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Appropriations Committee
January 18, 2017

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The Committee on Appropriations met at 10:00 a.m. on Wednesday, January 18, 2017, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on Agencies 18, 29, 33, 54, 71, 84, 85, 3, 7, 8, 9, 11, 12, 16, 32, 65, 69, 77, 87, 91, 93, 23, 28, 67, 68, 70, 76, 81, 82, 25. Senators present: John Stinner, Chairperson; Kate Bolz, Vice Chairperson; Robert Hilkemann; Bill Kintner; John Kuehn; Mike McDonnell; Tony Vargas; Dan Watermeier; and Anna Wishart. Senators absent: None.

SENATOR STINNER: (Recorder malfunction)...just part of the process. To better facilitate today's proceedings, I ask that you abide by the following procedures. Please silence or turn off your cell phone. Move to the reserve chairs in the front of the chamber here and try to order yourself so that you can come up and facilitate this process a little bit better before you give testimony. The order of the testimony is a head of the agency will first present, we will not time that part of the presentation; but after that we'll start to time five minutes for each presenter. An amber light will come on. That will mean that you've got about a minute to conclude your testimony. Testifiers sign in. Hand your green sign-in sheet to the committee clerk when you come up to testify. Spell your name, first and last name, for the record before you testify. Be concise. It is my request that you limit your testimony to five minutes, not including agency heads. If you will not testify at the microphone but want to go on the record as having a position on the 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 of today's hearing. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come in to testify. You will need 12 copies. Most of the time we need 10, but we have a bigger committee; you will need 12 copies. So if you need extra copies, hold up your hand and our pages will go and make the appropriate amount of copies. To my left, we have a fiscal analyst, Mike Lovelace. To my right is our committee clerk, Jennifer Svehla. And I will start on my left with self-introductions.

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SENATOR KINTNER: Bill Kintner, Legislative District 2.

SENATOR McDONNELL: Mike McDonnell, LD5, south Omaha.

SENATOR KUEHN: John Kuehn, District 38, south-central Nebraska.

SENATOR HILKEMANN: Robert Hilkemann, District 4, west Omaha.

SENATOR STINNER: John Stinner, District 48, Scotts Bluff County.

SENATOR BOLZ: Senator Kate Bolz. I represent District 29 in south-central Lincoln.

SENATOR WISHART: Senator Anna Wishart, District 27, western Lincoln.

SENATOR VARGAS: Senator Tony Vargas, District 7, downtown and south Omaha.

SENATOR WATERMEIER: Dan Watermeier, District 1 from Syracuse.

SENATOR STINNER: Thank you. Also with us today are our two pages: Aidan, she's from Lincoln; and Ashlee is from Seward. We will now start testimony with Game and Parks.
[AGENCY 33]

JAMES DOUGLAS: Thank you, Mr. Chairman, members of the Appropriations Committee. My name is James Douglas, J-a-m-e-s D-o-u-g-l-a-s. I have the privilege of serving as the director of the Nebraska Game and Parks Commission at 2200 N. 33rd St. Thank you for this opportunity to address the committee concerning LBs 22 and 23. I'll start by saying that when I get down to particulars you will notice then that we are not asking for very much variance between what these bills ask of the Nebraska Game and Parks Commission and what we would request. As a matter of fact, in the bottom lines there's no difference. But there are some reasons that we would ask for some slight adjustments. And part of those reasons reflect the fact that General Funds make up a fairly small part of our overall budget, less than 16 percent in total of our operating budget and about 24 percent of our parks budget so leaning towards parks. Very little goes to fish

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and wildlife activities in that those General Funds that go to fish and wildlife activities go there because there is no alternative for the type of activity mandated in law. I'll give you an example. We have mandates in law to do activities associated with evaluating other state agencies' permitted activities and how they might affect threatened and endangered species and we're mandated to do that. But Game Cash Funds, which come from permit fees for hunting and fishing, aren't allowed to be used for that activity. Park Cash Funds can't be used for that activity. So in the case of fish and wildlife, there's a small amount of General Funds that go to that activity. Also we have some other activities associated with nongame and endangered species that are funded with General Funds. So we have a diverse funding matrix. And in a situation where we have like we have today, that's actually advantageous for us as we look at how we're going to navigate and keep services and keep the high stature of our activities in the eyes of the public going when we have to sacrifice to make everything work for everybody. In that regard then what we're really...when we look at what these bills do, if I might try to characterize them--you can correct me if I'm wrong--but part of what occurs under these bills is that the spending authority that would in many...in most years carry over from one year to the next does not carry over for General Fund spending authority. And that amounts to about \$234,000 in our budget. The other thing that occurs is a 4 percent reduction in General Funds of \$482,000. What we propose is that we are going to find a way to live with that lack of carryover. And the reason that...there's a couple of reasons that that's so. One is that we have started cutting back on a lot of our activities that use those funds in the parks division. Several months ago, there was some uncertainty about what might occur with park permit fees, for example. Also as the Governor has requested, we've slowed down on some travel and hiring and so on. So that slow-down has occurred. That's one of the reasons why we think we can do that. The other is that if we didn't do that we would probably instead ask you to substitute our ability to use that authority with Cash Funds. But I think in the next biennial budget we're going to need those Cash Funds to ask you to do the same thing, which would be consistent with what the Governor's proposal is for the next two years, which is to substitute some Cash Funds for General Funds but keep authority. The other caveat on that, living with that is that it's our understanding that at least in the Governor's proposed biennial budget scenario we start the reductions that would occur in this current fiscal year do not affect the base that we start from the next year. So it would be how we sacrifice in the next six months. And we propose that we'll be able to do that. We'll be able to cover it with other authority we have. Now concerning the \$482,000 in General Fund reductions,

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we would only...we are not asking that that amount of reduction be reduced. But we are asking that it come from some different parts of our budget. And the reason we're asking that it come from some different parts of our budget than what is in the bill is for the reason I outlined in the beginning. We have some kinds of activities that can only be done with General Funds. So instead of taking General Funds away from those activities, we propose to take it away from some activities where we have a broader funding base so that we can survive that reduction. So we would propose, for example, that those reductions come from Program 617, which is our operations and construction budget. And this might be a good time to pause and see if you have questions or if I need to clarify anything I said. [AGENCY 33]

SENATOR STINNER: Questions? Senator Watermeier. [AGENCY 33]

SENATOR WATERMEIER: Chairman Stinner, thank you. Commissioner Douglas, when you say you want to move it all to 617, right now you're taking out \$90,000 or the suggestion is. You're saying you'd take more of it out of there? [AGENCY 33]

JAMES DOUGLAS: Yes. [AGENCY 33]

SENATOR WATERMEIER: Okay, just to be clear on that. [AGENCY 33]

JAMES DOUGLAS: Yes. [AGENCY 33]

SENATOR WATERMEIER: More out of your engineering and area maintenance. [AGENCY 33]

JAMES DOUGLAS: Yeah, right. [AGENCY 33]

SENATOR WATERMEIER: Okay. [AGENCY 33]

JAMES DOUGLAS: So specifically in Program 336, LB22 proposes a \$53,453 reduction. We'd request that that not be taken from there but instead take it from 617. In Program 337, LB22 proposes a \$32,743 reduction. Again, we'd request taking it from 617. [AGENCY 33]

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SENATOR WATERMEIER: That's fine. You didn't need to explain every one, but you're willing to sacrifice area maintenance and engineering. [AGENCY 33]

JAMES DOUGLAS Yeah, yeah. [AGENCY 33]

SENATOR WATERMEIER: Okay. [AGENCY 33]

JAMES DOUGLAS: It's not without pain. [AGENCY 33]

SENATOR WATERMEIER: I understand. [AGENCY 33]

JAMES DOUGLAS: But... [AGENCY 33]

SENATOR STINNER: Are you willing to send us a memo to that effect, how you want to line this stuff up to make sure we fully understand where you want to take it from? [AGENCY 33]

JAMES DOUGLAS: I'd be happy to do that. [AGENCY 33]

SENATOR STINNER: Okay. That would be great. Any other questions? [AGENCY 33]

JAMES DOUGLAS: I would make one other comment and that's on the Snowmobile (Trail) Cash Fund. It also I think in 223 takes the Snowmobile (Trail) Cash Fund's like \$79,000. We're willing to make that sacrifice as well. There's less activity in that arena than there was in some years past. There's less snowmobile registrations; there's less activity in snowmobiling. And so we don't like to see Cash Funds swept. But if there were to be some, I guess that would be the one that would be the least painful to... [AGENCY 33]

SENATOR STINNER: I do have a question. [AGENCY 33]

JAMES DOUGLAS: Yes. [AGENCY 33]

SENATOR STINNER: You know, we granted some increase in fees last year. [AGENCY 33]

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JAMES DOUGLAS: Right. [AGENCY 33]

SENATOR STINNER: How has that affected your revenue? Is attendance still the same?
[AGENCY 33]

JAMES DOUGLAS: Well, the fee increases did not go into effect until January. [AGENCY 33]

SENATOR STINNER: Okay. [AGENCY 33]

JAMES DOUGLAS: So, you know, they were put into our regulations last October, but they don't go into effect until now. So that's yet to be seen. But I do not anticipate a decrease in activity. [AGENCY 33]

SENATOR STINNER: Okay. Thank you. Questions? Senator Wishart. [AGENCY 33]

SENATOR WISHART: I'm assuming you've read the Governor's biennial budget recommendations. [AGENCY 33]

JAMES DOUGLAS: Yes. [AGENCY 33]

SENATOR WISHART: Can you talk a little bit about tying in sort of what we're doing now and then, you know, what you're going to see out of those recommendations, how you're going to deal with it? [AGENCY 33]

JAMES DOUGLAS: The Governor's budget suggestions grant our authority increase request at the level that we requested but substitutes Cash Funds in most cases for General Funds in a lot of cases. And so as we look at that, we can likely live with some semblance of that. [AGENCY 33]

SENATOR WISHART: Okay. [AGENCY 33]

JAMES DOUGLAS: But part of the reason, as I mentioned, is we need to spend less now, Cash Funds, so that we have sufficient Cash Funds to substitute for General Funds the next biennium.

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That's one of the things. And the other thing is that part of that scenario is dependent upon the Cash Funds, the Cash Fund at least leveling our increase associated with the fee increases that we discussed. Now... [AGENCY 33]

SENATOR STINNER: Other questions? Thank you. Is that it for Game and Parks? Our next agency is Department of Agriculture. [AGENCY 33]

SENATOR HILKEMANN: You've got one. [AGENCY 33]

SENATOR STINNER: Oh, we do have one. I'm sorry. Yeah. [AGENCY 33]

DUANE HOVORKA: Good morning. My name is Duane, D-u-a-n-e, Hovorka is H-o-v-o-r-k-a. I'm executive director of the Nebraska Wildlife Federation, pleased to be here to testify. And our comments basically about the Game and Parks Commission, it's one of those great natural resource agencies in Nebraska that historically has been very underfunded for the job that we ask them to do. And in the case of Game and Parks, especially they're very dependent on Cash Funds on the park fees, on hunting and fishing licenses, on the federal funds that come from the fees on ammunition and fishing tackle. And so we don't provide very many General Funds to that agency. And so 4 percent doesn't look like very much, but it's pretty significant to us because of the impact that it has and because of the small amount that we provide to them. So at this point, I understand the reason for the cuts and so we don't oppose the 4 percent cuts. We would strongly oppose going even further than that to making deeper cuts in the agency. And we'd ask you to agree with Director Douglas' ask that you give the agency some flexibility to move the cuts between funds. As I looked at the bill, there were I think maybe five or six different Game and Parks line items in the bill and there were some cuts to each of those. And the University of Nebraska has like one line item for all of their money. So again, if you provide that flexibility to the agency to move the cuts where they'll do the least damage, I think we'd be very grateful. And that concludes my testimony. [AGENCY 33]

SENATOR STINNER: Could you spell your name for the record, please. [AGENCY 33]

DUANE HOVORKA: Sure. It's Czech so it's H-o-v-o-r-k-a, Hovorka. [AGENCY 33]

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SENATOR STINNER: Thank you. Any questions? Thank you. Any further testimony on Game and Parks? Okay, now we'll move to the Department of Agriculture. Department of Agriculture, anybody here to testify for the Department of Agriculture? We'll move then to the Nebraska State Historical Society. [AGENCY 33 AGENCY 18]

TREVOR JONES: (Exhibit 59) All right. Good morning. Thank you, Mr. Chairman, members of the Appropriations Committee. My name is Trevor Jones, T-r-e-v-o-r J-o-n-e-s. I am the director and CEO of the Nebraska State Historical Society. I've been on the job about exactly six months so I will do my best to sort of try to understand the agency and the impact that these changes have on us. Been working on it for a while. Basically, I sort of want to go through a little bit of past history because (a) that's what we do and (b) it informs very much our testimony here today. You and the rest of the Legislature were very generous to the Historical Society in the last few years. We did an ongoing \$8 million renovation project of our museum building which is on the mall just at the edge of the Centennial Mall. And we're really in the final phases of finishing that big renovation project, and it had a lot of moving pieces. It meant that we moved collections from several buildings all around the city. We built a new facility the north side of town where we moved our archeological collections and also all the state archives that we're under statute to keep. And these projects are finishing but not done. And a huge amount of our reappropriated dollars were intentionally reappropriated to finish these projects by the Appropriations Committee in sort of the last go-round before I got here. And so the impact of removing 76 percent of these reappropriated funds on us is pretty colossal because we're in the home stretch on a lot of these projects. But we don't have the money...if this goes through, we don't have the money to actually complete a lot of things that are in the 90, 95 percent complete rate. And so we understand that there's certainly a budget issue and we can delay some things that we would frankly really like to do, some things that we had planned to do. But we, you know, giving up that much money really puts a lot of these projects in jeopardy of completion. So our proposal is that we take 40 percent of our reappropriation that we had and give that back and keep 60 percent so we can finish these mission critical projects. And I've given you a list and I don't, unless you want to we can go through each one of them, but some of them are just sort of in my opinion are the broad brush has caught some projects that are small enough that they don't have a huge financial impact but they're really big for us. So, for example, one of the things that this LB22 does is it closes out an account that has only \$5,900 left in it to finish the museum building

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because we had hoped that that would be done by now. But we did a walk-through, we had a scheduled walk-through with the Buildings Division and they discovered some problems before the one-year sort of rollout was up. And so we've got a drain that needs to be moved. A couple of things changed in code since the time we put them in till now and so we've got corrections to do, but that money is already gone. They've already swept that money away. We knew that the money that was there in that \$5,900 would not be enough to cover that and our last cost in the first place, but we had planned and we communicated with the budget office that we would use reappropriated dollars to finish these projects. And now these reappropriated dollars are being taken away. So it creates a big hardship for the agency. And I'd like to laud my team over the last few years who've worked on this because one of the things that they did--and I can take absolutely no credit for this because I was not here--but one of the great things that they did is they repurposed a lot of equipment to save the state money. And so some of the projects that you'll see for collection storage we actually used some equipment that was in one of our storage facilities and then moved it to another facility and we had to pour new concrete, which is part of the cost here. But that was, you know, about a quarter of a million dollars savings to the state for recycling equipment that we could have surplussed but it would be cost savings to do that. So some of the reasons that we don't have the stuff, you know, done where we are is because we had to move out of one facility, pour concrete, wait for the concrete to cure, move it to the next facility. And so, you know, these monies have been committed for these projects. We just haven't finished them yet. So that's pretty much where we are as an organization. We've got these projects that the board, my board, has said that they wanted to be done. The Legislature, it's my understanding, is they wanted us to complete them. But without 60 percent of this reappropriation, we can't finish these projects the way that we've agreed to. So that's pretty much what I've got to say. [AGENCY 54]

SENATOR STINNER: Thank you. Questions? Senator Bolz. [AGENCY 54]

SENATOR BOLZ: I'm going through your list here and it's very helpful that you've laid it out for us. Items 1 and 2 make sense to me. Help me understand item 3. I understand that some of this is for exhibition planning and marketing materials. Help me pull apart what's absolutely necessary. [AGENCY 54]

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TREVOR JONES: Sure. One of the big ticket items here for us is things like the gallery dividers that would help us do temporary exhibits in the space. So we built the space but it was...almost all of that money was infrastructure. And so things that we...you know, so some things we're going to delay and so we're going to limp along. With our auditorium, we didn't put new chairs in. We've got old chairs that probably have a couple more years left in them, so we can delay that. But things like the gallery dividers make it really much better for us to do things like traveling exhibits. We don't have any of that infrastructure. The other piece that we haven't done and we really need to do and certainly a huge strategic thing for us is we did this great new building but we haven't marketed it at all. We haven't. You know, there's been no advertising for the museum, there's been no promotion of it. And so we made this big investment but we haven't done the part of letting people know that it's here and that it's done. And I think that that's the piece that, you know, we really need to do if we want it to get used the way that we're projecting because we're, you know, projecting an increased attendance and impact. But unless we let people know, you know, that's not going to happen. We're going to not achieve that. So that's really some of the major goals for that, is to really look at that marketing piece. [AGENCY 54]

SENATOR BOLZ: Okay. And the other question is item 6, cloud storage. I certainly appreciate that you want to use new technology. Tell me more about that and tell me if there's a long-term impact of not moving to cloud storage in terms of a fiscal impact. [AGENCY 54]

TREVOR JONES: Sure. This is actually one of our pieces for this year and then it was our number one item for the next biennial budget as well that we needed. And the Governor's draft budget does not have this in there. We have a huge amount of data. Our responsibility is to store digital records and print records for the state by statute, and increasingly that information is in digital form. And the difference between us and a lot of other agencies is that when you think about IT and you think about long-term digital storage for...if you talk to IT professionals, they usually think of that in terms of a couple years. For us, by statute, we have to store a lot of this stuff forever, so it's really long-term storage. And so we're reaching a crisis point. We have servers that are failing and we really need sort of a cloud storage solution. And we know we need to get this started and then we're going to have an ongoing cost that we estimate is going to be about \$90,000 a year after the initial cost in order to be able to store this stuff and provide access to the people of Nebraska. So I feel it's a really interesting and terrifying time to be in this

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business because we still have the print world that we have to pay for and deal with. We still have a lot of stuff that's done in print, so our expenses are high there. And then we're increasingly digital so our costs are increasing there. And we're straddling both of those things, so we're having two streams that we have to maintain at the same time. And until that fabled day when we are in a paperless society, I don't see that changing. So for us, that's one of those pieces that we just need to move on and, quite honestly, you know, by hook or by crook, we have to do it. There's no "no" option there for us. So if we don't do that in the next biennial budget, we'll have to cut, you know, some staff positions or something to make that happen, because we're at the data loss area. We had a server go down this summer and it, you know, took us three months to reconstruct that data. And so if we deal with that, if we don't address that on a strategic level, we're going to end up losing essential documents. So we have to deal with it. [AGENCY 54]

SENATOR BOLZ: Okay. That's helpful. So just...I'm going to repeat that back to you. What I'm hearing you say is that this is existing electronic data that you are statutorily required to maintain. [AGENCY 54]

TREVOR JONES: Yeah, 12 terabytes worth, yeah. [AGENCY 54]

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

TREVOR JONES: Yeah. [AGENCY 54]

SENATOR STINNER: Senator Wishart. [AGENCY 54]

SENATOR WISHART: With the renovated facility, are you going to be renting it out for events?
[AGENCY 54]

TREVOR JONES: Yes, and we have done some of that already. But we would like to increase that capacity. [AGENCY 54]

SENATOR WISHART: Okay. [AGENCY 54]

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TREVOR JONES: We're also looking at increasing...one of the revenue streams I want to increase is I want to increase our cash revenue, so we're looking a lot at what we can do to increase our store sales. We have one store in this building and then we have one store down there and stores at our sites. I think we have the possibility of doing that. I would really like to be back here, you know, in the next biennium with an increase in that cash fund. It just...it's going to take us a while to build it. We've never really thought of ourselves as that much of sort of an entrepreneurial fund...you know, growing organization that way and it's time to transform. It's just going to take us a while. That is the goal. [AGENCY 54]

SENATOR WISHART: And so when you're looking at renting out the space, can you just walk me through what it would potentially cost and have you sort of projected how many people might be interested in doing that for weddings and other events? [AGENCY 54]

TREVOR JONES: Yes. We're looking...it would depend on the length of the rental and whether or not people needed catering and security. So let's say \$500 on the low end to, say, a couple thousand dollars per event on the upper end. One of our...we haven't done...part of what we need to do is a little bit more market research for what our potential is, because we have a couple limitations for the building. We don't have parking. We don't have our dedicated parking. And the other thing that we don't have is a full catering kitchen. So those put us in less competitive areas, so I don't see that as a huge cash earner for us. What I do see is a really great potential to increase our store revenue from both the store that's in this building and the store that's there. And so we're actually, you know, we're bringing in retail consultants and we're looking at how we can project a revenue increase, because I do think we have great chances there. And then also at our Chimney Rock facility, we have a store there that does amazingly well on sort of a per capita basis, and I really think we can increase that revenue because a huge portion of our audience there is tourists and they like to spend money there. So it's good for us. [AGENCY 54]

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

SENATOR STINNER: Any other questions? I'm intrigued with the 13 terabytes of historical data recommended by OCIO. Is that the recommended amount that you need today or is there some

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kind of projected amount that has to be added to that? Is this a 10-year deal or 15 or 20 or...?
[AGENCY 54]

TREVOR JONES: Unclear. [AGENCY 54]

SENATOR STINNER: ...how much capacity? [AGENCY 54]

TREVOR JONES: I would love to know that. Right now, that's an annual cost for us. I don't see it necessarily going down, but the costs of data storage have been going down. So I can't see the future well enough to know. One of the things that we're looking at really seriously, Senators, is what is the data that needs to be accessed on a frequent level, you know, how frequently people need to do that. Because if you put it into cloud storage and it's frequent access, it's more expensive to pull out. But we also have like master records, master images that we can create derivatives on so people would rarely need to, or if ever, to see that, the, you know, original scan of something. And that we can put into what they call dark storage that people don't need to see very often at all. That's much cheaper. I don't know what the breakdown is going to be for us. I think what we need to do is get it into more secure storage with the backups and then look at our use rates and then be able to start to shove some of this into cheaper storage, look at what gets used more, and look at the derivatives. I don't have the answers on that yet because we're just not...we're not there. We're not that sophisticated until we can start looking at that as a whole, because right now it's all spread out on all these different servers. So we don't have a complete picture. [AGENCY 54]

SENATOR STINNER: Okay. We have it, though, available today on different servers. This is a concept that the OCIO has come up with; said we can do a cloud storage of all those tera...or however big a storage we need to have in the cloud. And it will cost you \$100,000 per year in order to implement this. [AGENCY 54]

TREVOR JONES: That is correct. [AGENCY 54]

SENATOR STINNER: Is it implementation or ongoing? (Inaudible). [AGENCY 54]

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TREVOR JONES: It would be \$100,000. It would be \$100,000 to get it in and then \$90,000 a year ongoing is what they've given us at this point. Though they do say, and in fairness to them, they do say those costs will drop but I don't know by how much over time. The other, you know, there are other possibilities as we move forward in terms of contracting with third-party vendors, say, Amazon that has a storage service as well that might result in really steep cost savings somewhere in the future. But I don't have a, you know, a guarantee on that at this point. Right now I'm just trying to, you know, keep the data safe because we're at that point we need to do that and then, you know, look at the strategies after that. [AGENCY 54]

SENATOR STINNER: Okay. I'll need some time to process that. [AGENCY 54]

TREVOR JONES: Fair enough. [AGENCY 54]

SENATOR STINNER: Other questions? Thank you very much. [AGENCY 54]

TREVOR JONES: Thank you, appreciate it. [AGENCY 54]

SENATOR STINNER: Any further testifiers on the Department of...Nebraska State Historical Society? Seeing none, the Department of Natural Resources, I believe we have a letter that said that they will not attend. Is that correct? Okay. We will enter that into the record (Exhibit 95). The next agency I have is Nebraska Energy Office. Anybody from the Nebraska Energy Office? Okay. Department of Environmental Quality I believe. [AGENCY 54 AGENCY 29 AGENCY 71 AGENCY 84]

DUANE HOVORKA: Good morning. I'm still Duane Hovorka, D-u-a-n-e H-o-v-o-r-k-a, executive director of the Nebraska Wildlife Federation and here with respect to the Department of Environmental Quality. It's another of those natural resource agencies that we ask to do a lot for us in terms of protecting our air and water and environment with not very much General Fund money. And our concern with the proposed cuts is that--and I think I'm on about page 79 of LB22--is that the General Fund cut for the department is about...close to 18 percent. The Governor's explanation of the cut was about a \$900,000 cut in the storm water grants program which is money that goes to local communities to help them find solutions to dealing with storm

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water. And the ultimate beneficiary there is our streams and rivers, which are in better shape because we're dealing with the storm water that comes off of parking lots and out of our communities and into those streams. So it is an important program to us. It does have an impact on the local communities that are dealing with these issues. And so that's one concern. And the second concern is if the loss of General Funds becomes part of the base going forward, that's a pretty big cut for an agency going forward into the future. As we look at the situation at the federal level, I think with the new administration, with the new Congress, the Department of Environmental Quality relies quite a lot on federal funding in order to do the work they do. And there's about \$3 of federal funds for every dollar of state General Funds that goes into that agency. We think those funds are at risk at the federal level, not this year, not for the current state fiscal year. But certainly as you look at the next biennium, we think those federal dollars coming for those clean water and clean air programs are going to be cut significantly. And as a result, we're going to be asking our state DEQ to do even more with even less funding. And so that cut to the base, if that follows through into the next biennium, is a real concern for us in terms of the Department of Environmental Quality budget. So that concludes my testimony and I appreciate the time. [AGENCY 84]

SENATOR STINNER: Thank you. Are there questions? Senator Wishart. [AGENCY 84]

SENATOR WISHART: So, Duane, and maybe this is...maybe there's somebody coming later who will explain this if you don't feel comfortable, but can you walk through particularly in District 27 we experienced some very significant flooding several years ago to a lot of the homes in the district. And can you explain to me how storm water mitigation works and what these funds go into? Can you...do you feel comfortable talking to that? [AGENCY 84]

DUANE HOVORKA: I can give you just some general terms. [AGENCY 84]

SENATOR WISHART: Great. [AGENCY 84]

DUANE HOVORKA: But probably the agency would be better to tell you exactly the kinds of projects that get funded. Certainly there are efforts in cities for like the storm sewer drains is typically the kinds of things that we're dealing with. In some communities we've had the

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combined sewer overflow problems. We've got that in Omaha where you've got the sanitary sewers that in places are combined with the storm sewers that come off the streets. And so that's a big...that's not only in Omaha, but we've had that situation in other communities where we've had to try to separate those so that we can treat them differently. But the storm sewer, the storm water grants are primarily to help with...communities deal with those kinds of local flooding issues that come because the storm water is backing up in places. I don't know if that's very helpful but... [AGENCY 84]

SENATOR WISHART: Yeah. [AGENCY 84]

SENATOR STINNER: Other questions? Senator Bolz. [AGENCY 84]

SENATOR BOLZ: Quickly, you referenced concern over loss of federal funds. To your knowledge, do any of the state funds for these purposes have a federal match that would be impacted by the cuts? [AGENCY 84]

DUANE HOVORKA: Yes, many of them do. And in a lot of cases, my understanding is that the DEQ budgets are kind of the minimum that we need to get the federal funds. So there's federal funds for nonpoint source pollution grants which help reduce pollution that comes off of farm and ranch land around the state and other nonpoint...and there's other programs. There's clean water programs. There's clean air programs. In a lot of cases, we're getting federal funds based on a state match for those dollars. So that's, yeah. [AGENCY 84]

SENATOR BOLZ: So it's maybe a follow-up question for the agency in terms of what type of matching dollars we might lose if we decide to proceed with the cuts. [AGENCY 84]

DUANE HOVORKA: Yes, I think so. [AGENCY 84]

SENATOR BOLZ: Thank you. [AGENCY 84]

SENATOR STINNER: Additional questions? Thank you. [AGENCY 84]

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DUANE HOVORKA: Thanks. [AGENCY 84]

LYNN REX: (Exhibit 60) Senator Stinner, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And you have a handout that's coming your way explaining why the League of Nebraska Municipalities is opposing the \$900,000 cut to the Storm Water Management Plan grant Program which was established with passage of LB1226. And I think it's important to note that we're going to start with--and I'm going to go through this very quickly because of the time limitations that you have--to talk about a little bit of history here. And if we look at the handout, and I think everyone has it, oh, Senator Kintner does not have one. Sorry, Senator Kintner. I apologize for that. [AGENCY 84]

SENATOR STINNER: Well, we asked everybody to make 12 copies because we were...
[AGENCY 84]

LYNN REX: I know, sir, I did. And sadly I handed them to other colleagues in the room so I do apologize for that. In any event, if you look at the first few pages here, what you're going to see is that looking at pages 2 through, gosh, all the way through 8, what that outlines for you are the cuts in municipal aid programs. And I think it's important to understand that from the very beginning when municipalities were given what you would reference as state aid to municipalities, for those of you that are new, some of you may think that that was actually just like a gift from the state of Nebraska or you had extra money that was a gift from the state of Nebraska to municipalities. It was not. That was structured by the Nebraska Legislature as a reimbursement to municipalities, counties, and others when the state Legislature, starting in 1978, passed a bill to exempt livestock, farm equipment, and business inventory, all legitimate exemptions. But the Legislature at that time made a commitment to local governments that we're going to reimburse that amount because otherwise there's going to be a shift to residential homeowners. That was capped at \$70 million because then-Governor Exon said, can't afford it. The total amount for municipalities was \$17.9 million, our share of that \$70 million. The League hired the Bureau of Business Research at that time and when that bill took effect, one bill, when that one bill took effect, municipalities, counties, and schools lost \$250 million, not in valuation but in real dollars of what would have been actually paid at that time. So in any event, not that those aren't legitimate exemptions, but that gives you a bit of the background. So this outlines all

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the cuts which we have nothing essentially. We still have Municipal Equalization Fund, but everything was eliminated in "state aid to municipalities" which was deemed to be...the nomenclature was changed from the Personal Property Tax Reimbursement Fund to state aid because the Nebraska Supreme Court three times said it's a closed class. You have to call it something else. And John DeCamp, who was a state senator then said, we're just going to call it state aid. So that's how "state aid" happened to municipalities. Again, our total appropriation was \$17.9 million. There's only a couple of years that was ever fully funded. That's relevant to today because, in fact, we're talking about another cut of \$900,000 to the Storm Water Management Plan Program. What you don't have in this list of cuts is a \$14.7 million loss that municipalities and counties faced in July 1, 2009, when the wholesale price of gas bill took effect. LB846 passed in 2008 by the Nebraska Legislature, taking effect in July 1, 2009. That tied gas tax funds from municipalities and counties to the wholesale price of gas. That has gone up and down and up and down but, quite frankly, down, down, and down. And for those of you that were kind enough to vote for the gas tax and the fee increase of LB610 in 2015, that resulted in basically a 6 cent gas tax increase over a period of four years, phased in, that resulted in \$25.4 million for municipalities; an additional \$25.4 million for counties; and an additional \$25.4 million for the state of Nebraska NDOR. Let me suggest to you that that amount of money did not end up being new funds. That amount of money ended up being just to offset the loss of wholesale price of gas. So this \$900,000 is extremely important to us. This was, if you turn to--and again, I realize you don't have time to look at everything--but if you turn to page 18, which is the red number at the very bottom, what you see here is that \$1.824996 (million) was basically appropriated and distributed to municipalities to 22 entities in 2016. And those are as follows, and I'm going to read them fast: Lincoln, Omaha, Dakota County, Dakota City, South Sioux City, Douglas County, city of Bellevue, Papillion, Ralston, La Vista, Grand Island, Boys Town, Sarpy County, Fremont, Hastings, Lexington, Beatrice, North Platte, Norfolk, Columbus, Kearney, Scottsbluff, these are all cities that have a federal mandate for storm water and also these are cities that have a permit through DEQ. Basically our cities notified us that in the fall of 2016 they were notified that they would be getting a 56 percent cut in 2017. So this is going from essentially \$1.825 million reduced by \$900,000. We strongly oppose this cut because, again, these are funds that are extremely important for these cities that are trying to address a storm water mandate, which is a federal mandate. And this program was put in place after the Legislature said we're not going to let you transfer and have those people creating the problem on the local level pay for it

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through a fee process the Legislature said, no. Those folks came forward, all of those folks that "created a problem," in other words parking lots, everything paved how that impacts storm water, they all said, no, that ought to be done through property tax increases. That ought to be done by...paid for by everyone. So then we put in a bill saying, okay, we're going to do it that way. And they came forward, the same group, about over 50, 60 organizations and said, no, not property tax increases so then we had nothing. So bottom line is we're here today to say we really hope that you will not make this \$900,000 cut. It's extremely important to municipalities across the state. I'm happy to answer any questions that you might have. [AGENCY 84]

SENATOR STINNER: Thank you. Questions? [AGENCY 84]

LYNN REX: Thank you so much for your time, really appreciate your consideration. [AGENCY 84]

SENATOR STINNER: Thank you. [AGENCY 84]

LYNN REX: Thank you. [AGENCY 84]

DONNA GARDEN: (Exhibit 61) Good morning, Senator Stinner and members of the Appropriations Committee. My name is Donna Garden. It's D-o-n-n-a G-a-r-d-e-n. I am the assistant director of public works and utilities for the city of Lincoln. I am here today to testify about the proposed cuts to the Storm Water Management grant Program for the 2016-17 budget. Thank you for the opportunity to outline how these cuts will impact the city of Lincoln. As Lynn Rex noted in her testimony, this Storm Water grant Program is administered by the Nebraska Department of Environmental Quality. The proposed cut to this NDEQ program will reduce Lincoln's share of the storm water grant dollars by 56 percent, as Lynn stated. This takes it from approximately \$376,000 down to \$165,000 for the city of Lincoln, which is a reduction of more than \$200,000. So what does that mean to the city of Lincoln? It means that we will have to identify other funding, somewhere between--whether it's property taxes or a fee--to support this federally mandated storm water program. We don't have a choice in administering that program. It has to be put into place. By way of background, the Storm Water grant Program was designed to assist regulated entities in responding to a significant unfunded mandate authorized by the

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Clean Water Act. These Clean Water Act mandates are enforced by the Nebraska Department of Environmental Quality and the EPA. The city of Lincoln is a regulated entity as we own, we operate, and we maintain a municipal separate storm sewer system, also known in the industry as an MS4. You'll hear that term a lot. The federal Clean Water Act requirements focus on not only water quantity issues, which we talked a little bit about here today, such as flood protection mitigation, but also on water quality issues. And this particular program attempts to reduce the pollutants that enter the storm drain system by way of rainwater runoff. Our storm drains are not treated. All of the things that run off from rooftops, driveways, parking lots, and roads carry those pollutants. And those pollutants include things like vehicle fuels and oils, metals, salts, sediments and other impurities. Precipitation that falls and enters our city's storm sewer takes those pollutants up and carries them directly to our creeks, streams, lakes and waters of the state of Nebraska. As I noted before, the city of Lincoln is a regulated entity that has been granted a National Pollutant Discharge Elimination System permit, or an NPDES permit, by NDEQ. This permit has very specific requirements that the city must fulfill to comply with federal and state law. And the city has invested millions of dollars in implementing a municipal Storm Water Management Program designed to ensure that compliance. Specific requirements of NDEQ-issued permit include construction site runoff control, meaning we have to do inspection and enforcement to make sure that construction sites meet the law for construction storm water runoff. Postconstruction standards for water quality: this protects our water quality after construction is done and makes sure there's best management practices in place to protect it. Illicit discharge detection and elimination including illegal dumping; pollution prevention measures like street sweeping and storm drain cleaning; public education and public participation programs; water quality initiatives; and water quality monitoring. The city of Lincoln's cost to administer this federally required storm water program is approximately \$600,000 per year. That does not include the capital costs and projects that we put in, which the city has historically funded with voter-approved bonds. These administrative costs are covered by the NDEQ storm water grants and the city general fund dollars. The city of Lincoln's share of the storm water grant program has ranged from a high of almost \$540,000 in 2008 to a low of \$375,000 the last few years. And there's a graph attached to the testimony that I'm giving here today at the last page that shows how historically that has ranged. This proposed 56 percent cut to our storm water grant program means that Lincoln will receive only about \$165,000 for a \$600,000 program--a fraction of the cost to administer that mandated program. Because the city

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has no choice but to continue this program and follow the requirements of our NDEQ permit, this reduction means responsibility for these administrative costs will fall squarely on the shoulders of our local taxpaying constituents; that means the private sector businesses and residents. I would also like to note that the city of Lincoln's storm water permit is up for renewal by NDEQ by the end of this year. We just had a recent EPA inspection of the city's storm water program, and they identified potential areas of improvement that include lack of adequate staff. As we prepare to renew our NDEQ permit, this proposed cut will result in even more challenges in our effort to comply with a federally mandated storm water requirement. In conclusion, I would like to urge the committee to fully fund the storm water grant program at the level appropriated last session at \$1.8 million. This grant program represents an important partnership between the state and the entities regulated by NDEQ. It recognizes the state's interest in and the impacts on water quality in MS4 communities. Cuts to the storm water grant program will directly impact the ability of these communities to fund their federally mandated storm water programs. And more specifically, these communities will have few choices to deal with that cut. They will likely be forced to turn to property tax to ensure they continue to meet the requirements of federal and state law. Thank you, again, for this opportunity to testify; and I would be happy to answer any questions you might have. [AGENCY 84]

SENATOR STINNER: Questions? Senator Bolz. [AGENCY 84]

SENATOR BOLZ: Could you briefly describe for me what parts of state law these funds help you comply with? [AGENCY 84]

DONNA GARDEN: Title 119, NDEQ's Title 119 specifically, that is the NPDES program. [AGENCY 84]

SENATOR BOLZ: I'm sorry. I'm not familiar. Can... [AGENCY 84]

DONNA GARDEN: National Pollutant Discharge Elimination System, that's what our permit is issued under. [AGENCY 84]

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SENATOR BOLZ: I'm unfamiliar completely. Could you describe in more detail what it is that the state is asking you to do and what the impact on communities is that you would not be able to do without these dollars? [AGENCY 84]

DONNA GARDEN: The...actually this originates with the Clean Water Act. In 1990 and then again in 1999, it was passed that storm water should also be regulated once it goes into a storm sewer system. It then becomes what they call point source discharge, meaning if it goes into a pipe and it's discharged directly into a water of the state that it is now regulated water that we can look at what pollutants can be discharged into it and EPA can regulate that. The authority for that program under the Clean Water Act is delegated to the NDEQ, and they administer that program through Title 119. It takes the form of a permitting program whereby those requirements, meaning how do you prevent these pollutants from getting into waters or limitations on those pollutants are in a NPDES permit. And that's what the regulated entities have to abide by. [AGENCY 84]

SENATOR BOLZ: And those permits are...the authority for those permits are in statute that the Department of Environmental Quality oversees that implementation... [AGENCY 84]

DONNA GARDEN: That's correct. [AGENCY 84]

SENATOR BOLZ: So that's how the state intersects. [AGENCY 84]

DONNA GARDEN: That's correct. [AGENCY 84]

SENATOR BOLZ: Okay. [AGENCY 84]

SENATOR STINNER: Other questions? Senator Wishart. [AGENCY 84]

SENATOR WISHART: Can you explain what are the negative effects of these pollutants in our water system? [AGENCY 84]

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DONNA GARDEN: There are a variety of ones. Actually, EPA considers storm water now to be the biggest threat to our water. Since we've taken...the Clean Water Act has done a lot to improve direct dumping of industrial pollutants and we've done so much to clean up sanitary sewage in terms of discharging clean effluent to our waters. Now storm water is our biggest culprit for pollutants. Basically, it carries just about anything that you see. If you go down into a parking lot, you'll see a sheen on the water that's in the parking lot. And that comes from all of the motor oils that come off of cars. It takes the fertilizers off of your lawn. There could be nutrients and things like that that get into our waterways. Certainly even the salt we put down on the roadways during the winter months are a concern because all of that goes directly into our waters of the state. [AGENCY 84]

SENATOR WISHART: And so just continuing with that thought, what are the public health problems that can occur because of this? [AGENCY 84]

DONNA GARDEN: Certainly. A number of things can happen. Obviously, EPA's Clean Water Act was there to make fishable, swimmable waters. And it certainly can have an impact on aquatic life. That's what most of our pollutants are regulated at within the state in terms of determining when there is an impact on aquatic life so it impacts fisheries, it impacts a number of things. You've heard about nutrient issues possibly with our blue-green algae problems that we have throughout the state. Those are now affected in a lot of our lakes that do get closed in the summertime. And if you go even further down the road, obviously there's the Gulf of Mexico issue where there's a fairly large dead zone in the Gulf of Mexico due to the nutrients and pollutant runoff that flow through the waters that come down our storm sewers. [AGENCY 84]

SENATOR STINNER: Thank you. Any other questions? I have a question or two. And I struggle a little bit with these rigid regulations passed down through the Clean Water Act that doesn't look at resources that may or may not be available because of business cycles that we're in. Is there our ability to postpone or push out some of these measures so that it more or less fits our current situation? Is there a time line? Is there something that we could say, hey, waive this for a period of time because revenues are short? [AGENCY 84]

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DONNA GARDEN: I don't know if I can answer that. Maybe someone from DEQ could answer that. From the city's perspective, obviously we will work with DEQ on our next permit cycle. But normally what EPA and DEQ has done in the past is they will not let you be less stringent than what you've been before. So if you've achieved a program and you have compliance with that program, they won't let you go and backslide on those requirements in order to achieve them. And this is basically funding is our basic administration. It's not necessarily taking it a step further in the program. It's simply what we are required to do right now. [AGENCY 84]

SENATOR STINNER: Okay. I'll probably ask that question of DEQ then and maybe they can give me some kind of answer. I get the fact that once you reach a certain level you're not allowed to go back. That seems to be fairly rigid... [AGENCY 84]

DONNA GARDEN: Um-hum. [AGENCY 84]

SENATOR STINNER: ...and unrealistic in the real world. But I don't mean to make political comments. I'm sorry. Anyhow, any other questions? [AGENCY 84]

SENATOR KINTNER: That's my job. [AGENCY 84]

SENATOR STINNER: Any other questions? Thank you. [AGENCY 84]

DONNA GARDEN: Thank you. [AGENCY 84]

JACK CHELOHA: (Exhibit 62) Good morning, Senator Stinner and members of the Appropriations Committee. My name is Jack Cheloha and that's spelled J-a-c-k, last name is C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. And I want to testify today on the same subject matter as the two witnesses immediately preceding me. And I'm grateful for their testimony because I'm not an engineer and so I'm here basically to give you how this program affects the city of Omaha numerically. So that's my task today. As it was mentioned, the city of Omaha is under this Storm Water Management Program through the EPA and through NDEQ. We, too, have our permit. We've had our program in place for a number of years. In terms of renewal, I'm not sure where we are in terms of what year we're in or when the next renewal will

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be. Nevertheless, basically I pulled from our budget we appropriate roughly \$1.6 million annually towards our Storm Water Management Program. What I'm handing out here is the amount of funds that are at risk under the state of Nebraska's grant funding program. I've got a listing there from 2006 through 2016 of the amount of award that came to the city of Omaha. With that, you don't automatically get the grant. You have to put up some local money as well to qualify so it shows our local contribution for that part of the grant which you'll see based on my statement if we spend \$1.6 million this doesn't cover the whole cost of Omaha's storm water program. So the problem is in 2016 we would face a 56 percent cut or a loss of over \$400,000. This would be very painful. It seems to me that we've done some across-the-board cuts of 4 percent. It calls into question why would this important program lose 56 percent of its funding? Obviously, we will have to continue with our program. We've got our permit. It's a legal document. We've agreed to it. We're continuing our program. We're meeting the EPA requirements. If we would lose \$400,000-plus now in this budget cycle, that would be very painful. And we would have to either make it up with property taxes or fees on local businesses, etcetera, to make up the difference. And for those reasons, I would ask this committee respectfully not to make this cut. Thank you very much. I'll try to answer any questions.
[AGENCY 84]

SENATOR STINNER: Questions? Senator Bolz. [AGENCY 84]

SENATOR BOLZ: Just very quickly, your chart, this is a federal match? [AGENCY 84]

JACK CHELOHA: No. This is local match in order to qualify for the state dollars. [AGENCY 84]

SENATOR BOLZ: Thank you. [AGENCY 84]

SENATOR STINNER: Other questions? Senator Kintner. [AGENCY 84]

SENATOR KINTNER: I can say with some certainty you're going to get cut. My question to you is, what can you live with? I mean, what...tell me if we cut it in half what that would do to you; if we cut it by a third, what that would do to you. [AGENCY 84]

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JACK CHELOHA: Well, thank you, Senator. I mean from the previous witnesses, I mean, the cities have done their part through the ebbs and flows of the budgets through the last 20 years or more. I'd like to say, you know, we've done more than our fair share. But if the consensus is we're doing, you know, 4 percent for some of the agencies, I would think that that would be something that, you know, once again at least from Omaha's perspective we might be willing to do, but that's all I could agree to at this point, Senator. The rest would just have to be made up elsewhere. And we have to follow up. And you just can't dodge a federal mandate. Additionally, if I could, let me also tell you we're facing a second one on our combined sewer overflow, which through the course of 20-25 years Omaha is going to be spending roughly \$2 billion additionally. So this part of this key mandate is very important. So go easy on us is what I'm saying.
[AGENCY 84]

SENATOR KINTNER: Yeah, I appreciate you coming down here. All of us live in some city or municipality of some type or county. We all live under these problems. [AGENCY 84]

JACK CHELOHA: Absolutely. [AGENCY 84]

SENATOR KINTNER: And we're not deaf. We understand that there's problems all the way down the line. We're just trying to figure a fair way to do it. So I don't want to sound flippant when I say something is going to get cut. [AGENCY 84]

JACK CHELOHA: Not at all. [AGENCY 84]

SENATOR KINTNER: But we got to cut somewhere. [AGENCY 84]

JACK CHELOHA: I appreciate it. [AGENCY 84]

SENATOR KINTNER: And if we don't cut you guys, we got to cut more over on these guys who just testified a half an hour ago not to cut. So you can see where we are. So we're trying to weigh it out the best we can. [AGENCY 84]

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JACK CHELOHA: Absolutely. I appreciate that, and I appreciate the tough position you're in.
[AGENCY 84]

SENATOR KINTNER: Okay. Thank you for coming down, appreciate it. [AGENCY 84]

JACK CHELOHA: Thank you. [AGENCY 84]

SENATOR STINNER: Thank you. Any other questions? [AGENCY 84]

JACK CHELOHA: Thank you, sir. [AGENCY 84]

SENATOR STINNER: Any further testimony? Seeing none, Public Employees Retirement System. Anybody here to testify for that? That concludes our hearings for today or for this morning. I wish it was today. (Laughter) Oh, that was a slip. But anyhow, we will reconvene at 1:30. Thank you. [AGENCY 84 AGENCY 85]

BREAK

SENATOR STINNER: I'd like to get started. It's a little past 1:30 but I want to welcome everybody this afternoon to the Appropriations Committee hearing. My name is John Stinner. I represent Legislative District 48, Scotts Bluff County, and I'm also the Chair of the Appropriations Committee. The committee will take up the agency testimony in the order of posting. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on proposed legislation before us today. The committee members may come and go during the hearing. We have to introduce bills in other committees that we are called away to. It is not an indication that we are not interested in the bill being heard in this committee, just a part of the process. To better facilitate the proceedings, I ask that you abide by the following procedures: Please silence or turn off your cell phones. Move to the reserved chairs in the front to...if you're going to testify. That helps facilitate this whole process. Today we will have the agency head be the introducer of the agency. We will not put any time limit on what you have to say. I'd like you to be concise, but we won't put the clock on you. If people after that, there will be a five-minute limitation. Hand in your green sign-in sheets to the committee clerk

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when you come up to testify. Spell your first name and your last name, actually say your first name and spell it and then say your last name and spell that for the record so that we can pick it up when you testify. Be concise, like I said, five minutes after the agency head gives the testimony. 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 is a white sign-in sheet 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 of today's hearing. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. We need to have 12 copies. Normally you'd have ten, but this is a bigger committee. We need to have 12 copies so if you don't have 12 copies, put up your hand and our page will get those 12 copies for you. On my immediate left there is no fiscal analyst so I won't introduce that. But on my right is our committee clerk, Jennifer Svehla. The committee members with us today will introduce themselves beginning from my far left.

SENATOR KINTNER: Far left? Maybe far right?

SENATOR STINNER: Well, you're sitting in the far left chair.

SENATOR KINTNER: Okay. (Inaudible). Bill Kintner, Legislative District 2.

SENATOR MCDONNELL: Mike McDonnell, LD5, south Omaha.

SENATOR KUEHN: John Kuehn, District 38, south-central Nebraska.

SENATOR HILKEMANN: Robert Hilkemann, District 4, west Omaha.

SENATOR STINNER: John Stinner, District 48, Scotts Bluff County.

SENATOR BOLZ: Senator Kate Bolz. I represent south-central Lincoln and District 29.

SENATOR WISHART: Senator Anna Wishart, District 27, west Lincoln.

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SENATOR VARGAS: Senator Tony Vargas, District 7, downtown and south Omaha.

SENATOR WATERMEIER: Dan Watermeier, District 1 from Syracuse.

SENATOR STINNER: We also have with us today Brenda who is our page. She is from Wakefield, Nebraska. Our first, if I can find the agenda, the first committee to be heard today is Legislative Council. Is there anybody to testify on behalf of the Legislative Council? If not, we did get letters from the Governor and Lieutenant Governor's Office saying that they will not testify either. So the next on our list is the Secretary of State. [AGENCY 3 AGENCY 7 AGENCY 8 AGENCY 9]

JOHN GALE: Good afternoon, Chairperson Stinner and members of the Appropriations Committee. I am Secretary of State John Gale, J-o-h-n G-a-l-e. Thank you for this opportunity to briefly testify on LB22 as it relates to the appropriations of the Secretary of State Office. We are budgeting based upon the proposed cuts and understand the need to make our budget stretch during this difficult economic time. To meet the need, we have imposed travel restrictions and have deferred filling vacancies that are not mission critical; and we are hopeful for better economic times in the future when funding might be restored. Thank you. [AGENCY 9]

SENATOR STINNER: Thank you. Any questions? Perfect. Oh, Senator Bolz. [AGENCY 9]

SENATOR BOLZ: Sorry. Secretary Gale, can you describe to me what the impact of the cuts on election administration specifically might mean for your agency? [AGENCY 9]

JOHN GALE: Well, my budget officer is with me here today, but we're not anticipating that it's going to have any significant impact. We do have to replace our deputy for elections. Neal Erickson retired in December of last year and had held that position for 21 years. And so consequently, we have a major mission-critical position that we need to fill. I've consulted with chief of staff, Matt Miltenberger, with the Governor's Office and they concur that this is a mission-critical position. But we do have quite a sum of money that we need to pay out to Mr. Erickson as a result of his accumulated sick leave and vacation pay. So it may be two or three months before we actually can fill that position and still be budget neutral or at least balance a

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tighter budget that we have with this appropriation. But I have a great team of people in the elections division. We met an hour today going over the various responsibilities and duties. We believe that with the help of my general counsel and my budget officer we'll be able to move forward without that position immediately filled, simply because we're not in the midst of an election cycle. And Mr. Erickson did defer his retirement until we were able to complete the general election cycle. So if there was ever a good time, that was probably as good a time as you would find for him to retire. So obviously we tighten our belt up a notch like everyone else in this difficult time. But the cut in the administrative fund, elections administrative fund, is something that we're going to be able to deal with. So there shouldn't be any loss of service. We maybe don't have a person of Neal's experience, but we do have very capable, talented people in that division and we think we can handle it. [AGENCY 9]

SENATOR BOLZ: Thank you. [AGENCY 9]

SENATOR STINNER: Any other questions? [AGENCY 9]

JOHN GALE: Thank you. [AGENCY 9]

SENATOR STINNER: Thank you. Next up is the Attorney General. [AGENCY 11]

DOUG PETERSON: Good afternoon. Secretary Gale was a great example of brevity. I hope I can follow but I'm not going to be quite as quick as he is. Chairman Stinner and members of the Appropriations Committee, my name is Doug Peterson, D-o-u-g P-e-t-e-r-s-o-n, Attorney General of Nebraska. I appear before you today with great appreciation for the immense task that you have before you and that we in state government have in addressing the budget shortfalls. I'd like to take the opportunity to contextualize for you just the impact of the proposed cuts and transfers of LB22 and LB23. One of the things I have found, both in the last two years that I've been in office but also as I ran for office, is just the lack of awareness that people have as to the full scope of what our responsibilities are, both constitutionally and statutorily. In 1988, I worked in the Attorney General's Office for Bob Spire. I worked there for three years. At that time, our legal staff was approximately 28 lawyers. Today we're up to 65 lawyers, we have 10 investigators, we have approximately 40 support staff people. The difference between the Spire

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administration and our current situation is certainly the scope and degree of cases that we have to address across the state. But the constitutional statutory duties really have not changed. We still have a constitutional duty to protect. It's one of the fundamental duties of both our U.S. Constitution and state constitution and that is to protect and defend the state of Nebraska. What I would like to just suggest is that one of the big challenges I think for the Appropriations Committee is you have so many different budgets, so many different numbers that you're looking at, my hope today is to give you a much better understanding of the impact that LB22 will have, particularly on fund 507. That is our operating fund. If I were to use an analogy of a family budget, this is housing, clothing, and food, basically. It's the fundamentals of our budget. It's where we can least afford a hit for our operations. In order to get a better understanding of some of the programs that we run under 507, one, let me talk just briefly about our Civil Bureau. The Attorney General's Office has sole authority to direct the course of trial and appellate litigation in the defense of the state. Our Civil Litigation Bureau has nine attorneys. We manage a caseload of more than 600 cases a year and more than 70 appeals. So we always have approximately 600 cases in our hopper that the state is being defended through these nine lawyers. Some of these cases can be quite significant and some you might be aware of. Last year, 2016, there was a lawsuit filed by a few insurance companies that were unsuccessful in getting a very, very large Health and Human Services contract. In that particular case, there were millions of dollars at stake. In fact, the contract provided for about a billion dollars a year. Some of the largest firms in the state of Nebraska represented Aetna and other insurance companies against the state of Nebraska. The exposure was extensive. We had four of our lawyers from the litigation team representing the state and we pursued in federal court a motion for summary judgment. I've got to tell you, from my 25 years of experience in the private sector and having gone against large firms, both in the state of Nebraska and from other large cities across the country, I was so impressed by the young lawyers that we had on our team. I went into the conference room. They were preparing for the summary judgment hearing. They had all of their records developed and they were prepared to go in front of Judge Rossiter in federal court to defend this significant case that would suggest that...was alleging that Nebraska had not properly followed appropriate bidding procedures to let this contract. I was so impressed by these young lawyers. And what struck me was these young lawyers were probably in the salary range of about \$75,000 a year. The agency attorneys were making, who were assisting them in gathering the documents, were making more than that. The defense lawyers that they were going against, I would speculate,

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were making three to five times what these lawyers were making in defending the state of Nebraska. They were so thorough in that representation of the state that the federal court dismissed the case with a very thorough Opinion, and the insurance companies chose not to appeal to the Eighth Circuit Court of Appeals. So that's a significant exposure and I'm so impressed by the dedicated service of those four lawyers on that team, and particularly impressed by the quality of work they did. But I give you that example because the exposures were significant. And their funding came out of the 507 program. The Civil Litigation Bureau provides superior defense to state laws enacted by the Legislature. For example, last year, in 2016, our attorneys defended in federal court the Nebraska law that placed limitations on picketing at funerals. We were sued by the Westboro Baptists family and we were successful in that case in federal district court level, getting the case dismissed and upholding the Nebraska law. What I consider one of our most vital bureaus is our Criminal Bureau. The Attorney General's Office has concurrent jurisdiction over criminal trials throughout Nebraska. This means that our criminal prosecutor unit often handles investigations and prosecutions of some of the most high-profile, technically difficult criminal cases throughout Nebraska, including first-degree murder, sexual assault of adults and children, child abuse resulting in death, child exploitation. As an example, more than 850 criminal prosecutions and 80 criminal investigations occurred in 2016. Some recent cases just in the last month that were prosecuted out of our office was in Morrill County, Senator Stinner, I believe in your area. A man was found stuffed in a barrel in a dry creek bed. That was a case where immediately they called for our office to come out to use our investigators and our criminal prosecutors. We have a criminal prosecutor, Doug Warner, out at Scottsbluff, Nebraska. Doug did an excellent job and was able to get the conviction. Just, what, approximately a month and a half ago we got a call of a brutal murder up in northeast Nebraska of a young seven-year-old who went to school and said, I think my dad might have been killed, and actually witnessed his dad being killed. It was a drug-related matter in which we were able to provide investigation and will criminally prosecute that case. At one time, and I think this was about four or five years ago, the Department of Justice had three murder cases out of Cheyenne County, in the Sidney area. All three of those cases were investigated and prosecuted by attorneys out of our office, and all three of those cases, by separate attorneys, had successful first-degree murder convictions. So when you talk about constitution and statutory duties of protecting the state of Nebraska, this type of criminal prosecution is critical. When I ran for office one of the things I was told by law enforcement and

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county attorneys is what you provide to our office is vital. That all comes from 507, and the lawyers, the investigators, and the support staff are critical. But to me one of the things that I prioritized in office, if there's anything we've got to get right that's in the area of child sexual assault, child abuse and how critical it is that we provide. They're complicated cases. They're very difficult cases. We have dedicated professionals spend a substantial portion of the year traveling the state, trying the most demanding cases of child abuse, child sexual assault, and child exploitation cases. Over the past five years, five individuals in this unit have conducted more than 175 investigations in 63 counties, prosecuting approximately 100 child sexual assault and child abuse cases resulting in death with a 93 percent successful conviction rate. I'll just give you a quick example of this. We tried a child death case in Broken Bow in 2016, a very complicated case, Custer County, and we were able to use one of our prosecutors who specializes in child abuse and child sexual assault cases. One of the discouraging things in 2016 is one of our best prosecutors in child sexual assault cases came to me and said, Doug, I've been on the road for over 100 days in 2016. He has a five-year-old and a seven-year-old. And he said, I just can't do it anymore. He said, I can't be gone that much. He had an opportunity to go work at the Lancaster County Attorney's Office and I said, Charles, I completely understand. He went there for higher pay. And I have to go now out in the market and find that type of dedicated public servant, and it's a challenge. And his budget will come or her budget will come out of 507. And fortunately, we were able to hire someone who started, frankly, today. But it's a challenge and we have to do it well and we have to do it right. The scope of what we see in our office with regards to child protection is, frankly, it's...I have a difficult time finding the words to describe it. I recently traveled to a fairly close community where one of our investigators had found child sexual...or child pornography videos. We had to go to the particular home because we had an arrest warrant. And we went in and the scope of depravity found in these files was just unbelievable. But for that investigator working in our office watching for child pornography, this young 19-year-old would have continued to watch these types of videos. I'm not even going to come close to describing what you see, but what I'm saying is that is a very important service. His salary comes out of the 507 budget. And finally I want to talk just real quickly about the Legal Service Bureau and what they provide. The Legal Service Bureau and our Ag, Environment and Natural Resources Bureaus are comprised of 14 attorneys who specialize in expertise in each facet of law pertaining to all state agencies, boards, and commissions. These dedicated men and women have responsibilities not only over specialized subjects, such as

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regulation and licensure of healthcare professionals but agencies such as the Nebraska Equal Opportunity Commission and suits against the Department of Revenue. They also review agency regulations for statutory authority and constitutionality, as well as being in charge of overseeing any public record or open meeting complaints. With our Ag and Natural Resources Bureau and the lawyers who work in that division, I think you're very well-aware of the important work that they have to do with regards to water disputes with our neighboring states and looking after our natural resources. They just recently had a very successful case that was filed and I think the last time I was here last year I mentioned of some lawsuits that had been filed with regards to the Republican River by adjoining landowners. We were recently able to get a summary judgment motion from the district court to have that case dismissed and it was just recently argued last...two weeks ago before the Nebraska Supreme Court. The exposure on that case was significant. If one were to accept the damages that were being alleged, they were in the millions. The biggest challenge in Program 57 (sic--507), as far as a budget, is predictability. A multimillion dollar lawsuit could be filed tomorrow against the state of Nebraska. A multimurder case could occur tonight. A significant human trafficking ring could be busted this weekend. We don't know, day in, day out, the type of demands. Each of these pivotal responsibilities of the Nebraska Department of Justice are dependent upon the General Fund appropriation from 507. One other matter that I just want to bring to the court's (sic) attention, I thought this was interesting: In the first week of January, before the Nebraska Supreme Court, there were 16 cases that were argued before the Supreme Court; 14 of those 16 cases were argued by the Attorney General's Office and they weren't just criminal defense matters because we provide nine lawyers who do all criminal defense appeals. But there were also two cases related to the Nebraska Department of Revenue: Farmers Cooperative v. State of Nebraska, Frontier Cooperative v. State of Nebraska. There were several cases that were criminal, important criminal cases that were both brief and argued by the Department of Justice. Therefore, that's why I argue that fund 507 is such a critical fund to our office and I would ask that the Appropriations Committee, as you consider cuts, understand how critical it is. Year in, year out during my time, we've been able to operate efficiently in that budget, but that's like a family budget where you just can't afford to lose much because it would have significant impact on our overall operations. And then I want to just talk real briefly about LB23. That deals with the State Medicaid Fraud Control Fund, a \$500,000 transfer of funds which is proposed from LB23. One of the things to understand with this particular fund, our Medicaid Fraud and Patient Abuse Unit, headed by Mark Collins, a

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nationally recognized expert in this field, has existed since 2004. The monies in this cash fund represent a relatively small portion of the financial recoveries gained by our unit on behalf of the state. Over the past five years, this unit has opened nearly 500 investigations and conducted nearly 60 criminal prosecutions of persons who have committed substantial Medicaid fraud or exploited or abused patients in covered nursing facilities. Over this five-year period, financial recovery has exceeded a total of \$32 million. This unit is fully funded through federal grants, for which we are obligated under federal law to provide a 25 percent match. This grant match amounts to approximately \$300,000 annually and is funded solely through this cash fund. Such action should be treated as extremely rare occurrence, as a reduction of the balance in this fund under...in this undermines a long-term ability for this unit to continue to review the more than 5,000 adult protective service cases reviewed annually and the increasing importance of eliminating fraud and abuse in our Medicaid system amidst growing aged population. My office is happy to provide any prompt responses to questions that this committee may have. And I thank you for the consideration of this. [AGENCY 11]

SENATOR STINNER: Thank you. Questions? Senator Watermeier. [AGENCY 11]

SENATOR WATERMEIER: Chairman Stinner, Attorney General, thanks for coming today. Appreciate your conversation about Program 507. A quarter of a million dollars is being proposed to cut. When a city or a county makes a call into the state's AG Office, you prioritize those and some you say no to and some you say yes to? [AGENCY 11]

DOUG PETERSON: We will try, to any county that calls us, it's typically a county attorney's office that will call us... [AGENCY 11]

SENATOR WATERMEIER: Okay. [AGENCY 11]

DOUG PETERSON: ...on these matters or law enforcement. If it's a misdemeanor matter, we typically don't expend our resources on that. That's not to say we can't but we typically don't. There are, just about every case requested by a county attorney's office for a felony matter, we're going to try to provide both any investigative support we can, and also the county...the prosecution. [AGENCY 11]

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SENATOR WATERMEIER: Okay. So they don't make a request lightly. If they ask you, they're really needing the help. [AGENCY 11]

DOUG PETERSON: Correct. [AGENCY 11]

SENATOR WATERMEIER: If you say no, they got to fall back and hire it themselves. Falls back on their own budget. [AGENCY 11]

DOUG PETERSON: Correct. [AGENCY 11]

SENATOR WATERMEIER: They would have to add somebody to it. That's what I was trying to (inaudible). [AGENCY 11]

DOUG PETERSON: Exactly. Yeah, exactly. And, Senator, that raises a good point because if there's any comfort in knowing that what is provided in 507 is a prosecution and...an investigation/prosecution service to citizens in numerous counties that come out of 507, not out...the county doesn't pay. If the county has...if we have to retain experts in certain counties, we will talk to the county boards about what that cost may look like. But everything we provide in that regard comes out of 507 to support the prosecution that's necessary in those counties. [AGENCY 11]

SENATOR WATERMEIER: Okay. Thank you. [AGENCY 11]

DOUG PETERSON: Uh-huh. [AGENCY 11]

SENATOR STINNER: Other questions? I have one on the Republican Valley. You said that you've been able to settle one or two of the cases. We allocated, I can't remember the number but it was a substantial amount of money. [AGENCY 11]

DOUG PETERSON: Uh-huh. [AGENCY 11]

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SENATOR STINNER: Is there extra money in there? Do you feel fairly confident you've either got more money in that fund or...? [AGENCY 11]

DOUG PETERSON: Yeah, let me tell you legally what occurred in that case is we filed a motion for summary judgment and we were successful, or motion to dismiss. I can't remember the exact way we framed that case, but we were successful at the trial court level. As I said, the exposure was significant and that I think had something to do. But the point being is we were able to get the case dismissed at the early stages before we had to get into a lot of significant expert fees. [AGENCY 11]

SENATOR STINNER: Right. [AGENCY 11]

DOUG PETERSON: That case was argued in the last...it was argued in the first week of January before the Nebraska Supreme Court. We're hopeful that that will be affirmed. There is a possibility, though, and a reality and that's the difficulty about water litigation is the court has the option of remanding that case back and saying, no, this case should not have been dismissed at the early stages. And you have to go through full discovery and potential trial. And if that does happen, all those funds are going to be very necessary because water litigation, as you know, is kind of extensive as far as expert...requiring expert witnesses. [AGENCY 11]

SENATOR STINNER: Okay. And if you get a favorable Opinion, then there is some funds there that are excess funds. [AGENCY 11]

DOUG PETERSON: I believe so. [AGENCY 11]

SENATOR STINNER: Okay. [AGENCY 11]

DOUG PETERSON: The one thing about...I would say, yes, that's the short answer. I think one of the broader ones for the committee to understand is neighboring states' water litigation and rivers are always subject to a potential problem. And the Republican River now I think is in a fairly stable state because of what we were able to resolve with Kansas and Colorado. It's not to say that other rivers in our state, and I'm reluctant to go into any more detail, but it's not to say

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that other rivers in our state might not be subject to other legal interstate challenges. [AGENCY 11]

SENATOR STINNER: The next question I want to ask is when you started as Attorney General the staff was a certain level. Where are we today? Has it been a level situation or have you been able to hire additional attorneys? [AGENCY 11]

DOUG PETERSON: Senator, I should be able to give you an exact answer on that and I cannot. To me, I would say it's status quo. I can supplement information for you on that. What we have done is we've upped the personnel in the human trafficking area with a coordinator and an investigator. Other than that, I can't think of any additions. I think it's still pretty status quo. The SANE nurses, as you know, was something that we were wanting to expand. There's certain legislative bills that have been passed. We're in the process of looking for an auditor to help us with regards to elder abuse and financial abuse, but that position has not been filled. [AGENCY 11]

SENATOR STINNER: Okay. So the funds that we allowed for that have not been used yet. [AGENCY 11]

DOUG PETERSON: No. [AGENCY 11]

SENATOR STINNER: Okay. Thank you. Any other questions? If not, thank you. [AGENCY 11]

DOUG PETERSON: All right. Thank you. [AGENCY 11]

SENATOR STINNER: Any additional testifiers? Well, we now will move to the State Treasurer. [AGENCY 11 AGENCY 12]

DON STENBERG: Good afternoon, Mr. Chairman, members of the committee. For the record, my name is Don Stenberg, S-t-e-n-b-e-r-g, Nebraska State Treasurer. You'll be pleased to know, I suspect, that I'm not here today to ask for any new money or to object to the reductions proposed by the Governor in LB22. However, this bill does have important provisions that affect the

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ABLE Program that I want to bring to the committee's attention. And I also want to comment on the impact of the cuts to our child support operations. The ABLE Program was created by Senator Bolz's bill in 2015. The ABLE Program is a tax advantage way for persons with significant disabilities to save for expenses related to their disabilities. Savings in the accounts up to \$100,000 do not count as disqualifying assets for SSI, Medicaid, and certain other programs. As we implemented the bill in 2016, we found that an additional staff person was needed to administer the program. That position was added last summer. And while that does not require an increase in our current year appropriation, it does require a \$45,000 increase in our personal service limit. The Governor has included our request favorably on page 3, line 21 of LB22 and I urge the committee to support it. In addition, there is an urgent need to reappropriate the unexpended balance from June 30, 2016, of the balance in the ABLE Program for the current fiscal year. The start-up of the ABLE Program is in two phases. The first phase included writing a request for proposals, selecting a program manager, contracting with the program manager, writing legally required disclosure documents, developing promotional materials, and launching the program, which we did on June 29, 2016. The first phase was completed at a cost of \$145,543, leaving a balance of just over \$331,000 to finance phase two. Phase two involves entering into contracts with other states to manage their programs for them for a fee. We have entered into one contract so far and that is with the state of Alabama. The cost for us, for negotiating, the legal work, developing disclosure documents, and other related expenses for the first contract was approximately \$50,000. We are hopeful that a few more states will want to contract with us to operate their ABLE Programs for them for a fee, and we estimate that our start-up costs for each contract will be somewhat less than but similar to Alabama, so perhaps \$35,000 or so per contract. The problem is that through an apparent oversight the unexpended balance of \$331,000 on June 30, 2016, was not reappropriated to fund phase two. Fortunately, on page 2, lines 26 through 29 of LB22, there is a reappropriation of all unexpended appropriation balances existing on June 30, 2016, for the current fiscal year, "to the respective agencies, programs, and funds listed in this act except as otherwise provided in this act." And the ABLE Program is listed on lines 19 through 21 on page 3. So this should solve the problem. However, it might be helpful to have some intent language that makes clear the Legislature's intent to reappropriate this \$331,000 if there's any question about it. Without this reappropriation, we will not be able to enter into contract discussions with other states because we do not have the funds to finance those legal...the legal work involved. The program in the State Treasurer's Office that

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is most negatively impacted by LB22 is our child support unit called the State Disbursement Unit. The Treasurer's Office receives and disburses child support payments for the entire state. Last year we received and distributed approximately \$303 million in a total of 2.9 million transactions. This is child support being paid by noncustodial parents to custodial parents, usually by court order, and the recipient most of the time is the mother. Since I took office in 2011, we have substantially reduced the budget for our child support division from a little more than \$3.5 million in FY 2010-2011 to \$2.8 million in the current fiscal year, before the cuts proposed in LB22. All of these reductions were at my request due to our ability to manage the functions through a greater use of technology, and that reduction over that period of time was \$689,000, or about a 19.5 percent reduction in our child support operations budget during my time as State Treasurer. The child support unit is funded by a combination of General Fund and federal funds, so the \$45,422 reduction in General Funds in LB22 creates a total funding cut of \$113,555 because the federal match is lost. While I'm committed to making this budget reduction work, the committee should be aware of two things: first, that it may be necessary to lay off one or two of our child support staff in order to stay within our new budget; second, any additional reduction in our child support budget beyond LB22 is likely to lead to delays in distributing child support payments. Most of our...most of the time we have, from the time we collect the money to the time it's distributed to the custodial parent, is 48 hours. We're very proud of that record. It's one of the best in the country and we'd like to be able to continue to do that. And I mention this. We can live with the current reduction. It does not escape my notice that the receipts are running below the projections that were made last October and we're already down another \$51 million. But we're distributing money here that's not the state's money. It comes from noncustodial parents to custodial parents, and we cannot have any further budget cuts without seriously impacting our ability to handle this program in a timely manner. And I know there's a lot of parents out there who...for who this money is very critically important that they receive it promptly. So that's something for the future. We'll make work what's in LB22 and hopefully our revenue situation in the state will improve. Let's all cross our fingers. That's my testimony. Be happy to answer any questions. [AGENCY 12]

SENATOR STINNER: Thank you. Questions? Senator Watermeier. [AGENCY 12]

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SENATOR WATERMEIER: Chairman Stinner. Mr. Treasurer, I got a question about the ABLE Program. [AGENCY 12]

DON STENBERG: Yes. [AGENCY 12]

SENATOR WATERMEIER: Thinking back to the...and I could ask this of Senator Bolz, when you said you had to hire a person to administer that, did it all work out as far as the way the fiscal note worked out and the anticipated costs in your office? [AGENCY 12]

DON STENBERG: Well, the total, as I mentioned, the total costs, we don't need new money for that position. [AGENCY 12]

SENATOR WATERMEIER: Uh-huh. [AGENCY 12]

DON STENBERG: We didn't ask for enough personal service limit. [AGENCY 12]

SENATOR WATERMEIER: But you need (inaudible). Okay, I get that, but did it turn out as far as the fiscal note in how it was anticipated and in your office how it's going to be administered? [AGENCY 12]

DON STENBERG: Yeah, you mean in terms of going forward? [AGENCY 12]

SENATOR WATERMEIER: Yeah. [AGENCY 12]

DON STENBERG: Yeah. With the reappropriation, helped us with our contracting, our requests for the next two fiscal years is, I think, an increase of \$22,000-something over the current fiscal year. So we should be fine. I might...these contracts, if they're going to happen at all, they're probably going to happen in the next six months. And the reason I say that is most states that haven't already made a decision on how they're going to handle their ABLE Program will do so within the next six months. So some states are operating their own. Some states have contracted with other states, Alabama with us, Montana or Vermont with Ohio. Some states are doing RFPs right now to see what kind of results they get. If those don't come in well, some of those states

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may want to contract with Nebraska. But I think most states will have made their decisions on how they're going to proceed by this summer, so any contracts we're able to enter into probably will happen in the next six months or they won't happen at all. [AGENCY 12]

SENATOR WATERMEIER: Okay. I'm encouraging of the ABLE Program. I'm just curious how it worked out as far as administrative (inaudible). [AGENCY 12]

DON STENBERG: Yeah, I think in terms of total budget, we're right on track in terms of our need for personal service limit, and then of course the oversight and now reappropriating the money. [AGENCY 12]

SENATOR WATERMEIER: But that could be taken care of here. We can manage that I think for you. [AGENCY 12]

DON STENBERG: Yes. Yes. [AGENCY 12]

SENATOR WATERMEIER: I just appreciate your detail in your budget because I remember very well two years ago coming in here, you've reduced your budget, if I remember right, every year since you've... [AGENCY 12]

DON STENBERG: We have, yes. [AGENCY 12]

SENATOR WATERMEIER: ...that I've been watching your office. [AGENCY 12]

DON STENBERG: Yes, we have, Senator. [AGENCY 12]

SENATOR WATERMEIER: Yeah. Very good. [AGENCY 12]

DON STENBERG: Yeah, there's not a lot of fat left to cut. Let me put it that way. [AGENCY 12]

SENATOR WATERMEIER: I didn't see how there could be any. [AGENCY 12]

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SENATOR STINNER: Thank you. [AGENCY 12]

DON STENBERG: Other questions? Okay. Thank you all very much. [AGENCY 12]

SENATOR STINNER: Thank you very much. Anyone else to testify for...on behalf of the State Treasurer? If not, the Department of Revenue is listed next. Is there anybody that wants to give testimony on the Department of Revenue? (Exhibit 104) They have sent a letter in saying that they were fine with all the revisions. Okay, next is Educational Lands and Funds. Is there anyone here that would like to testify on that? Okay. Department of Administrative Services, do we have anyone here for that? (Exhibit 97) I believe we have a letter from them as well. Okay, Nebraska Arts Council. [AGENCY 12 AGENCY 16 AGENCY 32 AGENCY 65 AGENCY 69]

SUZANNE WISE: (Exhibit 63) Good afternoon, Senator Stinner and members of the committee. I am Suzanne Wise, S-u-z-a-n-n-e W-i-s-e, and I'm the director of the Nebraska Arts Council, and I've also asked my colleague from Humanities Nebraska, Chris Sommerich, to speak after I've completed my testimony. For those of you that are new to the committee, Humanities Nebraska is not a state agency. It's a not-for-profit. And so the funding that the Legislature allocates for their use comes through our agency. And so what we'll be addressing today affects them as well. I've distributed a handout that will provide you with the details of what I will be addressing in my remarks. We concur with the 4 percent reduction in General Funds and have adjusted our budget accordingly. This process began in July when we received the Governor's first communication. In the matter of the \$85,937 reappropriation funds, however, our agency will end the fiscal year \$10,897 short in Program 326, which is our administrative line. The additional reduction of \$40,858 to Program 327, which is our grant line, means we will be forced to rescind 52 grants already approved for schools for their school bus trips for the arts, which will impact about 2,600 students. And in my handout, the third page gives you a list of the schools and where they're going. And again, those have already been approved and we will have to rescind those. I've also spelled the impact of the reappropriation funds being lost in an e-mail to Jeanne Glenn, which is the first piece of that handout. So we understand what fiscal restraint is and I put my staff up against any in terms of making every dollar count. We've done the best we can with this year's budget, but we are a very tiny agency and the additional reduction of a

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reappropriation will have serious consequences on us for the remainder of the year. And that's my testimony. Thank you. [AGENCY 69]

SENATOR STINNER: Thank you. Any questions? Senator Kintner. [AGENCY 69]

SENATOR KINTNER: Yeah, I just want to say that I understand the process in reappropriated money. You save very carefully. You budget very carefully. You do everything right and you accumulate a little bit of money at the end. And because you watched your budget very carefully and you've got it for something special or something unforeseen, and then we come and we just swipe it from you after you've so carefully watched your budget and you've accumulated that money. I understand that. I totally understand that. And as we make these tough decisions as to what to do and where to cut and how to do it, I just want to make you aware that I think most of us on this committee are aware of how carefully you watch your budget, how carefully you accumulate that money, and how you would kind of put it over here for something special you might have to do or something unforeseen, and we come and we take it. So we don't do that lightly. And I appreciate you coming here today and I don't know what we're going to do, but it won't be easy decisions. So thank you very much for coming. [AGENCY 69]

SUZANNE WISE: I appreciate the kind words about our fiscal prudence. Thank you. [AGENCY 69]

SENATOR STINNER: Thank you. Are there questions? Thank you. [AGENCY 69]

SUZANNE WISE: Thank you. [AGENCY 69]

CHRIS SOMMERICH: (Exhibits 64 and 65) Thank you, Chairman Stinner and members of the Appropriations Committee. Again, my name is Chris Sommerich, C-h-r-i-s S-o-m-m-e-r-i-c-h, and I'm executive director of Humanities Nebraska, a statewide nonprofit, as Suzanne mentioned, that's here to enrich the lives of all Nebraskans through high-quality educational humanities programs across the state in history, literature, culture, and so forth. While I can't definitively speak for the many organizations across the state who work with or receive funds through the Nebraska Arts Council, I believe the vast majority would agree with me that in

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fiscally challenging times we understand we should all expect to share the burden of making up a shortfall. And Humanities Nebraska will, of course, our adjust our budget accordingly to the 4 percent reduction in General Funds we receive through the Nebraska Arts Council, and will do so through a combination of trimming expenses where we need and raising private funding as well, as much as possible. So I just want to give you a very brief example of, I think, from a nonprofit perspective that receives grants or receives state funds through an agency like Nebraska Arts Council, how even a small amount of dollars can make a big difference and do make a big difference. So in our case, for example, if there's a cut above that 4 percent, say \$5,000 ends up being cut beyond that for our budget, which may seem like not a lot of funds, the kind of calculation I need to make as executive director is do an assessment of where we can do that. And I believe we would delay offering any additional Nebraska Warrior Writers workshops for veterans for the remainder of this year. Nebraska Warrior Writers is a new program we offer to veterans and active military who are interested in developing their writing skills through a series of workshops led by experts at the Nebraska Writing Project. It's a new program and the number of participants is kept intentionally small so that we can kind of nurture active participation and figure out how to grow the program going forward. We've had some success in raising private funds in this past year, but the fact that it is new, relatively unknown, reaches a limited audience, has proved to be a fund-raising challenge. And so we're doing what we can to supplement private funds with other funding sources, like our state money. Thanks to the positive response we had from participants this past year, we already are committed to three workshops this spring, three sessions...or six sessions each, Omaha, Lincoln, and Grand Island. But there would not be...additional funding cuts, I haven't been able to find where I'd get the money to carry through with additional expansion this fall. There's been interest in North Platte. We've identified a team to do such a workshop in North Platte this fall or repeat in any of those communities. So we would just suspend that program for the fall and then readjust our funding for the next budget and figure out a way forward. So that's just kind of an example. You know, I do really understand that we're all in this together and that we need to work together to figure out a way out of the digital...the, I'm sorry, the difficult task with the budget shortfall. But that's just one example of how that...those sorts of decisions filter out into the nonprofit community around the state. And with that, I'm happy to answer any questions. [AGENCY 69]

SENATOR STINNER: Thank you. Any questions? [AGENCY 69]

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CHRIS SOMMERICH: All right. [AGENCY 69]

SENATOR STINNER: Thank you. [AGENCY 69]

CHRIS SOMMERICH: Okay. Thanks. [AGENCY 69]

SENATOR STINNER: Any other testifiers for the Nebraska Arts Council? Next, the Commission on Industrial Relations. Seeing no one, the next one is political Accountability, Disclosure Commission. Moving right along, Nebraska Tourism Commission. [AGENCY 69 AGENCY 77 AGENCY 87 AGENCY 91]

JOHN RICKS: (Exhibit 66) Good afternoon, Chairman Stinner, members of the committee. I'd like to thank you for the opportunity to testify before you all today in support of Agency 91. My name is John Ricks, J-o-h-n R-i-c-k-s, and I'd like to introduce myself as the new executive director of the Nebraska Tourism Commission, having just started this journey on January 9 of this year. I look forward to working with you all in an effort to further the tourism industry in the state as a sound economic driver. And I'm here to support the Governor's proposed budget cuts for the Tourism Commission for fiscal year 2016-2017, reductions which impact our state aid General Funds by the following amounts: A General Fund reappropriated reductions from fiscal 2015-16 of \$17,452; and a General Fund reduction of fiscal year 2016-2017 in the amount of \$10,000. The total reductions in General Funds for the Tourism Commission will then total \$27,452. At this time I'd like...the Nebraska Tourism Commission thanks you all for your service to our great state, and I'd welcome any questions. [AGENCY 91]

SENATOR STINNER: Any questions? Well, welcome aboard. [AGENCY 91]

JOHN RICKS: Thank you, sir. [AGENCY 91]

SENATOR STINNER: Thank you for taking the job. [AGENCY 91]

JOHN RICKS: Thank you very much. [AGENCY 91]

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SENATOR HILKEMANN: Yeah. [AGENCY 91]

JOHN RICKS: You bet. [AGENCY 91]

SENATOR STINNER: Any further testimony on Tourism? Last on the schedule for today is Tax Equalization and Review Commission. Thank you. Go ahead. [AGENCY 91 AGENCY 93]

ROB HOTZ: (Exhibit 67) Good afternoon, Chairman Stinner and members of the Appropriations Committee. Thank you for giving all of us the time this afternoon to come before you. My name is Rob Hotz, R-o-b H-o-t-z. I'm one of the three commissioners with the Tax Equalization and Review Commission. I'm here on behalf of the commission. Thank you for your time and attention this afternoon. The commission has now been in existence for--we're a younger agency--for about 20 years. Since its creation, the commission has had two primary functions. The first is to conduct what is known as statewide equalization, which is a process formerly done by the then State Board of Equalization, where we review the assessed-to-sale ratios for each class and subclass of property in each of the 93 counties. And our second primary function and our primary function is to hear appeals of individual property valuation protests from all 93 counties, as decided by the county boards of equalization. That's a quasi-judicial function that was formerly done by the state district courts 20 years ago. In 2011 legislation was passed giving the commission the authority to hear some of these appeals with a single commissioner. In our view, that process continues to be effective. Many of our appeals are brought by unrepresented taxpayers, and most of our single commissioner proceedings have been heard by the nonlawyer member of our commission, who in her previous life was an elected county assessor. And it is much more efficient than having two commissioners conduct a less informal proceeding. We feel that the single commissioner proceedings have been very effective. At that same time, in these last five years, as of five years ago, we were able to schedule about 400 hearings per year. At this point, we schedule about 800 hearings per year and dispose of far more than that. However, all of our hearings, whether done by a single commissioner or by a panel of commissioners, must be resolved, by statute, with a written order which must include findings of fact and conclusions of law. All three commissioners need the assistance of one another and of staff legal counsel to research, draft, and review these orders before they're issued. This is the nuts and bolts of what the commission is statutorily required to do and our budget needs go directly to this function.

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Over the years, the commission has been fiscally conservative, I believe. We think that we've run a pretty tight ship. We've not made significant budget requests unless our workload increased substantially. As a historical point, when I came on to the commission, the commission was nearly frantic when the number of appeals would be 1,600 per year. In 2012 and 2013, we had 2,200 and 2,300 respectively with three commissioners rather than four. At the same time, our orders are statutorily required to pass legal muster in several respects. Each substantive order issued after a hearing includes the findings of fact, addresses substantive legal issues, and then includes conclusions of law. We rely heavily on staff legal counsel to assist us in this process. Staff counsel is particularly indispensable to our nonlawyer commissioner. Two of the commissioners right now are lawyers; one is a nonlawyer, as I explained earlier. The...historically, up until 2015, we had two full-time staff lawyers to assist the commission. Until 2015, we had those two lawyers. And after losing one to a higher paying state agency in late 2015 in this biennium, and having the second appointed as our newest commissioner when we had a commissioner resign in late 2015, our second attorney, the first left to go to another agency. They were here earlier. I won't point fingers. And the second attorney who had been with us as an attorney for 15 years or so was appointed to be a commissioner. And so we were at that point without an attorney, a staff attorney. We determined we needed to raise the bar to be able to obtain and retain replacement counsel. We replaced one full-time lawyer and we were fortunate enough to obtain the part-time services of a retired district court judge. With nearly one year of retrospection, we believe both of these hires were good and positive moves for the commission. However, our part-time attorney, a retired district court judge, has given us notice that he will stay on only until August 2017 and his .4 FTE is inadequate to hire a full-time replacement. At that point, we'll have one full-time attorney and the resources to hire only a .4. It creates a very significant disruption in our ability to issue orders timely when we are understaffed with legal counsel. So for the next biennium we're asking, as we did last year, for additional General Funds to obtain and retain effective legal counsel. In so many words, we've had to compete with other agencies to raise the staff counsel level of pay so that...we hired last a lawyer who left us. We trained him up since law school as a second-year law student. He was with us for five years and at some point another agency offered him more money. We were not able to compete with that offer. Regarding the current fiscal year, it's important to note that during the current biennium we expressed significant vacancy savings due to the resignation of that one commissioner and the resignation of a staff attorney. During that time that we were not paying for either one, we

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realized some vacancy savings. That vacancy savings was then reappropriated to the current fiscal year budget. For these reasons, our budget can tolerate the deficit reductions proposed for the current fiscal year, including a 4 percent General Fund reduction and what amounts to a 37 percent reduction in our '15-16 reappropriation. But our ability to continue to be efficient, effective, and customer focused, as the words the Governor used the other day in the State of the State, would be very negatively impacted if we did not have the resources in the next biennium to obtain and retain a total of two full-time staff attorneys. We are, therefore, respectfully agreeing with the Governor's recommendations for the current fiscal year, but we also respectfully request that our budget for the next biennium accommodate the critical needs discussed above. That's my testimony. Thank you for your time and attention. I'd be happy to answer questions if you have them. [AGENCY 93]

SENATOR STINNER: Thank you. I'd like to get a few things on the record. You are an administrative court that was put into place to take pressure off somebody appealing directly to the state court. Is that correct or...? [AGENCY 93]

ROB HOTZ: Correct, yes. [AGENCY 93]

SENATOR STINNER: Okay. What is your fee that you charge somebody to come to your court? [AGENCY 93]

ROB HOTZ: And we talked about this a year ago at this...at the hearing. [AGENCY 93]

SENATOR STINNER: Yes, we did. [AGENCY 93]

ROB HOTZ: Twenty-five dollars is the filing fee per parcel by statute and... [AGENCY 93]

SENATOR STINNER: Now that is...that could be a corporation with multi locations. [AGENCY 93]

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ROB HOTZ: For each parcel, sometimes you may have two or three parcels that are separately identified, it would be \$25 each, even if they're next to one another. But typically, the parcels are...you have one parcel, another parcel across town or in another location. [AGENCY 93]

SENATOR STINNER: Well, I'll use my bank as an example. I've got five, six, seven location...nine, eight locations, right? Every year I could go to the county and I could protest my real estate taxes. That's just a matter of I don't like the assessed valuation, I'm going to protest. And I don't get the right answer from them. But as a matter of just corporate planning, for \$25 times however many locations I have, I can come to your court and get a hearing. [AGENCY 93]

ROB HOTZ: Yes, sir. So the bank, as you put it, if they had eight locations in that, wherever it would be within Nebraska, any county, the first thing they would do is do the...look at the notice of taxation...of valuation, file a protest with the county board of equalization, which has no cost. And then if they wanted to improve their position based upon the county board decision, those eight parcels would be appealed to the commission at \$25 each regardless of the valuation set by the county assessor or the county board. It would be...that would be \$200 for those appeals to be filed with the commission. [AGENCY 93]

SENATOR STINNER: Okay. [AGENCY 93]

ROB HOTZ: The commensurate rate in the district courts right now I believe is \$83 for a civil filing that would be similar to this. [AGENCY 93]

SENATOR STINNER: But I could come to your court without an attorney. [AGENCY 93]

ROB HOTZ: Yes, you could. [AGENCY 93]

SENATOR STINNER: Okay. Difference between that and the regular court, yeah, I'll get \$83 but I have to bring an attorney to the...I don't have to but I certainly would bring an attorney to the district court, wouldn't I? [AGENCY 93]

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ROB HOTZ: I think the courts are seeing what...probably what we're seeing at the same time as there are more and more unrepresented litigants... [AGENCY 93]

SENATOR STINNER: Okay. [AGENCY 93]

ROB HOTZ: ...in the system. [AGENCY 93]

SENATOR STINNER: So that could be done (inaudible). [AGENCY 93]

ROB HOTZ: And we have more than half easily that are unrepresented. [AGENCY 93]

SENATOR STINNER: But my point being that you were put in place as an administrative court for me to go, to take pressure off of the state courts. However, it is up to the taxpayers of Nebraska to support. How...what's the percentage of General Funds versus fee income that you bring in? [AGENCY 93]

ROB HOTZ: Right now the user pay percentage is 5 percent and the General Fund would subsidize 95 percent of our function. [AGENCY 93]

SENATOR STINNER: So 95 percent of the function supported by me coming to you as a corporate planner with no threshold as to whether it be an \$80,000 property or a \$1 million property or a \$5 million property, still the same across the board. [AGENCY 93]

ROB HOTZ: That is correct. Yes, sir. And there are two pieces of legislation that have been introduced this session, one at our request, another one introduced, that each would make some modification to that \$25 fee schedule, if you would. [AGENCY 93]

SENATOR STINNER: But the other interesting note is I can negotiate with my county while I'm coming to your court. [AGENCY 93]

ROB HOTZ: Yes. That has positive features as well as negative. [AGENCY 93]

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SENATOR STINNER: I get that. And you have to come to the Legislature to rearrange your fee schedule. [AGENCY 93]

ROB HOTZ: Yes, sir. It's in statute... [AGENCY 93]

SENATOR STINNER: Okay. [AGENCY 93]

ROB HOTZ: ...77-5,004 I believe. [AGENCY 93]

SENATOR STINNER: My point being is I am incented to come and protest my tax every year to you if I'm large enough. [AGENCY 93]

ROB HOTZ: There is a regressivity to the fee structure that's been in place since the conception of the commission for 20-some years. [AGENCY 93]

SENATOR STINNER: I certainly am saying that, you know, the \$80,000, \$100,000, \$25 is probably the right amount. What I'm...how many of these 800 cases that you hear or 600 are large corporations or, say, assessed values over \$500,000? [AGENCY 93]

ROB HOTZ: I don't know the number off the top of my head. We have a significant number of appeals that are under \$100,000 in value. We have a significant number that are between \$100,000 and \$250,000. We still get a fair number of appeals that are above that and above a million and in the tens of millions in value. [AGENCY 93]

SENATOR STINNER: The other side of this... [AGENCY 93]

ROB HOTZ: We see it. We see it all. [AGENCY 93]

SENATOR STINNER: The other side of this is don't you have to have an appraiser? So how complex it is, say that I have a large corporation, grain elevators or ethanol plants or something along those lines where you would have to hire somebody with expertise in that area, which would add to your cost, add to your time, clog up your system, and still get \$25. [AGENCY 93]

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ROB HOTZ: The parties are more...it's more typical for the parties in the larger valuation cases to hire fee appraisers to come in and give an appraisal. Even the county boards will often do that in preparation for a hearing before us. [AGENCY 93]

SENATOR STINNER: Sure, but you have to have somebody with expertise to scrutinize it. [AGENCY 93]

ROB HOTZ: That is...that happens, but often we don't have a fee appraisal in evidence (inaudible) needs to utilize our training and expertise that the statute requires that we take continuing education and do certain things in order, first of all, to be able to be a commissioner within the first year and then beyond. So we do, frankly, need to have a fairly good understanding of the three valuation methods of sales comparison, cost, and income, and be able to work with it fairly readily. [AGENCY 93]

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

ROB HOTZ: Thank you. [AGENCY 93]

SENATOR STINNER: Any other questions? Senator Hilkemann. [AGENCY 93]

SENATOR HILKEMANN: I'm just going to make a comment, Mr. Chairman, on this. In Omaha the word TERC has become a bad four-letter word. [AGENCY 93]

ROB HOTZ: It has, yes, sir. There is...there are pending cases that I cannot talk about, because the court, when our decisions are made, either the Court of Appeals or the Supreme Court, the appeal goes to the appellate courts. We do have some cases on appeal now that could be remanded back to the commission. So I can't talk about pending litigation. [AGENCY 93]

SENATOR STINNER: Sure. Any other questions? Thank you. [AGENCY 93]

ROB HOTZ: Thank you. [AGENCY 93]

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SENATOR STINNER: Okay. That concludes this part of the afternoon testimony. Do we have...I'm sorry, do we have someone else to...? Come on up here. Thank you. Thank you for...
[AGENCY 93]

WOMAN: I apologize (inaudible). [AGENCY 93]

SENATOR BOLZ: Oh, I think she's in the wrong hearing room. [AGENCY 93]

SENATOR STINNER: You're in the wrong room. (Laugh) Anyone else to testify on the Tax Equalization and Review Commission? That concludes testimony today, the first segment. We'll meet back at 3:30. [AGENCY 93]

BREAK

SENATOR STINNER: (Recorder malfunction)...started. Welcome to the Appropriations Committee hearing. My name is John Stinner. I represent the 48th District, which is Scotts Bluff County. I also serve as Chairman of the Appropriations Committee. The committee will take up the agency testimony in the order posted. Now I have made an exception and I've moved our good friends from the Nebraska Commission for the Deaf and Hard of Hearing to first on the list. Obviously, they have a lot of equipment that they needed to set up, so we're going to take care of their needs first. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on proposed legislation before us today. The committee members may come and go during the hearing. We have to introduce bills in other committees and are called away. It is not an indication that we're not interested in a bill being heard in this committee, just a part of the process. To better facilitate today's proceedings, I ask that you abide by the following procedures. Please silence or turn off your cell phone. Move to the reserve chairs when you're ready to testify, and the reserve chairs are right up here in front. Order of testimony: The head of the agency will have an opportunity to talk about his agency, talk about the recommendations and how they will respond to those recommendations. We will not put them under a time limit. But the subsequent people who come up will be under time-- five-minute time limit. Order of testimony, of course, is the head of the agency first and then any other testifiers that are organized behind that. Testifiers sign in, hand your green sign-in sheet to

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the committee clerk when you come up to testify. Spell your first name and your last name for the record before you testify. Be concise, it's my request. After the agency's head presents their testimony, then everybody will be held to a five-minute limit. You'll notice that there is a green, an amber, and then a red. Once the amber comes on, you got about a minute to conclude your testimony. If you will not be testifying at the microphone but want to go on the 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 of today's hearings. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. You will need 12 copies. Normally, you'd need ten. This, because of the size of the committee, we need 12. So if you're short copies, just raise your hand and our page will respond by making copies. To my immediate left is our fiscal analyst Liz Hruska, and to my right, I have it backwards in this script, so to my right is Jennifer Svehla. She's our committee clerk. The committee members with us today will introduce themselves beginning on my far left.

SENATOR KINTNER: Bill Kintner, Legislative District 2.

SENATOR McDONNELL: Mike McDonnell, LD5, south Omaha.

SENATOR KUEHN: John Kuehn, District 38.

SENATOR HILKEMANN: Robert Hilkemann, District 4, west Omaha.

SENATOR STINNER: John Stinner, District 48, Scotts Bluff.

SENATOR BOLZ: Senator Kate Bolz. I represent District 29 in south-central Lincoln.

SENATOR WISHART: Senator Anna Wishart. I represent District 27 in west Lincoln.

SENATOR VARGAS: Senator Tony Vargas, District 7, representing downtown and south Omaha.

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SENATOR WATERMEIER: Dan Watermeier, District 1, in Syracuse.

SENATOR STINNER: Thank you very much. Today also with us is Brenda, our page. She is from Wakefield and she's running around with the water. So if you need anything, copies or anything else, just let us know, let Brenda know. Anyhow, we will start then with comments from the Commission on Deaf and Hard of Hearing Commission. [AGENCY 82]

JOHN WYVILL: (Exhibits 68 and 69) Good afternoon, Chairman Stinner, members of the committee. My name is John, J-o-h-n, Wyvill, W-y-v-i-l-l. I am the executive director of the Nebraska Commission for the Deaf and Hard of Hearing. Just as a couple of housekeeping things, Sharon Sinkler is our interpreter here, providing communication access for Dr. Pete Seiler from my board. And we have the court interpreter here that is providing real-time captioning for the hearing. So if you do ask me questions, I will be looking at this to see your questions. I'm not avoiding your question. I just want to make sure I understand the question before I respond. So thank you very much for the opportunity to be here. My comments are very brief. I don't envy the task that is before all of you today and in the weeks ahead with the challenging budget climate. Before you is a letter that I have provided to the committee that just outlines and makes you aware of our agency budget. We are just a small, independent state agency with a little over \$1 million in our budget. And what they're proposing is for the taking of approximately \$118,000 from our budget, \$77,000 I believe from our carryover funds or reappropriated amount and then about \$40,000 from our general operating fund. The letter and the attachment just outlines we have heeded the Governor's advice and call over the months and earlier, basically saying that we have some challenging times ahead. We have been...tried to be frugal with our expenses, mindful of those difficult times. Here are some additional items that we had planned to do if we had the funds available so the committee can appreciate the challenges ahead. And then finally it just leaves with where we're moving or what we would have used the money for. So with that, I open it up for the senators if you have any questions or comments. We just wanted you to be aware in writing so you can study what we have done to this date, what we have planned for the money, and then understanding what we cannot do in this short time. And should there be availability of some funds, here are some of the projects that we would have liked to have seen, but we understand the very challenging times and then also the need for shared sacrifices in order for all of us to have a balanced budget. [AGENCY 82]

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SENATOR STINNER: Thank you. Questions? Senator Hilkemann. [AGENCY 82]

SENATOR HILKEMANN: Do you have any cash funds available that are in reserve in your organization? [AGENCY 82]

JOHN WYVILL: Okay. Senator, I am not sure what you're referring to as cash funds. We have reappropriated funds that are available to us that we use for a rainy day or one-time funds, and that is approximately...has been reappropriated about \$150,000. And of those, about 48 percent, is being recommended to be given back to help with the budget shortfall. [AGENCY 82]

SENATOR HILKEMANN: Okay. [AGENCY 82]

SENATOR STINNER: Senator Kintner. [AGENCY 82]

SENATOR KINTNER: Thank you for coming in. The number of people you're serving now, this year, right, the past year, is it...are you increasing the number of people you're serving each year? Is it stable? Is it declining? [AGENCY 82]

JOHN WYVILL: We have changed the reporting requirements the way we have done it. In the past, we have counted the way that we have met people in booths and fairs and others activities, and now we're focusing more on one-on-one. I just can say anecdotally is that we are reaching out to more consumers than we have done in the past because we have a segment of our population, that is roughly 1 percent of our population, deaf and then the 20 percent of our population has some form of hearing loss. So we're trying to reach out to the individuals that have previously not gotten our services. So that's what we try to do and so we do have some repeat customers. But to answer your question, Senator, we believe that and we can certainly provide those monthly reports to you. [AGENCY 82]

SENATOR KINTNER: Yeah. You know at some point we'll be looking at your budget for the... [AGENCY 82]

JOHN WYVILL: Sure. [AGENCY 82]

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SENATOR KINTNER: ...the biennium budget. Yeah, I'd like to see the number of people you served in '14, '15, '16. I want to see the trends compared to your budget. [AGENCY 82]

JOHN WYVILL: Sure. We'll be happy to do that, Senator. [AGENCY 82]

SENATOR KINTNER: All right. Fantastic. [AGENCY 82]

SENATOR STINNER: Any other questions? Thank you very much. [AGENCY 82]

JOHN WYVILL: Okay. Thank you for your time, members of the committee. [AGENCY 82]

PAUL SEILER VIA INTERPRETER: Good afternoon, Senators and all of you. Thank you for your time. I have been here before as the executive director before John. My job was to prepare you for him. (Laugh) I am also now a consumer of the commission's services and have been since I moved back to Nebraska. Nebraska is one of the few states that has, comparatively, a large commission. Some states have one person that serves the entire state, Kansas, for example. One person serves the state of Kansas, so it's difficult for that person to serve all of the people. So I would say, estimate, we have about 150,000 people who are deaf or hard of hearing from birth all the way to the grave. A lot of people don't realize that there are a lot of people that when they become older they do lose their hearing. They're confused: What are services that they can have, use? How can they use a telephone? If I go to a nursing home, what can I expect for watching television or getting people to come and meet my health needs? Some people who are hunters...how many of you are hunters, a raise of hands? Your hearing, you could lose your hearing from shooting a gun if you do not use ear protection, ear muffs to provide protection for your ears. Farmers can lose their hearing. There are a lot of people who have problems with their hearing as they get older and they don't understand what it's like growing up being able to hear and then all of a sudden not being able to hear. So the commission provides that transition. They explain to people what they can expect, how to set up their homes to be adaptive to their needs. Maybe they have a light that is hooked to the doorbell or the telephone. My telephone, my cellphone, if I put it down, how do I know if it's ringing for a text? It's also connected to my watch. So we explain that information and how that happens is through the commission. It is a small agency but they do work, I would say, more than 40 hours a week. Sometimes they stay

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after work until the job is done. I can tell you that some people come back and say they appreciated so much the hard work that the commission has provided to make them continue to be independent. I know that you need the money. I don't envy you either for the decisions you have to make. But keep in mind that the decisions you make impact people in your family, your neighbors, your grandchildren, whoever. I'd be happy to answer any questions. [AGENCY 82]

SENATOR STINNER: Questions? Senator Kintner. [AGENCY 82]

SENATOR KINTNER: Since you've been at the agency for years, how has the agency changed in the last ten years? [AGENCY 82]

PAUL SEILER VIA INTERPRETER: Oh, thank you. That is a very big source of pride. There's been a change in some people's roles. Instead of being called field representatives, which means really nothing, we've changed their title to advocacy specialist. We changed one position to an educational advocate to help parents who have children in schools. We work closely with the Nebraska Department of Education now. We have a much better relationship with them. We just had a meeting today, actually, to discuss ideas to incorporate better practices for schools. I think that's a huge improvement. We opened more offices or actually reopened an office in Scottsbluff. We had to at one time close that. When I came in, that was the first task that I had and I hated it. The people out there need services as much as the people in Lincoln or Omaha. There's more information and technology that is provided. John's plan is to require people to document one-on-one interactions; is better proof of who we serve and where. I could go on and on, just to give you a brief idea. [AGENCY 82]

SENATOR HILKEMANN: Thank you. [AGENCY 82]

SENATOR KINTNER: Okay. Well, thank you. Appreciate that. [AGENCY 82]

PAUL SEILER VIA INTERPRETER: You're welcome. [AGENCY 82]

SENATOR STINNER: Other questions? Thank you. [AGENCY 82]

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PAUL SEILER VIA INTERPRETER: Thank you for the opportunity? [AGENCY 82]

SENATOR STINNER: Are there any additional testifiers for the commission? Okay. Thank you. Thank you. We'll just take a brief break here and allow things to clear. We do have the air conditioner on as high as it will go right now. I see people waving. We'll proceed to the top of the schedule. Department of Labor, I believe we have a letter from the Department of Labor. Is there anybody from the Department of Labor or anybody else that wants to testify on the Department of Labor? Seeing nobody, I'll move to the Department of Veterans' Affairs. We also have a letter from Department of Veterans' Affairs. Are there anyone out there that wants to testify? Equal Employment Opportunity Commission, Commission 67, also sent us a letter. Are there anybody interested in testifying on behalf of the Equal Employment Opportunity Commission? Seeing none, we'll move to the Latino American Commission. [AGENCY 82 AGENCY 23 AGENCY 28 AGENCY 67 AGENCY 68]

LAZARO SPINDOLA: (Exhibit 70) Good afternoon, Chairman Stinner and members of the committee. Thank you for receiving me today. For the record, my name is Lazaro Spindola, that's L-a-z-a-r-o S-p-i-n-d-o-l-a, and I am the executive director of the Latino American Commission. I kind of feel out of place because everybody brings million-dollar issues and my issue is only \$40,000, so I feel like the underdog here. I'm here basically to clarify some things. First of all, you have a chart in your hands which is the second page of my handout which shows a pattern for expenses for the first six months of this budget year. You can clearly see there our expenses have diminished substantially from over \$20,000 per month to less than \$15,000 per month, and this is a 25 percent reduction. We understand that these are difficult fiscal times and we have tried to be good team players as far as reducing expenses is concerned. Another observation refers to the paragraph in the bill that says, and that would be the third page in your handout, it's highlighted there, "Of the unexpended General Fund appropriation balance existing on June 30, 2015, \$6,000 is hereby reappropriated." So we're losing basically \$8,000 but we're getting \$6,000 more. So that's...I can live with that. But the problem, Senators, is that we only had \$700 in reappropriations on June 30 of 2015, not \$6,000. I also wish to clarify our cash fund because it appears there too. Our cash fund gives us the authority to spend a limit of money, up to \$5,000, provided that we get it from private donations and only for the specific purpose defined in the cash fund. In this case, it is the Hispanic Heritage Month Celebration and

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Conference. It is not General Fund money. Some years, well, not some years, so far we've never been able to get \$5,000 in one year. Finally, I wish to point out that we only have three employees in our agency. Taking the \$8,000 cut means that the only way to keep functioning would be to lay off one full-time position. Since we only have three employees, this is 33 percent of our staff. This would be the equivalent of Health and Human Services laying off 1,800 workers. Saving \$8,000 for Nebraska means one person losing their job, losing their health insurance, probably collecting unemployment benefits and all the other hardships associated with unemployment. It also means that the interpretation and translation services for other state agencies would be severely limited. I used to bring a couple of examples. We field an average of eight calls per month from differing state agencies where they need interpretation services. The language line charges \$3.95 per minute. This amounts to 474 minutes per month. At 12 months, that's \$5,600. As far as translation, another example: When the death penalty became law by law, it had to be translated into Spanish. If the Secretary of State had to use private translation services, the cost would have been another \$5,600. So all in all, at the end, all of these issues would end up costing more than \$8,000. Please take all these factors in consideration when debating whether LB22 should pass as written or whether consideration should be given to smaller agencies and struggling agencies such as ours. That would be all. I will try to answer any questions you might have. [AGENCY 68]

SENATOR STINNER: Questions? Seeing none, thank you. [AGENCY 68]

LAZARO SPINDOLA: Well, thank you for receiving me. [AGENCY 68]

SENATOR STINNER: Our next committee is Foster Care Review Office. [AGENCY 68
AGENCY 70]

KIM HAWEKOTTE: Need to put the glasses on. Age is horrible. [AGENCY 70]

SENATOR STINNER: I do resemble that. (Laughter) [AGENCY 70]

KIM HAWEKOTTE: (Exhibit 71) Good afternoon, Chairman Stinner and members of the Appropriations Committee. I am Kim Hawekotte, it's K-i-m H-a-w-e-k-o-t-t-e, and I'm the

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executive director at the Foster Care Review Office. In your written testimony being handed to you is a lot of background about the Foster Care Review Office because I know for some of you it's a new experience. But in a very short sense, the Foster Care Review Office is an independent state agency. We're not affiliated with the Department of Health and Human Services or the courts or any child welfare entity. Our role is to independently track all children in out-of-home care in this state, to review those individual child cases, to make recommendations to the courts and all other stakeholders with regards to the best interest of those children, and then also to analyze and to collect data so that we can make recommendations to each of you as to what the needs of these children are and what the system needs. Currently, we run with a staff of about 29 people statewide, but I think just as importantly we have over 325 volunteers that meet every month across this state that review these individual cases. And I have listed in our testimony where all of those board hearings are because many of them are in your areas. But in any given year, we review over 4,000 children that are in out-of-home care and make recommendations to stakeholders as to what's in their best interest. I always like to think that we operate on two levels: one, on that individual child level--what do they need, is their best interest being taken care of, what needs to happen so that these children are not languishing in out-of-home care; and then the second statutorily need that we have to meet is that we have to create annual and quarterly reports to each of you and to all other stakeholders as to what we're seeing. So we collect data on every child that we review so that we can put together our annual and quarterly reports, along with recommendations as to changes that we feel the system needs to do. I am, with regards to our budget, we have for this year really looked at the ability and we can absorb the 4 percent. Where we have concerns or what I am here for is to really to talk about our carryover funds for 2015-16. Like all responsible people, like you and I, if you want to buy something expensive, you save up for many years in which to do that. It is something, when I took over as director four years ago, we had an antiquated database that was over 30 years old and could not be integrated with any other system in the state. So we saved up for a couple of years in order to be able to build this new database. And this committee was gracious enough back in 2014-15 to allow us to keep \$100,000 of our carryover from that year to use strictly to build that database, which we have. We have started it. And attached to my testimony is Exhibit A, which lists out the current status of the FCTS database. When we started building the database in July of 2015, we knew it would be a two-year process working with the CIO's Office. And we have completed the first year of it. You will see on Attachment A exactly what we have

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done, but you will also notice we have things that we have yet to do that were anticipated to be completed during this fiscal year using our carryover from 2015-16 and then also our current budget of '16-17. Without those funds, we cannot complete our database, which then means we cannot give the good data that everybody needs in order to make decisions. So what we're requesting is the ability to use our '15-16 carryover funds. Anything that is remaining the end of June of 2017 we are more than willing to go back into the General Fund. We're more than willing to have these funds stipulated to be strictly used for the database so that we can finish that project. Part of the problem that we are currently in is that the CIO's Office is in the process of giving us a bid on what it's going to cost to complete the system. I'm not going to have that bid for about another three to four weeks because they're working on it. So I can't sit before you and say it's going to cost me \$30,000 to complete it or it's going to cost me \$80,000. I don't know. I will have more information, like I said, within the next 30 days and that's why our request is to be able to use our carryover to complete this project and then by the end of June, anything remaining would gladly be turned over. We appreciate your willingness in the past to work with us on this issue. We feel it's a very important issue so that we can appropriately track. We track over about 8,800 children every year between Probation and the Department of Health and Human Services. We need that ability to track so that we as a state know where our children are at all times. I'm here for any questions and I do appreciate your time and your willingness to consider our request. [AGENCY 70]

SENATOR STINNER: Thank you. Any questions? Senator Wishart. [AGENCY 70]

SENATOR WISHART: Thank you for being here today. Can you explain a little bit more how the data system is going to help us track the kids' well-being in the state? [AGENCY 70]

KIM HAWEKOTTE: One thing that we did when we created this database, it's been able to do a couple of things. Because of the platform we are current...that was created on, we now can generate overnight reports automatically from Health and Human Services into that database. What that has allowed both of our systems to do is to not have staff have to enter data every day on what we call change, add, delete reports, because we know children move every day in and out of home. So by doing that, we have automated that process. And also by doing the type of database that we have done with a SQL database, it allows us to now put on and lay on a

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predictive analytic program to be able to predict now but also in the future as to where things are going. Without that type of database and that integrated ability, we couldn't do the predictive analytics that we feel is very important for the future. Did that help answer your question?

[AGENCY 70]

SENATOR WISHART: Uh-huh. [AGENCY 70]

SENATOR STINNER: Other questions? Senator Bolz. [AGENCY 70]

SENATOR BOLZ: I just wanted to say a quick thank you. In 2012, prior to LB998 and prior to the establishment of this database that you're working on, I was one of the people who answered an information and intake line in the child welfare system when we were going through privatization, which was not a success. And so I just want to say thanks because I remember taking those phone calls of confused and frustrated parents and foster parents. Your work matters. Thank you. [AGENCY 70]

KIM HAWEKOTTE: Thank you. [AGENCY 70]

SENATOR STINNER: Questions? Thank you. [AGENCY 70]

KIM HAWEKOTTE: Thank you. [AGENCY 70]

SENATOR STINNER: Any further folks that want to testify on Foster Care Review? If not, we go to the Commission on Indian Affairs. [AGENCY 70]

JUDI GAIASHKIBOS: Thank you, Chairman Stinner and Appropriations Committee. This is very unique, in the 21 years that I've served as the director of the Commission on Indian Affairs, to have two hearings. So I hesitated whether to come before you today and take time--I know you're very busy--because our agency, although we're not pleased or happy about the cuts that we have been...will face, the 4 percent, we can live with that. And I am looking forward to our next hearing, which is March 2 I believe, where we can visit with you further about what our agency does. I am Judi gaiashkibos, J-u-d-i, gaiashkibos, g-a-i-a-s-h-k-i-b-o-s, the director of the

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Commission on Indian Affairs. I'm a member of the Ponca Tribe. And just wanted to give you just a short minute of what it is that our agency does. And really, I wanted to meet the new senators and have a moment for you to meet me in anticipation that I don't get to engage with you all that often. So on March 2, this will be our second time of meeting the new senators. And some of the other older senators, I've met you before. Our agency represents and serves as a liaison between our tribal sovereign nations and working with the State Legislature and the federal government. And one of our statutory obligations is to handle the return of human remains. So in this next year we hope to be out of the bones business and return the last 250 remains that are currently at the Historical Society and the University of Nebraska. So unlike any other agency in the state, we are tasked with that is, to me, a sacred duty of my position that I have done all these years. And so there are many things that our agency does to help prevent Indian wars, if you will, that have been in the past very contentious. We are, as you can see in our budget, we want to stress and make it clear that we're not thrilled by health insurance cuts, but we understand. And but we do expect that there's a change and upgrade in status of our employees, that that would be taken into consideration. And so moving forward to the biennium, we will continue to work as a small agency with a very small budget to find partnerships. That's what we think we're really good at. We have a staff of three. We're up on the sixth floor if you ever want to come up and see us. And I caution my staff that sometimes you can be too good at what you do and so everybody wants your help. And then when I say yes, that means more work for my staff and then they don't get salary increases. But we have had significant partnerships over the 21 years I've been here and going forward into the sesquicentennial celebration we're very pleased that we were able to find a donor to totally fund with private funds the Standing Bear Memorial on Centennial Mall. That, we think, is going to be a great contribution to our state as we look forward and also look back to the first peoples. We're also really pleased working with the First Lady on this in the upcoming year, Standing Bear of the Ponca, a children's book written by Virginia Driving Hawk Sneve that will go out to all the ESUs this summer and be distributed to the 27,000 5th graders in the state of Nebraska, another partnership that was utilizing money outside of our agency. Today I had lunch with professors at the University of Nebraska, Dr. Larry Rilett, who recently received a huge federal grant for transportation, and we are partnering with them on a summer leadership academy for Native youth because as some of you may have heard at the hearing or at the luncheon that the Winnebago hosted yesterday, really what changes people's lives is job opportunities and

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education. And really the problem or the root problem of many of our challenges in life are living in poverty. And at Whiteclay, I think that's more of the real problem--poverty and lack of the ability of families to have a reason to get up in the morning. And their children have lost hope. So what our agency is committed to doing is working with senators, such as Senator Bolz, on the Tribal License Plate bill to continue to develop these partnerships that will help Nebraska be a good place and a good life for all of us. And so with that, I thank you for your hard work. I understand, as the director of the Latino Commission said, cuts to our little agencies may seem small but when you compare it to DHHS or others, it's really catastrophic, you know, because there are so few of us. So we hope that you'll be kind, kind. And that's all I have to say. Wi'Bthu Ho. [AGENCY 76]

SENATOR STINNER: Thank you. Questions? Yes, Senator Wishart. [AGENCY 76]

SENATOR WISHART: Can you give us an update on the trail project that you're working on? [AGENCY 76]

JUDI GAIASHKIBOS: Oh, that's another one of our partnerships. Well, let's see. Congressman Fortenberry introduced the bill on the House side successfully twice. Senator Johanns introduced on the Senate side and then he left and wasn't able to get that finished. So Senator Fischer then introduced it on the Senate side. And most recently we weren't able to, during the last session, get that into the energy bill. So Senator Fischer has decided that she does not want to introduce the bill again and Congressman Fortenberry is committed. This is a priority for him to have the federal trail bill. My daughter, who used to be a legislative page here, Katie Brossy, is now an attorney at Akin Gump and she is the pro bono lobbyist on our bill. So I trust my lobbyist. And so she works out there in D.C. and keeps me informed on that. And so what I hear from the chief of staff of Congressman Fortenberry, "Reyn" Archer, is that now we're at the place where Congressman Fortenberry has asked Senator Sasse to introduce. So we're hoping he will and then Senator Fischer will join in. And this is for the feasibility study portion of that. And then we would forward with Park Service. We're not at the top of the queue so we'd have to wait a bit, but they have four years with the bill to do that. And once that happens and we're successful, we believe that this will benefit all the communities along the trail, from Niobrara all the way to

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Oklahoma, for ecotourism, for cultural education, and so it's going to be a win-win for everyone.
I wish I had... [AGENCY 76]

SENATOR WISHART: And the trail will be called...? [AGENCY 76]

JUDI GAIASHKIBOS: Do I know what the trail will be called? [AGENCY 76]

SENATOR WISHART: Yeah. [AGENCY 76]

JUDY GAIASHKIBOS: I believe it will be called the Chief Standing Bear Trail. [AGENCY 76]

SENATOR WISHART: Okay. Okay. [AGENCY 76]

JUDI GAIASHKIBOS: Yes. [AGENCY 76]

SENATOR STINNER: Thank you. Other questions? Thank you very much. [AGENCY 76]

JUDI GAIASHKIBOS: Uh-huh. Thank you. [AGENCY 76]

SENATOR STINNER: Any additional testifiers on the Commission on Indian Affairs? Next is
Commission for the Blind and Visually Impaired. [AGENCY 76 AGENCY 81]

PEARL VAN ZANDT: (Exhibit 72) Good afternoon, Senator, Chairman and Senators. It's nice
to be here. Thank you for giving us some time. We just have a few brief statements for you
today. I brought with me deputy director Carlos Servan, and business manager Bill Brown. I'm
executive director of the commission and my name is Pearl Van Zandt. It's P-e-a-r-l, last name is
V-a-n Z-a-n-d-t. So thank you. For the current fiscal year, the 4 percent reduction will impact
both aid to blind clients and operations. Operations is basically, for the most part, direct services
across the state of Nebraska to blind individuals. And aid is specific expenditures, usually for
college tuition or maybe some technology that they need for a job or tools they need for the skills
of blindness. We, the agency, is a core partner in the work force investment Work Force
Innovation and Opportunity Act, and so we're very much involved with all of the work force

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effort that's part of WIOA. The recommended reduction is \$45,941. That's operations being cut by \$38,865 and case services by a little over \$7,000. Our budget includes an earmark from General Funds that must be used for the senior blind services. That's not addressed in the cut but I wanted to bring it up because that earmark is \$128,250. If funds are cut from our overall budget, we would request that you would also decrease the earmark to some comparable amount if possible so that we have flexibility with the limited funds that we do have. Another thing that I wanted you to consider that I brought up in my little page here is that the funds that NCBVI has can enable us to bring in additional federal funds each year from other states that were not able to match their federal amount. The funds for most of the...in general our funds are 80 percent federal, 20 percent state. So as the state is cut, the ability to draw down federal is limited. I won't go into a lot of detail on that, but for the past several years we've been able to bring about an extra \$750,000 into Nebraska through the reallocation process. And so just know that as state funds are cut, that's going to limit our ability to bring in those dollars. And I just want you to know the budget reductions do directly impact the services to blind Nebraskans. Our main purpose is to enable people who lose their vision to either stay employed or to get back into the work force. And so the work that we do enables blind people to pay taxes and so not be a drain on the taxes. And we just hope you'll consider that negative impact that the recommendations would have and at the very least to not cut the budget for aid. And, you know, beyond that, see what might work. So we really appreciate your time. I'll be glad to answer any questions that you might have. [AGENCY 81 AGENCY 26]

SENATOR STINNER: Questions? Thank you. [AGENCY 81]

PEARL VAN ZANDT: All right. Thank you. [AGENCY 81]

SENATOR STINNER: Any additional testifiers for the commission? Well, we'll go to our final item on our agenda is the Department of Health and Human Services. [AGENCY 81 AGENCY 25]

COURTNEY PHILLIPS: (Exhibit 73) Good afternoon, Senator Stinner, members of the Appropriations Committee. For the record, I'm Courtney Phillips, C-o-u-r-t-n-e-y, Phillips, P-h-i-l-l-i-p-s, and I have the privilege of serving as CEO for the Department of Health and Human

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Services. I'm here today regarding fiscal year '16-17 budget bills and to provide for the record that I'm in support of the Governor's recommendations pertaining to Agency 25, the Department of Health and Human Services. At this time, I will take any questions that the committee has regarding these bills. [AGENCY 25]

SENATOR STINNER: Okay. Questions? Senator Bolz. [AGENCY 25]

SENATOR BOLZ: Good afternoon. I guess I'll just start by asking the dollars in our budget book related to reappropriated funds and the across-the-board withholding, how is your department as a whole managing those reductions? [AGENCY 25]

COURTNEY PHILLIPS: So as we started through the budget process, as you know, we looked across the board in terms of the Governor's holding the line, the 4 percent, as we looked at the budget scenario across the state. And so we looked across DHHS in terms of what could be done as it relates to the 4 percent. Prior to the Governor's hold as it related to the freeze in spending and expenditure freeze, we had already started that process internally at DHHS as looking at the vacancies, our supplies, our travel. So those things were already in place. We just firmed up when the Governor put the expenditure hold in place. And so as we looked across the board, we looked at several things as related to our contracts, our historical spending as it relates to the appropriated dollars for those contracts. In terms of our reappropriation dollars, we looked at the historical spending as well as the current utilization rates and the forecast based on those, and those are some of the amounts that you see in the recommended reductions. So we're quite comfortable with those based on historical utilization as well as current utilization and doing that forecast out. [AGENCY 25]

SENATOR BOLZ: Specifically, I'd be curious to hear you talk about the operations portion of the puzzle. I think I heard you reference some vacancy savings and some of those pieces. I guess I'll be frank and say, some of that concerns me as it relates to some of the vacancies I see in your vacancy report as they relate to child welfare, DD service coordination, those kinds of things that I'm...I just would like to hear you discuss further how your agency is managing without some of those staff people in pretty tough jobs. [AGENCY 25]

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COURTNEY PHILLIPS: Absolutely. So as we looked in place of putting some of the vacancy reviews, many things were exempt their process. And so some of those critical positions that have constant, continuing postings, those were exempt from the process. So as you mentioned, some of our childcare workers, those things were exempt. Direct services in the facilities were also exempt. So we had some exemptions already carved out on their process. The vacancy savings you see mostly in the '17 are some things that have already been achieved. Those vacancies we keep in the budget because those are positions we're trying to fill. We also had some changes as it relates to the operations in terms of some of our contracts and some of those reductions that we were able to make in terms of some staff that we were able to bring on versus contractual relationships, some savings as it relates to that. We also made some changes as it relates to our information technology, some of the hardware and software savings that we were able to achieve, also looking at some of our purchases, also looking at some of the way we conducted our background checks for internal processes and doing a rebid of that particular contract that we had in place and doing an all-state agreement with some other states to utilize some services that were out there. So overall in our operations budget, there are several things that consists of, not just the saving. But I do want you to know that we had a clear process in terms of many of those critical positions that did have an exempt from the vacancy in the hiring critical review process. [AGENCY 25]

SENATOR BOLZ: That's really helpful additional context. In terms of some of the utilization, I always find that challenging to understand how the utilization matches up with the operations and what that means in terms of federal funds. And I don't know that it's the best use of the committee's time to work through all of those details, but if you could share with the committee some of the data analysis that you used to get to the numbers that you arrived at, to those numbers,... [AGENCY 25]

COURTNEY PHILLIPS: Okay. [AGENCY 25]

SENATOR BOLZ: ...that would help my comfort level frankly. [AGENCY 25]

COURTNEY PHILLIPS: Absolutely. [AGENCY 25]

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SENATOR BOLZ: Thank you. [AGENCY 25]

COURTNEY PHILLIPS: And we can do that for each one of the categories that have the utilization factor. [AGENCY 25]

SENATOR BOLZ: Great. [AGENCY 25]

SENATOR STINNER: Other questions? I have a couple questions. One of the things that we looked at, one of the studies we had this summer, was about backroom activities. Are any of your cuts related to any of the internal audit quality control, to make sure that we're complying with all the regs? [AGENCY 25]

COURTNEY PHILLIPS: No, we have no reductions as it relates to our internal staffing unit, internal auditing that you've met with. [AGENCY 25]

SENATOR STINNER: Right. [AGENCY 25]

COURTNEY PHILLIPS: No, sir, do not. [AGENCY 25]

SENATOR STINNER: And your CFO is a CPA and is capable of staying on top of all the cost studies that you have to do and those types of things? [AGENCY 25]

COURTNEY PHILLIPS: Yeah. I do think we have continual improvements that we have to make in our financial management array, as well as the internal audit, some of those things that we've talked to you about in terms of wanting to shrinking up those unit and actually getting in there, working with APA in terms of things that they may e seeing that we can get on top of. It's a day-to-day learning for us in terms of getting in, digging in of things on an historical perspective, so absolutely. [AGENCY 25]

SENATOR STINNER: If I remember correctly, we took quite a little bit out in reappropriations, quite a little bit, meaning I think it was \$110 (million), \$117 million last year to balance our budget. And reappropriations comes up at \$171 (million). I start putting those numbers together

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and it's a big number. Is that possible or is this stuff...are these reappropriations really committed funds or needed for contingencies or how does this...? [AGENCY 25]

COURTNEY PHILLIPS: So we do have reappropriations in terms of, as I said, we looked at our historical utilization and also did the forecasting for this current year as it looks at utilization as well as enrollment across the department in the different areas. And we are comfortable with the presentation that we have and the reductions of those. As it relates to any quarter, I know you asked this question previously when we did your audit meeting in terms of what happens if some of those audits that we have in current relationship and conversations with CMS come down the pipeline? We do have a small corridor within our budget in terms of some of those audits that have been present prior to 2012 and that we're currently working through. We have no indication that any of those will come through this current fiscal year, but we do have a small corridor for that in a case made that it does. [AGENCY 25]

SENATOR STINNER: The other thing that I'm curious about and I'm trying to understand it better is the child welfare, Nebraska Families Collaborative. I thought we put some money into there. My recollection was about \$10 million. We're \$7.8 million off again. What's happening there? [AGENCY 25]

COURTNEY PHILLIPS: So the dollars that we put in, I think you're referencing last fiscal year? [AGENCY 25]

SENATOR STINNER: Yes. [AGENCY 25]

COURTNEY PHILLIPS: That was in the overall child welfare budget, the \$7 million we were requesting as it relates to the NFC contract, particularly for the Eastern Service Area. [AGENCY 25]

SENATOR STINNER: Okay. [AGENCY 25]

COURTNEY PHILLIPS: And now what we're looking at is projecting based on when we did the numbers of out-of-home placements and state wards that we have in that particular area. We base

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those numbers off of the '16 numbers, and we've seen an uptick of approximately .61 percent over a month and in terms of that increase. And that's some of the things that we're working on in child welfare as we start to look at our service array, making sure that the services that we're currently paying for across the state, not just in the Eastern Service Area, actually contribute to the outcomes that we want to see for out-of-placements for youth. [AGENCY 25]

SENATOR STINNER: Okay. I'll pass on any other questions, but we're going to take a hard look at some of these areas in the biennium budget. [AGENCY 25]

COURTNEY PHILLIPS: Absolutely. [AGENCY 25]

SENATOR STINNER: And you'll have the opportunity to come back and talk to us at that time. [AGENCY 25]

COURTNEY PHILLIPS: Absolutely. And any time you guys have questions, you know I've always been open to come over or a phone call in order to go a little bit further. [AGENCY 25]

SENATOR STINNER: I do appreciate that. Yes. Any other questions? [AGENCY 25]

COURTNEY PHILLIPS: Thank you, members. [AGENCY 25]

SENATOR STINNER: Thank you. [AGENCY 25]

SENATOR KINTNER: She brought the cavalry today. [AGENCY 25]

COURTNEY PHILLIPS: Of course, Senator Kintner, I have to bring them. [AGENCY 25]

SENATOR KINTNER: You brought a couple battalions here. They (laughter) they're going to go home and now you're going to fight a battle. [AGENCY 25]

COURTNEY PHILLIPS: No way. [AGENCY 25]

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SENATOR STINNER: I thought they were all going to testify. They're all lined up here in the testimony seat. [AGENCY 25]

COURTNEY PHILLIPS: (Inaudible) specific questions for them. (Inaudible). [AGENCY 25]

SENATOR STINNER: Thank you very much. Thanks for taking the time. I appreciate it. [AGENCY 25]

COURTNEY PHILLIPS: Absolutely. [AGENCY 25]

SENATOR KINTNER: Good to see you. [AGENCY 25]

SENATOR STINNER: We'll take...absolutely. [AGENCY 25]

JEANETTE WOJTALEWICZ: Ready, sir? [AGENCY 25]

SENATOR STINNER: Yep. [AGENCY 25]

JEANETTE WOJTALEWICZ: (Exhibit 74) Good afternoon, Chairman Stinner and members of the Appropriations Committee. My name is Jeanette Wojtalewicz, spelled J-e-a-n-e-t-t-e W-o-j-t-a-l-e-w-i-c-z. I'm the chief financial officer for CHI Health, and our system operates 15 hospitals, 2 behavioral health facilities, and serves thousands of patients and families across Nebraska. In addition to CHI Health, I'm offering my testimony on behalf of the Nebraska Hospital Association and its member hospitals. Before I begin, I would like to thank each of you for your time and attention to these proposed deficit cuts and the hearing process. Like you, many of us have spent time trying to understand these budget cuts and their interplay with the reductions proposed in the biennial budget. For this reason, we wanted to quickly bring your attention to an issue impacting Nebraska's 27 largest hospitals. I anticipate or I did anticipate that you'd be hearing many concerns from testifiers today regarding the proposed 3 percent cut in Medicaid reimbursements. We significantly have concerns about this as well. However, what I want you to understand is that the issue that I'm bringing to your attention today is different in that it involves an underpayment of 6 percent within the current Medicaid reimbursement structure that was

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previously agreed to by all providers, the Department of Health and Human Services, and a third-party evaluator. Now this is a technical area. I have attached to my testimony some additional information and I'd be happy to entertain any detailed questions after I'm done testifying on that particular 6 percent shortfall. Nebraska's largest hospitals have been working with Calder Lynch, Director Calder Lynch, and the Division of Medicaid and Long-Term Care to find a solution to closing this payment gap. DHHS has been an important partner, both to CHI Health and the Nebraska Hospital Association, and we hope to continue this close working relationship. However, it seems that the budget-neutral changes to the rate system that were agreed upon by the hospitals and the Department of Health and Human Services is no longer taking place. Last week, Director Lynch informed the Nebraska Hospital Association that in light of the state's fiscal descent, payments for inpatient Medicaid services would not be adjusted to the previously agreed upon budget-neutral status and that the 6 percent underpayments would occur indefinitely. The impact of this rate cut has been and will continue to be profound on Nebraska's largest hospitals which serve the highest percentage of Medicaid patients. The Nebraska Hospital Association estimated that the annual loss is more than \$10 million when we couple both the losses in the state funds and the federal matching Medicaid dollars. For CHI Health, that amount is over \$4 million. We believe it is important that you are made aware of the loss to these hospitals and that what we have incurred amidst the department's promises to remedy the loss in reimbursement. This failure to correct course is even more troubling given the recommendation for a further 3 percent aggregate cut in Medicaid reimbursements in the upcoming biennial budget. Nebraska's hospitals are dedicated to serving the Medicaid population and continue to do so at a fraction of the actual cost providing this care. Given the budget constraints that all of us are operating under, we certainly understand that fiscal prudence is a must. Nebraska's hospitals provide millions, and I repeat, millions of dollars in uncompensated care each year, which is why the additional loss of dollars promised to us is deeply concerning. We are simply asking that the state...for the state to follow through on its agreement and hope to work with you to accomplish this in the next budget proposal. You certainly do not have an easy task ahead of you, but we'd like to thank you for your service and hope that you consider CHI Health and all members of the Nebraska Hospital Association as resources for you and your staff as you make these important deliberations. I'm happy to answer any additional questions you may have. [AGENCY 25]

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SENATOR STINNER: Thank you very much. The provider rate 3 percent cut in the biennial budget, we'll get to that and I expect you to come back for testimony then as well. [AGENCY 25]

JEANETTE WOJTALEWICZ: Happy to. Happy to be there. [AGENCY 25]

SENATOR STINNER: Your contention is that because of the length of time between adopting another version you are running out at a 6 percent higher rate. Was that something that you billed the state at that rate and then had to take a lesser amount? Or haven't they reimbursed any of that? [AGENCY 25]

JEANETTE WOJTALEWICZ: So it's a little different than that. What in fact happens is there's a certain payment rate each...in our larger hospitals. We call them PPS or prospective payment hospitals. We get paid a flat rate to take care of a patient, but it's different depending upon the disease state, the diagnosis codes of those patients, and there's a flat rate. There's multiple payment mechanisms, once called the all payer DRG group or that's what the state used for Medicaid. That went away. It was going away in 2014 so they moved...were moving to a new version called the all payer refined DRG system. What actually happened then is in the analysis, there's different weightings and different groupings, and so they worked to "rebase" our rates so that we would not have any reduction in overall reimbursement. What actually happened is analysis was done using one version of that grouping system. What was actually put into place was a different or an updated version. So the intent I don't believe was intentional, but the new version that hadn't been tested and run against our analysis that was put into place caused the 6 percent shortfall. That was brought to the state's attention and then analysis began validating this with a third party. [AGENCY 25]

SENATOR STINNER: Okay. Thank you for that clarification. Questions? Senator Kuehn. [AGENCY 25]

SENATOR KUEHN: Thank you, Mr. Chairman. I appreciate your bringing this to the committee's attention today. Just to put the \$4 million figure that you mentioned into perspective, since you're CFO of CHI, what is CHI's total revenue annually. So we talk about your 15

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hospitals, 2 facilities, what are you talking about in total revenues across the state? [AGENCY 25]

JEANETTE WOJTALEWICZ: Our total net patient service revenues are over \$1.9 million...billion, excuse me. [AGENCY 25]

SENATOR KUEHN: Okay. So we're talking about \$4 million out of \$1.9 billion in total revenues. What total assets does CHI have in this state in terms of footprint with your facilities, just even a rough figure? [AGENCY 25]

JEANETTE WOJTALEWICZ: Approximately \$3.5 billion of assets. [AGENCY 25]

SENATOR KUEHN: And just for the record, what is the tax status with regard to property tax rolls as well as nonprofit status of CHI's enterprises? [AGENCY 25]

JEANETTE WOJTALEWICZ: We are considered a nonprofit organization... [AGENCY 25]

SENATOR KUEHN: Okay. All right. [AGENCY 25]

JEANETTE WOJTALEWICZ: ...or not for profit. [AGENCY 25]

SENATOR KUEHN: Okay. Appreciate that, just to put that \$4 million in perspective of your overall organization with CHI. So thank you. [AGENCY 25]

JEANETTE WOJTALEWICZ: You're welcome. [AGENCY 25]

SENATOR STINNER: Thank you. Senator Hilkemann. [AGENCY 25]

SENATOR HILKEMANN: Yeah, what is your present...the reimbursement rate compared to Medicare at the present time for how does Medicaid...? [AGENCY 25]

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JEANETTE WOJTALEWICZ: Medicaid payments are less than Medicare payments. They are comparable but they are less. So I would say, a ballpark, about 85 percent of the Medicare rate, 85 to 90 percent of the Medicare rate. [AGENCY 25]

SENATOR HILKEMANN: That's what your present Medicaid rate is. [AGENCY 25]

JEANETTE WOJTALEWICZ: Approximately. [AGENCY 25]

SENATOR HILKEMANN: Okay. Okay. Thank you. [AGENCY 25]

SENATOR STINNER: Senator Kintner. [AGENCY 25]

SENATOR KINTNER: Yeah, thanks for coming. I'm not even going to take a stab at your last name, so we'll just stick with Jeanette. [AGENCY 25]

JEANETTE WOJTALEWICZ: No worries. [AGENCY 25]

SENATOR KINTNER: So whenever you treat a Medicaid person, you're losing money... [AGENCY 25]

JEANETTE WOJTALEWICZ: Correct. [AGENCY 25]

SENATOR KINTNER: ...or is that...but you put that in your budget, knowing you're going to treat X number so you don't lose as much. You kind of figure that into the whole equation. Is that correct? [AGENCY 25]

JEANETTE WOJTALEWICZ: It's part of our mission and it's part of being, as was brought up, as a not-for-profit hospital. We serve all. [AGENCY 25]

SENATOR KINTNER: So you don't do anything to limit the number of Medicaid people you take. [AGENCY 25]

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JEANETTE WOJTALEWICZ: No, we do not. [AGENCY 25]

SENATOR KINTNER: As the CFO, you put together a budget every year. Do you figure we're going to do this much, that we're going to have this much revenue, we're going to spend this much money? And when revenue comes short, what do you do? You cut something, right? [AGENCY 25]

JEANETTE WOJTALEWICZ: Yeah. Yes, we do. [AGENCY 25]

SENATOR KINTNER: That's exactly what the state is doing here, we're cutting something. [AGENCY 25]

JEANETTE WOJTALEWICZ: Certainly understood. [AGENCY 25]

SENATOR KINTNER: You should totally understand what we're doing. [AGENCY 25]

JEANETTE WOJTALEWICZ: I do. [AGENCY 25]

SENATOR KINTNER: It's what you live and die every day. So you're arguing, I guess, to cut somewhere else. [AGENCY 25]

JEANETTE WOJTALEWICZ: What I'm arguing is that as a Medicaid population, those are our most vulnerable citizens of the state of Nebraska and, therefore, further cutting those and forcing our healthcare providers who've become the safety net--and we're not a Medicaid expansion state so we are already a safety net for many, many people who don't have coverage--puts services for those patients at risk. Yes, we will continue to serve them but it is a disproportionate, I guess, negative impact on those who are here as safety net facilities for the state. [AGENCY 25]

SENATOR KINTNER: You'll have to charge more somewhere else. [AGENCY 25]

JEANETTE WOJTALEWICZ: Well, that would be one of the arguments. And we've been very clear when speaking on behalf of CHI Health that our goal is to reduce cost, reduce the cost of

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healthcare, keep individuals healthy, keep them out of the hospital. And so we've put significant amount of money into resources that actually keep people out of the hospital. That would help get our costs down. So, you know, we...our commitment is to bringing costs down. And we understand the state's current dilemma of not having revenues matching expenses. We often are in a similar situation. So I'm not saying that this is more important than anything else, but it is very important to the citizens of Nebraska who are Medicaid recipients. [AGENCY 25]

SENATOR KINTNER: We sit here all day long for two days, and one group after another says cut somewhere else if you can. Some say cut us a little bit but not as much. So, you know, we're trying to figure this whole thing out and I'm not sure (inaudible) our collective heads again and try to come up with something, probably nobody will be happy totally. [AGENCY 25]

JEANETTE WOJTALEWICZ: Certainly understand. Just wanted to make sure you were aware of the issue. [AGENCY 25]

SENATOR KINTNER: We're probably starting with the Governor's recommendation and we'll kind of adjust up or down from there. And so we're just trying to ascertain the amount of pain you're going to take and how are you going to handle it and what we should do about it and all that, so. [AGENCY 25]

JEANETTE WOJTALEWICZ: What I wanted to make sure that you were aware of, that this shortfall already existed. So, you know, my understanding is that some funds were already brought forward from the Department of Health and Human Services maybe somewhere in the \$7.5 (million) to \$8 million saying, here, we'll offer this back to the deficit. My worry is that that's the 6 percent that was already cut from the hospitals. And I do not believe, honestly do not believe that it was an intentional reduction by the state. It was just simply a technical error in the calculation. So my goal today was to simply make sure you were aware of that before you made your decisions. [AGENCY 25]

SENATOR KINTNER: Is your biggest concern just the budget adjustment to what we're doing right now? Or is your bigger concern, which I think it would be, would be getting hacked at in the biennial budget? [AGENCY 25]

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JEANETTE WOJTALEWICZ: I would say that our concerns are both. But first and foremost is the shortfall that we've been, you know, underpaid, in essence, since 2014. And if that is not corrected--and we recognize decisions will need to be made in the future biennial year that could result in other negative adjustments to many groups, including hospitals potentially, we hope not, but if so, that would be a 6 percent and then another 3 percent on that. And then it just starts snowballing. So our goal at this point is simply to ask you to rectify the current underpayment that we had and then you will still need to make, obviously, the decisions in the next biennial budget (inaudible). [AGENCY 25]

SENATOR KINTNER: Okay. Thank you for coming today and making us aware of that. [AGENCY 25]

JEANETTE WOJTALEWICZ: You're welcome. [AGENCY 25]

SENATOR KINTNER: Appreciate it. [AGENCY 25]

JEANETTE WOJTALEWICZ: Absolutely. Any, yes, any other questions? [AGENCY 25]

SENATOR STINNER: Senator Bolz. [AGENCY 25]

SENATOR BOLZ: I understand that you work for CHI Health. You also have a document here from the Nebraska Hospital Association. [AGENCY 25]

JEANETTE WOJTALEWICZ: Yes. [AGENCY 25]

SENATOR BOLZ: And if you're not positioned to answer this that's okay, but I'm trying to understand how this underpayment might have impacted different types of hospitals. [AGENCY 25]

JEANETTE WOJTALEWICZ: Absolutely. [AGENCY 25]

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SENATOR BOLZ: CHI certainly was impacted in one way. What about like the rural critical access hospitals? Can you speak to... [AGENCY 25]

JEANETTE WOJTALEWICZ: Yes. [AGENCY 25]

SENATOR BOLZ: ...how the system as a whole has been impacted? [AGENCY 25]

JEANETTE WOJTALEWICZ: Yeah, and I actually appreciate that question, because as I spoke earlier it impacted 27 hospitals, not the critical access hospitals. The critical access hospitals are reimbursed based upon a methodology that looks at their annual costs, the Medicare cost report, and the state utilizes that to provide reimbursement to their cost. So they're not impacted by this, what's referred to in the handout, all payer refined DRG system. That is only for the larger hospitals, the 27 hospitals that are more than 25 beds. [AGENCY 25]

SENATOR BOLZ: Thank you. [AGENCY 25]

JEANETTE WOJTALEWICZ: You're welcome. [AGENCY 25]

SENATOR STINNER: Senator Wishart. [AGENCY 25]

JEANETTE WOJTALEWICZ: Yes. [AGENCY 25]

SENATOR WISHART: Can you walk us through, and I'm referring to the underpayment of 6 percent. Can you walk us through the time line of how these negotiations work for the rates and then, you know, when you learned that, you know, you weren't being paid at the rate that you agreed upon and then moving forward into now, just what is that time line? [AGENCY 25]

JEANETTE WOJTALEWICZ: So let me get my notes here to make sure that I'm giving the accurate dates. The change in the system, so this is going from the all payer DRG to the all payer refined system, was to take place in July of 2014. So that is when, it was right around that time, when a consultant was hired, public consulting group, to kind of analyze the change initiative. It was actually, I believe, a bit before that when the analyst came in and I don't have the exact date

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so I apologize for that. Yeah, so I can't speak to the exact date in which the analysis began, but it was to the rate change went into effect July 1 of 2014. So then I believe it was around August 14 of that same year, so very shortly thereafter, when it was identified actually by the Nebraska Medicine Hospital, they brought forward that this...it appeared that the actual rates being paid were different than what had been agreed upon. And then we incorporated our Nebraska Hospital Association representatives and Courtney Miller from...the deputy director from Medicaid and Kerry Winterer also was involved in September of '14. So analysis was before July '14; the change went in, in July of 2014; identified an error, August of '14; groups getting together in September of '14; and then the analysis continued. In 2016 then the state said that it would consider, July of '16, that they would consider adding 6 percent to make up for this error. That did not occur. So from probably end of July and probably till about July of 2015, when we were doing all the analysis, and I believe a representative for the Nebraska Hospital Association did follow up with Calder Lynch in the fall of '15 and then was told, okay, we'll make the correction in July of '16. So as soon as the change went into effect and the error was identified, it was brought to the state's attention. And we have really been working quite collaboratively with them and the third party on that. [AGENCY 25]

SENATOR WISHART: Is this...has this ever happened before? [AGENCY 25]

JEANETTE WOJTALEWICZ: With the state or with other payers or...? [AGENCY 25]

SENATOR WISHART: With the state. [AGENCY 25]

JEANETTE WOJTALEWICZ: Not to my knowledge... [AGENCY 25]

SENATOR WISHART: Okay. [AGENCY 25]

JEANETTE WOJTALEWICZ: ...that a shortfall was identified that wasn't rectified, not to my knowledge. [AGENCY 25]

SENATOR WISHART: Okay. [AGENCY 25]

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SENATOR STINNER: Any other questions? I just want to get on the record, I want to get all the information put together here. That difference, that 6 percent, what is the state contractually obligated to pay? [AGENCY 25]

JEANETTE WOJTALEWICZ: I can't speak to the law, I guess, which would be the contractual requirement, but there is, I believe, an analysis that states that they will pay us on a DRG basis. I don't know that it states clearly around the...which grouper or how exactly the mechanics are. That might be a better question for Calder Lynch or Courtney Phillips. [AGENCY 25]

SENATOR STINNER: I think that's important in our analysis to say, okay, there is a legal piece of this thing, and of course then the ethical piece of what's right. [AGENCY 25]

JEANETTE WOJTALEWICZ: Correct. [AGENCY 25]

SENATOR STINNER: So I've got to be able to decipher those two pieces, so. [AGENCY 25]

JEANETTE WOJTALEWICZ: Certainly understandable. [AGENCY 25]

SENATOR STINNER: Any other questions? Thank you for your time. [AGENCY 25]

JEANETTE WOJTALEWICZ: Absolutely. Thank you for listening. [AGENCY 25]

SENATOR STINNER: Go ahead. I'm sorry. [AGENCY 25]

TOPHER HANSEN: (Exhibit 75) That's all right. Chairman Stinner, thank you. My name is Topher Hansen, T-o-p-h-e-r, Hansen, H-a-n-s-e-n. And first I just want to say thank you to you all for serving and doing the hard work of running a state well. I think we've got a pretty good track record of running a state well. And this is some of the toughest work there is. Chairman Stinner, members of the Appropriations Committee, my name is Topher Hansen. I'm the president and CEO of CenterPointe here in Lincoln. I've been involved in the field of mental health and substance treatment for almost 24 years and as CEO I participated at the state and federal level as an advocate for policy and practice. I'm here today on behalf of the Nebraska

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Association of Behavioral Health Organizations and that's a statewide organization consisting of provider organizations, consumer organization, hospitals, and regional health authorities.

[AGENCY 25]

SENATOR STINNER: Topher, can I interrupt you. Would you spell your name? [AGENCY 25]

TOPHER HANSEN: Oh, sure. I did. [AGENCY 25]

SENATOR STINNER: You did? I'm sorry. I apologize. [AGENCY 25]

TOPHER HANSEN: That's all right. Want me to do it again? [AGENCY 25]

SENATOR STINNER: Yes...well, no, no, if you've done it. [AGENCY 25]

TOPHER HANSEN: Many people ask... [AGENCY 25]

SENATOR STINNER: I just wanted to make sure because... [AGENCY 25]

TOPHER HANSEN: ...and it's not Hansen that befuddles them. (Laughter) [AGENCY 25]

SENATOR STINNER: Okay. [AGENCY 25]

TOPHER HANSEN: I did get it into the record though. (Laugh) [AGENCY 25]

SENATOR STINNER: Thank you. I'm sorry. [AGENCY 25]

TOPHER HANSEN: You're all right. And I would add for our behavioral health organization that we are unique in the country, as Nebraska is in many ways, for having an organization that has mental health, substance payers in the regions, consumers, and providers all focused on the same thing and doing work together. This is not repeated elsewhere and we should be proud of that. That's the way Nebraska operates. I am here to provide you with information that will help inform your decision on LB22 and any cuts to the behavioral health system of care. Assuming

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that the Legislature is able to reduce the current budget, one of the goals in reducing that budget is to do so without creating greater expense. We don't want to make matters worse and this is one of those services that we threaten that outcome. So looking at critical services or essential services or essential services that are foundational to our system is important. As you just heard, health as a broad category is one of those areas that is foundational to all else we do. I'm talking as people, as systems, as states, as communities. Behavioral health or mental illness, mental health, and addiction or substance treatment services as a subset of the broad category of health is equally, if not more, critical than some of the other areas of health. In the U.S., mental illness ranks first among illnesses that result in a disability. So you may not have heard some of these numbers before, but absorb this because this is different than what you may know. So mental illness ranks first among illnesses that result in a disability. A needs study from Nebraska Department of Health and Human Services shows one in five people, or 325,000 adults in Nebraska, have a mental illness in any given year. This mirrors what happens nationally. Over 30,000 adults and youth are served through the Division of Behavioral Health funded programs. In 2010, depression ranked second for global disease burden. It's due to be first by 2020 at current rates. That disease burden is how much the illness, untreated, costs our economies. Substance use disorders, meaning alcohol, drugs, and cigarettes, cost our economy \$484 billion, more than cancer and diabetes combined. These are not problems we want to put on the back burner. The majority of people incarcerated in Nebraska have a substance use disorder or a mental illness. Most of those people did not have adequate, if any, care prior to committing the offense that resulted in prison. Not treating people who have mental illness or substance use disorders ends up costing millions of dollars in Nebraska. The costs incurred by jails...that cost is incurred by jails, prisons, and other publicly funded programs as well as hospital emergency departments, which do act as a big safety net. Providers of mental health and substance treatment services are already operating so close to the line of financial viability that their businesses are threatened. A study by Seim Johnson, which is attached to your packet that I've handed out commissioned by NABHO, the Nebraska Association of Behavioral Health Organizations, showed that the cost of doing business in outpatient, residential, and inpatient services was 20 to 50 points under the rates currently paid in Nebraska. The LR413 Task Force, chaired by Senator Bolz, issued a report after exhaustive work to identify the issues in behavioral health in Nebraska. The first recommendation of that task force states, "Rates for services provided by mental health providers in Nebraska's behavioral health regions and through the Medicaid

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Division are not reflective of the cost of providing services." The concluding statement by the task force says, "Ongoing collaboration is needed from the behavioral health regions, the Division of Behavioral Health, the Nebraska Legislature, and others to continue to strengthen our behavioral health services and supports." Cutting funds to this underfunded division that serves the most vulnerable and often the most costly people in our state would work against our interests to save money overall. As a state, we don't want to be in the position of having to increase funding in our Corrections because we cut funding in the behavioral health services. We all know someone who suffers from one or both of these diseases. We know that treatment works and that they can live a fulfilling life. We also know that without treatment there will be enormous costs and problems. The members of NABHO urge you to not cut funding to services that go to serving the neediest in our community. After years and decades of putting this issue on the back burner, please make this the time that we begin the new approach to health policy in Nebraska and set a course to adequately fund the behavioral health of all Nebraska citizens so they can live a fulfilled life and contribute as they are able to our great state. I would add to that the level...these people that are our citizens are some of the most ill citizens in our state, and you see it sometimes in the streets as you move around in Lincoln and in Omaha. And what I know from doing this for over two decades is that when you invest the time and money to begin to take them baby steps forward to getting better, you put them back in the position of contributing. They are ill. They are not people who are doing wrong. They have sick brains. Science has told us what the illness is about for both addiction and for mental illness and it is an ill brain that we must treat. And it results in things like homelessness, prison, jails, hospital EDs, and so on when we don't do that. We've done a couple of studies on this to see how much they spend and the first that I'm aware of in Nebraska took 19 people, many of which happen to be people that we engaged in our services. Those 19 people spent over \$1 million in service money because they were going without services, not to mention those that end up in prison because of a substance issue or mental health issue. And we're spending money doing that and yet not really getting to the root cause of all that, which is treating their behavioral health condition. So with that, also there are talking points in your packet that you can refer to that we thought condensing that might help. [AGENCY 25]

SENATOR STINNER: Thank you. Questions? Thank you. [AGENCY 25]

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TOPHER HANSEN: Thank you. [AGENCY 25]

DENNIS CRAWFORD: Everybody ready? [AGENCY 25]

SENATOR STINNER: Yep. [AGENCY 25]

DENNIS CRAWFORD: I don't do this very often. Hello. I'm Dennis Crawford, D-e-n-n-i-s, Crawford, C-r-a-w-f-o-r-d. I'm testifying on behalf of the Intellectual Disabilities Advocates of Nebraska, and also on behalf of my brother Matt Crawford who is a long-time resident of BSDC. My brother Matt has lived at BSDC since 1975. He's gotten along there very, very well. He's been very well taken care of all these years. I have great respect for the Appropriations Committee. The committee has a long tradition of working together on a bipartisan basis. You're to be commended for that. You could certainly provide a good example to our dysfunctional Congress in Washington, D.C. I understand you're dealing with a very difficult budget situation this year. You're facing a \$900 million shortfall, largely due to a reduction in commodity prices over the last two or three years, so I certainly can understand and appreciate the tough choices you have to make this year. I'm here because I'm concerned about the cuts proposed in the budget of Beatrice State Developmental Center by the Governor. The people who reside at BSDC are the most vulnerable and helpless people in Nebraska. We should not make cuts at BSDC unless it's a total and complete last resort. These are the people that can least afford a budget cut. Like I said, my brother has lived there since 1975. I'm one of his co-guardians, along with my sister and along with my mother. My brother has had a very good quality of life at BSDC. This is all he knows. This is his home. This is where he's lived for many, many decades. I visited him there about a month ago; he seemed very happy and his living conditions there appear to be top rate. The house he shares with several other disabled gentlemen was clean and very tidy. The women who are working with him and his housemates are extremely nice people. They appear to be very concerned about my brother and his other housemates. I have great respect for the work those folks do down there. It's tough work and they do a great job. I believe that as a society we must take care of the most vulnerable people in Nebraska. I'd request that the committee carefully review the budget submitted by the Governor with respect to BSDC. I would like you to maintain the quality of life my brother and his friends currently have there. I'd request there be no cuts or, in the alternative, the cuts do not diminish the quality of life enjoyed by my brother and his

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friends. So thank you very much for your time here today. I appreciate your time. If you have any questions, I'd be more than happy to entertain those. [AGENCY 25]

SENATOR STINNER: Questions? Thank you. [AGENCY 25]

DENNIS CRAWFORD: All right. Thank you very much. I appreciate your time. [AGENCY 25]

JON DAY: (Exhibit 76) Good afternoon now, Senator Stinner and fellow Appropriations members. My name is Jon Day. It's a hard spell. It's J-o-n D-a-y. Good afternoon. I'm Jon Day. I'm the executive director of Blue Valley Behavioral Health, a private, nonprofit, behavioral health organization that covers 16 primarily rural counties in southeast Nebraska. Blue Valley treats approximately 5,000 adults and youth every year who are dealing with a variety of mental health and substance abuse issues. The people that we treat are not faceless individuals. Instead, they're our family members, our friends, coworkers, people who we know and care about. I was originally here to talk to you about the 4 percent budget reductions within the Division of Behavioral Health, LB22, for this current year and the destructive impact it would have on the people that need behavioral health services, especially those in the rural communities. However, we and the many people that receive services are thankful this is no longer the case. However, it's important to emphasize that funding within the Division of Behavioral Health and Medicaid needs to not only stay intact but be further financially supported. There are many facts and reasons why appropriately funding behavioral health services needs to be a priority. To begin with, any reduction that would have occurred within this current year along with the projected funding reductions that are looming for the next two-year budget cycle would guarantee decreased mental health and substance abuse treatment. Over the past three years, Blue Valley has received an average increase of 2.25 (percent) rate increase from the Division of Behavioral Health, which results in a reimbursement rate still significantly lagging behind the cost of doing business. However, by at least having these minimal increases, Blue Valley has been able to increase their overall services by 15 percent. This means that approximately 600 more people are now being seen compared to three years ago. This is not only a powerful income, but it completely demonstrates the need for mental health and substance abuse services throughout Nebraska. If this fact wasn't convincing enough to exemplify the demand for behavioral health treatment, it's important to know that wait lists still exists for people needing appointments, even

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despite our growth. As a result, the availability of behavioral health services doesn't impact just a few people. Instead, it involves a much larger population than commonly thought. With this in mind, if any funding reduction or lack of increase occurs, it will not only completely erase the gains that have been made for more adults and youth receiving treatment. It will also make it much more difficult to even obtain services, especially in the rural communities. In fact, it was only last Friday when we received a phone call from a person who was needing to see one of our providers. Unfortunately, due to the demand for these services remaining high, she was having difficulty finding an appointment. She was starting a new job and without having her current medication, it would have made it very hard for her to keep it and be successful with her new employment. At the last minute, we were able to get this person in early enough, without having to wait several weeks. These type of scenarios take place every day. And if these behavioral health services were not available, the positive outcome that you just heard would not have happened. Not only does a funding reduction or a lack of increased funding reduce access to behavioral health services. It also directly impacts each community throughout Nebraska. Blue Valley, like other providers, is a referral source to many agencies and entities in the local area. Hospitals, physicians, attorneys, law enforcement, probation, schools, HHS, local businesses, and other organizations will be faced with having fewer or no behavioral health provider to refer to. In turn, this not only impacts the individual or families in need but also prevents these local institutions from performing their normal community duties. These reductions would cause physicians or hospitals not being able to refer people for treatment, a county or district court or a Correctional system that orders treatment with no local provider available or having to be placed on a wait list, or even schools having concerns for students with behavioral health issues that without local behavioral health resources can lead to a higher dropout rate. As you can see, limiting or reducing access to behavioral health treatment has consequences that reach far beyond just the individual. With any provided service, the goal is to always move forward and create a larger impact for those who live in our community. Behavioral health issues, just like physical health services, are not discretionary; they're essential. Due to the thin line of operability that already exists because of the current allocations, if funding for these services is not increased or if a funding reduction occurs during the next budget cycle, behavioral health services will take a tremendous step backwards in time, like it hasn't experienced in decades. We are aware of the budget deficits that exist for this upcoming budget cycle. However, we are also all aware of how appropriately funding services prevents further expenses at the individual and

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community level from happening. We appreciate your support in supporting a clear message to the public that mental health and substance abuse treatment in Nebraska is a priority. And I'll be able to answer your questions. [AGENCY 25]

SENATOR STINNER: Thank you. Any questions? Thank you. [AGENCY 25]

JON DAY: Thank you. [AGENCY 25]

BRIAN KANTER: (Exhibits 77 and 78) Chairman Stinner, Appropriations Committee, thank you for allowing me to speak. My name is Brian Kanter, B-r-i-a-n K-a-n-t-e-r. I'm the president of the Nebraska Association of Service Providers, or NASP you may have heard them called, and I appreciate being able to testify about the upcoming proposed budget cuts. NASP is a professional membership association of developmental disability service providers throughout the state. Our 30 members represent the majority of state-certified providers serving the vast majority of individuals with developmental disabilities in Nebraska. Our members serve thousands of Nebraskans with disabilities and employ thousands of direct-support professionals. We provide residential services and training to support individuals living in their homes, vocational services for individuals in the work force, as well as intensive behavioral and medical support services when needed. All of these services are provided in community-based settings in local communities, workplaces, and residences rather than in institutional settings. We are truly proud of the services that we provide in the state of Nebraska. Our providers are dependent upon reimbursement from federal and state funds. In most cases, 98 to 100 percent of our revenue comes from Medicaid. Unlike many other businesses, our member providers cannot pass along increased costs to their customers or the people we support. People that receive services seldom have private resources or insurance to help offset the cost of the services and supports. The current reimbursement rates were developed in 2011 and do not reflect the increasing costs related to the Affordable Care Act, the Nebraska minimum wage increase, the actual cost of providing services today in 2017. With the proposed rate cut over the next biennium, we have a great concern for a system that is already struggling to compete for and retain a professional employee base. LB206 was introduced to address this by increasing our reimbursement rate by 3 percent each of the next two years. Our providers manage tight budgets and face challenges finding and keeping quality employees. With current and proposed reimbursement rate

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reductions some NASP members have closed service settings to reduce operating costs. Additionally, more NASP members anticipate decreased financial stability, decreased programming and choice for individuals supported, negative effects to staff salaries and benefits, and service capacity reductions to include the closing of group homes and extended family homes. Some extended family homes, which are home-based settings where people with disabilities live with a family, have told us that they are in economic peril, especially in southeast and central areas of the state. Provider agencies in northeast Nebraska are concerned about their ability to continue providing services. Recently, NASP completed a provider-by-provider survey of our members, and based on the results we can say that funding the deficit appropriation request in LB205 as soon as possible is essential to maintaining the stability of an existing system and infrastructure at the current service provision level. Reducing capacity in community-based programs is not a good direction. This is particularly important because we have, over time, supported people moving out of the Beatrice State Developmental Center, BSDC, and broadly the state and the nation are moving away from institutional settings. The NASP membership would like to suggest that the identified savings from BSDC could appropriately be reinvested into or back into community-based services. Furthermore, for CMS to approve Nebraska's new waiver, Nebraska must show that the new approach will allow access to service across the state. If the loss in funding results in the closure of providers in specific geographical areas, other providers may not be able to expand to provide those services, which will result not only in individuals losing access to services but could result in problems with the approval of our new waiver. The Governor's budget request includes the use of reappropriated funds to address the deficit. Providers have been told that in order to respond to the Governor's request to withhold 4 percent of funds that the Division of Developmental Disabilities will no longer pay for the background checks required by law. Additionally, LB336 proposes the department would begin to charge providers for each APS and CPS check. Under these proposed plans, the cost remains but is shifted over to the service providers. In addition to growing concern over rates, NASP members were informed in August of 2016 of a discrepancy between the provider billing guidelines issued by the Division of Developmental Disabilities and the billing guidelines previously approved by the Centers for Medicaid and Medicare Services, CMS. CMS required Nebraska to stop the inconsistent billing practice as of October 1, 2016. At this time providers were told they would receive a 48 percent reimbursement rate cut equal to the amount of lost federal match. We were directed to continue providing that same level of service

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in order to maintain stability in the lives of the individuals we serve until January 1 of 2017, and that was later extended to March 1 of 2017 when a new waiver is planned to be implemented. NASP members estimate lost revenue to be at \$7.08 million for the five-month period. We understand the challenges in finding a way to reduce spending, but make no mistake about these actions...these actions significantly impact and hurt providers of services to Nebraska's most vulnerable citizens. We look forward to continuing to work with you to fulfill our missions to be sure that our fellow Nebraskans living with disabilities are supported with the quality of services that they deserve. Please keep our situation in mind as you consider this bill and the budget bills that follow. In closing, on behalf of NASP, I want to thank Senator Stinner and this committee, the Legislature, and the Governor for their past support in going forward for developmental disabilities community-based services. Community-based providers of developmental disabilities services appreciate our positive working relationship with the Legislature and with the Division of Developmental Disabilities of the Department of Health and Human Services. Current reimbursement rates have fallen short of covering our costs, but we greatly appreciate this body's past and present efforts to try to close that gap. I'm willing and happy to take any questions I can possibly try to answer. [AGENCY 25]

SENATOR STINNER: Questions? Senator Hilkemann. [AGENCY 25]

SENATOR HILKEMANN: Yeah, I have a question here. I'm looking at your members of your association. I do not see Goodwill Industry of Omaha. Were they ever a part of your organization? [AGENCY 25]

BRIAN KANTER: They are not. We have 30 members which, as I said, represents the large majority of the service provision in the state of Nebraska. Goodwill is not a member. [AGENCY 25]

SENATOR HILKEMANN: Okay. Goodwill of Omaha. [AGENCY 25]

BRIAN KANTER: Correct. Thank you. [AGENCY 25]

SENATOR HILKEMANN: Okay. Thank you. [AGENCY 25]

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SENATOR STINNER: Questions? Thank you. [AGENCY 25]

MARK MATULKA: (Exhibit 79) Chairperson Stinner, members of the Appropriations Committee, my name is Mark Matulka, M-a-r-k M-a-t-u-l-k-a, and I appear before you today representing Mosaic. Thank you for the opportunity to provide testimony on the FY '16-17 expedited budget adjustments. Mosaic is a mission-driven organization serving 3,700 people with intellectual and developmental disabilities throughout ten states, including 733 people in its home state of Nebraska. Mosaic provides day services, employment services, extended family homes, residential, and intermittent services, medical and behavioral risk services, and affordable and accessible housing. As you are aware, in October 2016 changes were made to the billing of day programming hours by the Division of Developmental Disabilities. We appreciate the department and the administration's efforts to rectify the situation. Unfortunately, the proposed funding will not be enough to cover providers' expenses during the period of October 2016 to March 2017. The loss of funding will impact Mosaic's critical community-based services. Without action, Mosaic estimates it will lose \$738,000 of day service revenue for the October 1 to March 1 period. Furthermore, each extended family home provider is estimated to lose \$300 per month on average. Mosaic respectfully requests the committee include deficit funding to make providers whole for that five-month period and also recommends identified savings from BSDC be reinvested into community-based settings. As a note, Mosaic does support Mr. Kanter's previous comments and a letter submitted on behalf of the Nebraska Association of Service Providers. We are a member of NASP. People with disabilities, their loved ones, and the greater community, including the state of Nebraska, rely on human service providers to achieve personalized services and promote meaningful lives in the community. The Governor's proposal, regrettably, reduces valuable resources to an already stressed system. If providers have to bear these costs, it could lead to decreased financial stability, fewer programs and choices for people in service, negative impacts on staff wages and benefits, and the potential reduction of group homes and extended family homes. Some background about Mosaic: We are 96 percent Medicaid-funded and 77.34 percent of our funding goes toward staffing costs. Mosaic has no ability to set its prices, increase reimbursement rates, or shift costs burdens to non-Medicaid-funded constituencies such as private pay insurance. In economic terms, disability service providers are price takers. We rely heavily on the federal and state Medicaid partnership to ensure our costs are covered. Medicaid reimbursement rates are directly connected to the

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quality of services; however, rates seldom reflect the actual costs of providing services to people with intellectual disabilities since the increasing costs of doing business usually outpace Medicaid rate adjustments. For example, the cost of compensation alone increased by 2 percent in 2015. For years, direct-support professionals--our front-line workers--have been filling the roles of teacher, social worker, community connector, in addition to providing personal care so that people with intellectual disabilities can live meaningful lives in their community. Like a Nebraska state senator, a direct-support job boasts long hours, irregular schedules, and low pay; yet, it is satisfying, fulfilling, and provides an opportunity to make a significant difference in people's lives. Even though support workers are very critical to the success of community-based services, the rates provided by the state and federal Medicaid partnership have not allowed their salaries and benefits to reach a level to adequately compensate them for their hard work. Mosaic struggles very much with recruitment and retention of staff because the rates preclude competitive wages. Mosaic in Nebraska's community-based programs have an average turnover rate of 57 percent, and we have 94 vacant FTE positions. In addition, competition for qualified workers is not only within the healthcare field but other industries as well. And unlike other industries, we don't have the ability to raise our prices to cover increasing expenses such as health insurance and the minimum wage increases. It's imperative that the Legislature and the administration recognize the value of these services and ensure Medicaid rates are sufficient to continue providing critical community-based services for people with intellectual disabilities. Again, Mosaic respectfully requests that the committee provide the \$7.08 million in deficit funding to ensure fiscal stability of providers to continue serving the needs of Nebraskans with disabilities. Thank you again for the opportunity to speak with you all today. I'm more than happy to answer any questions you may have. [AGENCY 25]

SENATOR STINNER: Thank you. Questions? Senator Hilkemann. [AGENCY 25]

SENATOR HILKEMANN: I have toured your facility in Axtell and I was impressed with your facility. Are you near capacity at Axtell? [AGENCY 25]

MARK MATULKA: I do not know the answer to that. I know at the beginning of our fiscal year, which begins in July, we were close, but I don't have an accurate number. But I can get that for you, Senator. [AGENCY 25]

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SENATOR HILKEMANN: I have visited your facilities in Omaha. Are you near capacity with your programming in Omaha? [AGENCY 25]

MARK MATULKA: Day service, I believe residential. I do not have the answer to that. [AGENCY 25]

SENATOR HILKEMANN: Okay. Thank you. [AGENCY 25]

SENATOR STINNER: Senator Kintner. [AGENCY 25]

SENATOR KINTNER: How long have we known each other, five, six, seven years? [AGENCY 25]

MARK MATULKA: For a while, Senator. [AGENCY 25]

SENATOR KINTNER: Yeah, it's been a while. My question, do you raise any private money? [AGENCY 25]

MARK MATULKA: We do: 96 percent of our funding does come from Medicaid funding; the other 4 percent comes from donors who are willing to stand in the gap and provide funding for valuable services. But they stand in the gap; they don't fill the gap. [AGENCY 25]

SENATOR KINTNER: Well, the obvious question is why don't you just go raise more money? I mean (inaudible) it's ugly. It's no fun. It's terrible (inaudible). It's the worst thing asking someone for money. But you're totally reliant on an unstable federal government and a state government that's stretched (inaudible), well, you know how far it's stretched. You've been in state government. So why haven't you got out to do the...do it the hard way? [AGENCY 25]

MARK MATULKA: You know, I would contend that we have a very aggressive fund-raising effort to ensure that our services can be supported. But at the end of the day, this is a service we are providing on behalf of the state of Nebraska in a manner better in which the state of Nebraska could do it itself. And we are serving people with quality community-based services

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that are leading to positive outcomes at a far better and cheaper price than the state of Nebraska could do. [AGENCY 25]

SENATOR KINTNER: It just seems to me that if money...if I were \$700,000 short, I'd be out there calling a businessman and partners in law firms and saying, hey, hey, we need some money, we're doing something valuable here, we're doing something...we're helping people, innocent people who haven't done anything wrong. [AGENCY 25]

MARK MATULKA: We do have a...we have some fund-raising staff members that that's what they devote their time to. We are beginning a capital campaign. I'll definitely send you and other committee members an invite if you all would like to join one of our Discover the Possibilities to where you can learn about the valuable services we provide and how you can contribute through private dollars. [AGENCY 25]

SENATOR KINTNER: Well, the reason I'm sitting here being a (inaudible) mean guy and a hard guy is, you know what, I'm just...I'm asking the exact questions that anyone from Plattsmouth or Papillion or Springfield or Nehawka would ask, is, okay, you need more money; well, what are you doing to get it? I'm just asking exactly what my constituents would ask. [AGENCY 25]

MARK MATULKA: And I appreciate that and empathize where your constituents are coming from. And we are out there asking for the money but, you know, at the end of the day, we rely on the state and federal Medicaid partnership to be able to fulfill our work. And without a margin, we can't have a mission. [AGENCY 25]

SENATOR KINTNER: Okay. Seems like you better get better (inaudible) out there or something. Okay. [AGENCY 25]

MARK MATULKA: Like I said, Senator Kintner, I will...we'll get you to our Omaha agency. I know we do serve some people within the Papillion-Cass County area, and love to have you out. [AGENCY 25]

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SENATOR KINTNER: Mark, thanks for all you do and I do appreciate what Mosaic does. And I don't know what we're going to do for you here, but do appreciate you coming in. [AGENCY 25]

MARK MATULKA: Thank you, Senator. [AGENCY 25]

SENATOR STINNER: Senator Bolz. [AGENCY 25]

SENATOR BOLZ: Mark, do any of the individuals that your agency serve participate in share of cost? [AGENCY 25]

MARK MATULKA: Specifically in Nebraska, I do not know the answer to that. I would have to go back and talk with our operations. [AGENCY 25]

SENATOR BOLZ: Do any individuals with developmental disabilities in the state of Nebraska participate in share of cost? [AGENCY 25]

MARK MATULKA: Not that I'm aware of. [AGENCY 25]

SENATOR BOLZ: I might ask the same question of Michael Chittenden or other folks who are in the room. It's my understanding that there are individuals with developmental disabilities who participate in share of cost... [AGENCY 25]

MARK MATULKA: Okay. [AGENCY 25]

SENATOR BOLZ: ...and sometimes that's a real sacrifice to families. So perhaps not the services that Mosaic provides but in the system as a whole. [AGENCY 25]

MARK MATULKA: Yep, definitely. Thank you. [AGENCY 25]

SENATOR STINNER: Senator Hilkemann. [AGENCY 25]

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SENATOR HILKEMANN: Another question: How many residents do you have at your facility at Axtell? [AGENCY 25]

MARK MATULKA: I don't know the exact number of...actually, I do. And my apologies for the...I work in government relations, not operations. Our operations person, Tammy Westfall, who's far more capable than I at running facilities, would have these answers right on the top of her head. Out at Axtell 116 people are supported. [AGENCY 25]

SENATOR HILKEMANN: And do you know what the budget is for the facility at Axtell? [AGENCY 25]

MARK MATULKA: As of September it's about \$13.9 million. [AGENCY 25]

SENATOR HILKEMANN: \$13.9 million? [AGENCY 25]

MARK MATULKA: I believe so, yes. [AGENCY 25]

SENATOR HILKEMANN: Thank you. [AGENCY 25]

SENATOR STINNER: Any other questions? Thank you. [AGENCY 25]

MARK MATULKA: Thank you, Senators. [AGENCY 25]

MICHAEL CHITTENDEN: (Exhibit 80) Well, good afternoon, Senators. Thank you for your time. My name is Michael Chittenden, M-i-c-h-a-e-l C-h-i-t-t-e-n-d-e-n. I'm the executive director for The Arc of Nebraska. The Arc of Nebraska is a support and advocacy agency and organization working with and for people with intellectual and other developmental disabilities. We are a statewide organization with nine local chapters, over 1,000 members, and we are affiliated with The Arc of the U.S. We have many concerns with the Governor's budget as it is proposed for folks with developmental disabilities. I would like to echo the remarks and statements of Mr. Kanter and Mr. Matulka, who are members of NASP. We work hard with NASP to build capacity for community providers. I've given you a letter that I've written, but I'm

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going to go off script on this one and talk about some of the remarks that were said earlier. It is true. As a point of history, I am a former service provider so I have a lot of experience, close to 30 years' experience in providing services to people with intellectual and developmental disabilities. You have a system of indentured servitude when it comes to community providers. They are stuck with the rates that are provided through the state. There isn't any...no negotiations. They are the rates and they sign it, the contracts, and they move on. To your question earlier, Senator Kintner, about fund-raising, state and local and state and federal funds can't be used to fund-raise. So unless they have a foundation, Mosaic does, but most agencies don't and so they can't go out and actively fund-raise to help support that. So they don't have those opportunities to get the money from donations. And quite frankly, intellectual and developmental disabilities is not a sexy thing to give to. Actually, more money is given to the preservation of animals in the state of Nebraska than to services for people with developmental disabilities. I think that's a shame. So I come to you not to ask you to go crazy with the Governor's budget actually. I think there are savings to be had and I think there are cuts to be made. I think you go after BSDC institutions. They are antiquated. They are expensive. At last report, and you see this in my letter from the StateOfTheStates.org, which uses the state's own numbers, and they're a few years old. They haven't updated them yet. But it costs nearly \$400,000 per person per year--and we would actually argue that's gone up over the last several years as the population has decreased--to serve people at BSDC. I understand why Mr. Crawford would want his brother to continue living there. If I was getting \$400,000 spent on me per year, I think I'd have a pretty good life. And I think that good life can be maintained at BSDC, although I do believe it should be closed over time, with less money going there. And then I think we need to take that money and invest it in capacity for community-based services. We've seen this with the behavioral health plans or behavioral health systems. When we didn't invest in capacity and started shutting things down, we had problems. People suffered. We've seen it with BSDC when we move people too fast. When people don't get adequate services, people suffer. Some people even died in that case. Olmstead, the Olmstead decision which guarantees the right of choice of provision of service, does not guarantee the right to institutional life. It only guarantees the right to community choice, to the least restrictive possibility. So we don't have to keep spending money at BSDC. Take those savings that you're getting from BSDC, reinvest them into the capacity of the service providers in the community where people need to be. That way we ensure their safety. That's my testimony today and I'm available for questions. [AGENCY 25]

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SENATOR STINNER: Thank you. Questions? Senator Hilkemann. [AGENCY 25]

SENATOR HILKEMANN: Yeah, Michael, on some of the residents that are at, like, at Axtell and also... [AGENCY 25]

MICHAEL CHITTENDEN: Uh-huh. [AGENCY 25]

SENATOR HILKEMANN: ...BSDC, if they were placed in the private placements that you're talking... [AGENCY 25]

MICHAEL CHITTENDEN: Private providers, yes. [AGENCY 25]

SENATOR HILKEMANN: ...private providers, you know, we're looking at...I know I've been down to BSDC and that's around \$400,000 there, and with the Mosaic you're saying is about \$120,000 for those. What can they be...what would be a...in a worst-case scenario, what would be the cost of keeping them with private providers run? [AGENCY 25]

MICHAEL CHITTENDEN: Private providers vary depending on the regulations and really the need of service or the need of the individual, the level of need of the individual. [AGENCY 25]

SENATOR HILKEMANN: Right. I understand. [AGENCY 25]

MICHAEL CHITTENDEN: On average in the state of Nebraska it's about \$75,000. [AGENCY 25]

SENATOR HILKEMANN: Okay. [AGENCY 25]

MICHAEL CHITTENDEN: In some cases under the waiver services they average actually closer to about \$50,000. In small ICFs, not those big institutions but just like a six-person intermediate care facility, that's where you get the \$75,000 and that's why I went with that higher number in my written testimony. [AGENCY 25]

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SENATOR HILKEMANN: Uh-huh. [AGENCY 25]

MICHAEL CHITTENDEN: If we're just supporting people at home, living with their families,...
[AGENCY 25]

SENATOR HILKEMANN: Right. [AGENCY 25]

MICHAEL CHITTENDEN: ...we can do it as cheap as \$25,000 per year on average. [AGENCY 25]

SENATOR HILKEMANN: Okay. [AGENCY 25]

MICHAEL CHITTENDEN: So it really helps us to keep people in the community, not sequestered in an institution, and it's cost-effective that way. [AGENCY 25]

SENATOR HILKEMANN: Uh-huh. [AGENCY 25]

MICHAEL CHITTENDEN: And I would say it's even safer as we have more people with their eyes on them in the community. And I'm not saying that any place is 100 percent safe. No place can be. There will be instances of abuse, as there have been in institutions, as there will be in the community. But I think with more eyes on people, we have a lesser rate of issues in the community. [AGENCY 25]

SENATOR HILKEMANN: Right. Thank you. [AGENCY 25]

MICHAEL CHITTENDEN: Thank you. [AGENCY 25]

SENATOR STINNER: Other questions? Thank you. [AGENCY 25]

MICHAEL CHITTENDEN: Thank you very much. [AGENCY 25]

MICKEY CREAGER: Good afternoon, almost good evening. [AGENCY 25]

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SENATOR STINNER: Yeah, it is. [AGENCY 25]

MICKY CREAGER: (Exhibit 81) Good afternoon, Senator Stinner and members of the Appropriations Committee. My name is Mickey Creager, that's M-i-c-k-e-y, Creager is C-r-e-a-g-e-r. And Mickey is not a mouse spelling; it's an Irish spelling. I'm a member of Lincoln Citizen Advocacy. I'm on the board of directors and I'm an advocate myself. And in both of those positions, I'm a volunteer. Since 1993, we have, with the support of the Legislature and state funding, we have worked very hard to build strong citizen advocacy programs in Nebraska. And for those of you that are not familiar with Citizen Advocacy, it's really pretty simple. We have five offices across the state. There's one paid employee in each office and that paid employee is a matchmaker. They find a person in the community with a disability, and by "in the community," it could be in something like BSDC or in a group home, and we match that person with an ordinary citizen who will come into that person's life and make a difference, kind of the way people did in my hometown--I grew up in Humphrey--and the way people took care of each other. And other than the one paid employee, the matchmaker, the rest of the organization is completely volunteer. So I think the state gets a good bang for its buck, because it's a sizable organization but just one paid employee in each office. And we have been very good stewards of the funds that you provided us over the years. We have small offices, not a lot of equipment. We don't have, you know, offices that can really be made smaller or cut, anything like that. If you cut our funding, you're going to cut a person's salary. We routinely evaluate each office to make sure that they're performing in accordance to the principles and the practices of citizen advocacy. And we have been very modest in our request for financial support from the state. The Governor's proposed budget reduces our allocation by 10 percent and that kind of reduction would mean that we would have to close one of the offices. So we humbly ask you that you hold our funding level so that we continue to do the work of Citizen Advocacy. And even though, you know, most of this is volunteer, there has to be some kind of an organization behind it. It's kind of an inverted pyramid where you just have that one person at the bottom who is paid, but then it just...it goes from there. And it's beautiful work. I've been involved with it for about 15 years and, as I said, as an advocate and on the board, and, you know, we've gotten people out of places like BSDC, out of group homes. You know, our current allocation is \$484,750. Well, I heard a similar amount, I think it was per person per year at BSDC. So this goes a long way. And you know we do appreciate that you have to cut some funding somewhere, but you know others can maybe cut

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down on their overhead. We, for us, we would cut out an office completely. So I'm asking you to please not that do that. [AGENCY 25]

SENATOR STINNER: Thank you. Questions? [AGENCY 25]

MICKY CREAGER: Any questions? [AGENCY 25]

SENATOR STINNER: Thank you very much. [AGENCY 25]

MICKY CREAGER: Thank you very much for your time and thank you for your public service. [AGENCY 25]

BECKY GOULD: (Exhibit 82) Good afternoon, Chairman Stinner, members of the committee. My name is Becky Gould, B-e-c-k-y G-o-u-l-d. I'm the executive director at Nebraska Appleseed and our mission at Appleseed, we're a nonprofit organization. Our mission is justice and opportunity for all Nebraskans. I want to make two quick points this afternoon. The first is related to the process that has brought us, in part, to the deficit bills that are in front of you and I guess a concern that we have just about that overall process and the practice of the executive branch withholding percentages of appropriated funds because of tough budget times. At best, I think it's a reason for Nebraska to examine the statutory scheme related to allotments and the discretion that's allowed under that statute. At worst, it could be a constitutional violation of separation of powers between the legislative branch and the executive. We believe the practice that was carried out of withholding appropriations across the board sets a precedent that would allow a future executive to stop the release of appropriated dollars based on his or her own discretion rather than on decisions made by the Legislature when it sets the budget. It creates budgetary uncertainty for agencies and entities who have funds appropriated to them. This is why special sessions are permitted and occur when we see the need for the Legislature to intervene and revise a budget. In lieu of a special session, we would advocate for the three deficit bills to be taken up with the proposed biennial budget as a whole package so that the fiscal picture of the state could be looked at comprehensively rather than in a piecemeal manner. I also want to touch on the specific cuts to the HHS budget. LB22, LB23, and LB24 represent another instance in a trend of taking dollars previously appropriated to Medicaid and CHIP, the

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Children's Health Insurance Program, in order to pay shortfalls in areas of the budget unrelated to healthcare. Last year we took \$84.8 million from Medicaid and \$11.1 million from CHIP to offset the deficit facing our state. Again, this year, in addition to dollars being taken from public assistance and various Health and Human Services cash funds, \$14 million is being taken from Medicaid to offset the deficit. Of this \$14 million, \$7.5 million is due to lower spending in Medicaid than was appropriated. From CHIP there's a proposed \$1.4 million taken, again due to lower spending than was appropriated. While it's been stressed that these funding shifts do not have an impact on eligibility for Medicaid and CHIP, it's important to consider the context in which dollars are being shifted. While these are lean times in which difficult decisions must be made, two additional factors must be taken into account. First, the shifting of these dollars takes place in the face of a continual narrative about Medicaid spending growing at an uncontrollable rate. It makes good fiscal sense that we as a state budget conservatively in Medicaid in order to have a funding cushion due to Medicaid's structural nature and the need for the program to be responsive to external factors, like economic downturns. Especially in a time of uncertainty of what changes lie ahead on the federal level, it's critical that we continue to protect our current Medicaid funding structure. However, while Medicaid is often criticized and characterized as a program with an out-of-control budget, it is important to note that this is the same program we use to plug holes in other areas of the budget as we did last year and as we are proposing to do right now. Second, the deficit appropriation bills draw from excess in Medicaid while at the same time the proposed biennium budget proposes cutting rates to Medicaid providers, as you've been hearing this afternoon, which can have dramatic impacts on the access to Medicaid enrollees to care, as well as things like caps to dental services which directly impact Medicaid recipients. Ultimately, these dollars were budgeted for healthcare and we would ask that they be used to help maintain adequate healthcare for the citizens of Nebraska. We also wanted to flag in the child welfare budget there's \$107,425 that is proposed to be taken out of the Bridge to Independence Program. This program provides critical supports to young adults aging out of the foster care system so that they have a smooth transition to adulthood. This program is an important investment. Young people who age out of foster care face really daunting odds. Statistically, many experience low rates of unemployment...or low rates of employment and educational attainment and too many end up in the adult corrections or public benefit systems. But currently, more than two-thirds of the young people in Bridge to Independence are beating those odds and are employed or attending secondary or postsecondary education. Investments in

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this program, rather than cuts, should be the priority of the Legislature going forward. And with that, I'd be happy to answer any questions. [AGENCY 25]

SENATOR STINNER: Thank you. Questions? Senator Kintner. [AGENCY 25]

SENATOR KINTNER: Well, I think this is the first time I've talked to you, I believe. [AGENCY 25]

BECKY GOULD: Yes, Senator. [AGENCY 25]

SENATOR KINTNER: But my question is, how many times have you taken legal action against the state of Nebraska, Appleseed? [AGENCY 25]

BECKY GOULD: We have taken legal action several times. When we do that it's only as a last resort and after we've approached the state to try to resolve the issue without litigation. And in every case, we are representing low-income Nebraskans and we're providing those services pro bono, free of charge to those individuals. [AGENCY 25]

SENATOR KINTNER: So if you came to my house, you twisted your ankle walking up there and you sued me, took legal action against me and you sued me, and then you came back to me and said, hey, I'd like you to do this, I'd like you to do that, I'd like you to do this, I think I'd say get the heck out of here. So you're pretty hostile to the state of Nebraska than (inaudible) here. And you're coming to us and saying, well, will you please do this? I don't get it. [AGENCY 25]

BECKY GOULD: Senator, I guess I would disagree with the characterization that we're hostile to the state. [AGENCY 25]

SENATOR KINTNER: You're suing. You're going to court and you're going after the taxpayers of the state for money. [AGENCY 25]

BECKY GOULD: So we are usually not going after them for money. So the cases that we're bringing are about interpreting the law and how the state is carrying out its activities in that

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context. And so, for example, one of the recent cases was related to access to behavioral therapy for kids in the Medicaid program, and so these are kids who are on Medicaid and were not receiving a service that it was our view was required that the state provide under federal law. The state, the Division of Medicaid disagreed with that. We had lots of conversation with them in advance of filing a lawsuit. And ultimately, sometimes you reach a moment where there's a disagreement about what the law actually means and the only way to resolve that is to go through the legal system. [AGENCY 25]

SENATOR KINTNER: Was that in federal court? [AGENCY 25]

BECKY GOULD: That, yes, that case was...actually, that case was in state court. [AGENCY 25]

SENATOR KINTNER: State court. [AGENCY 25]

BECKY GOULD: We did file that one in state court. And so, you know, those are the kinds of cases that we're bringing. We're trying to represent folks who otherwise wouldn't have representation and trying to resolve issues where there's a legitimate question of what the law means. And when we can resolve that question, then state government can move forward within the bounds of a federal law and the people who are on those programs can be served. So...and to be honest, Senator, we try to work in partnership with the state as much as we possibly can and the litigation work is just one aspect of what we do. So my hope is always that we can find agreement without litigation, that we can find ways to help the state better leverage state and federal funding, have programs work more efficiently. We have a shared interest and a shared mission with the Department of Health and Human Services and the state of Nebraska, and sometimes you have a disagreement and you have to figure it out. [AGENCY 25]

SENATOR KINTNER: So the only...so legal action only twice? [AGENCY 25]

BECKY GOULD: No. I mean over...we've been around now as an organization for 20 years. And in that time...I can't give you an exact figure. But I would say we're in the ballpark of probably 15 cases in that 20-year period. And a number of them have settled, you know, amicably. We find a way to make it work. [AGENCY 25]

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SENATOR KINTNER: Okay. All right. Thank you. [AGENCY 25]

BECKY GOULD: Uh-huh. [AGENCY 25]

SENATOR STINNER: Any additional questions? Thank you. [AGENCY 25]

BECKY GOULD: Thank you. [AGENCY 25]

SENATOR STINNER: Any additional testifiers? Somebody else? I don't see any more testifiers, so we are adjourned. Thank you all. (Exhibits 83-110) [AGENCY 25]