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Health and Human Services Committee and Appropriations Committee  
November 13, 2012

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[LR508 LR549]

The Committee on Health and Human Services and the Committee on Appropriations met at 9:00 a.m. on Tuesday, November 13, 2012, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR549 and LR508. Health and Human Services Committee senators present: Kathy Campbell, Chairperson; Mike Gloor, Vice Chairperson; Gwen Howard; Bob Krist. Senators absent: Dave Bloomfield, Tanya Cook, and R. Paul Lambert. Appropriations Committee senators present: Lavon Heidemann, Chairperson; Danielle Conrad; Tony Fulton; Tom Hansen; John Nelson. Senators absent: John Harms, Vice Chairperson; Health Mello; Jeremy Nordquist; and John Wightman.

SENATOR CAMPBELL: Good morning, everyone. I'm Kathy Campbell and I serve as the Chair of the Health and Human Services Committee. We want to welcome you to this joint hearing between the Appropriations Committee and the Health and Human Services Committee. So certainly want to welcome Senator Heidemann and his crew with us today. For anyone who thinks that they might have a colleague who is trying to watch this on television or video streaming, they are having difficulty so we are not on television and we are not being video streamed, but we don't know whether that will come back on. But I make that announcement because there probably are some of your colleagues who said, oh, I'll just watch it on TV.

SENATOR GLOOR: We are on.

SENATOR CAMPBELL: We are on TV.

SENATOR GLOOR: Finally.

SENATOR CAMPBELL: Never mind. (Laughter) As is the custom in our committee, in the Health Committee we do self-introductions, so we're going to start, and today I'm

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going to reverse that order and we'll start with Senator Krist. Oh, Diane, sorry. Diane, you want to introduce yourself?

DIANE JOHNSON: I am Diane Johnson, the committee clerk.

SENATOR KRIST: And...

MICHELLE CHAFFEE: Michelle Chaffee, legal counsel...

SENATOR KRIST: There you go.

MICHELLE CHAFFEE: ...and page.

SENATOR KRIST: And our stealth senator, whoever that might be, that's going to join.

SENATOR HOWARD: No nameplate.

SENATOR KRIST: No nameplate yet. Bob Krist. I represent District 10 in Omaha, which is northwest Omaha, Douglas County, and the city of Bennington.

SENATOR HOWARD: Senator Gwen Howard, District 9, and it's pretty much mid-city Omaha.

SENATOR GLOOR: Senator Mike Gloor, District 35, which is Grand Island.

SENATOR HEIDEMANN: Senator Lavon Heidemann, District 1, which is the five southeast counties in the state.

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

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SENATOR CONRAD: Good morning. I'm Danielle Conrad. I represent north Lincoln's "Fightin' 46th" Legislative District.

SENATOR HANSEN: I'm Tom Hansen. I represent District 42, which is Lincoln County.

SENATOR CAMPBELL: And Senator Fulton.

SENATOR FULTON: I think I'm Tony Fulton. I represent District 29, south Lincoln.

SENATOR CAMPBELL: And I represent District 25, east Lincoln and Lancaster County. I apologize to some of the senators who do not have a nameplate. There's a lot going on in the Capitol today and when we went to get their nameplates, they didn't have them. So someone has absconded with your nameplates; we're not sure. I'd just like to remind everyone today, please turn off your cell phone or put it on silent. It's so distracting if it goes off and you're horribly embarrassed, so we'll just give you that warning. When you come forward today to testify, make sure you've filled out one of the bright orange sheets. Print as legibly as you can and give that to Diane, the clerk. And if you have any handouts, you can also give them to Diane. We tried to gather a number of them ahead of time because we do not have pages today. They are all in orientation with the new senators. As you come forward and sit down, please state your name for the record and spell it fully, first and last. And then you say to yourself I've already given you an orange sheet with my name; why do I have to do this? You have to do this because the orange sheet is for our clerk, but those who transcribe need to hear you say your name and spell it. That's the purpose for that. We have a list of prearranged testifiers and then at the end we will take public testimony. Before we start I want to formally say this is the hearing for LR549, Senator Conrad's interim study to determine the range of investment returns on the Nebraska Health Care Cash Fund over the next ten years and the actual demands upon the current recipients of the funds over the next ten years; and Senator Gloor's LR508, the interim study to review, assess, and provide recommendations relating to the implementation and sustainability of the Nebraska

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Health Care Funding Act. Both senators agreed to do a joint hearing, which is very helpful. Senator Conrad is going to open this morning, and then Senator Gloor will make a few comments also. Senator Conrad.

SENATOR CONRAD: (Exhibit 1) Thank you. Thank you, Chairman Campbell, Chairman Heidemann and members of the committee, friends all. My name is Danielle Conrad, D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d, representing, of course, the "Fightin' 46th" of north Lincoln. I'm here today just to briefly open on LR549 and to thank my good friend, Senator Gloor, for agreeing to host this committee in a cooperative manner. We've had a chance to visit over the interim period and we are both excited about this opportunity to educate the membership about the importance of the Health Care Cash Fund and to discuss solutions and ideas for its sustainable future, as it is critically important to our public health infrastructure here in our great state of Nebraska. I do want to flag just one thing, because I know there are many testifiers who will come later who can very clearly detail the impacts of what the pending cuts may have to their respective organizations and programs, but one that isn't able to join us today representing the Parkinson's Disease Registry, my friend, Monnie Lindsay, who has sent a letter that I will distribute to the members this morning. And it just details that when we're talking about the cuts and when you hear about the cuts that are on the table today, of course they'll have impacts on programs and organizations. What it would do to a small program like the Parkinson's Disease Registry, it would actually kill the program. And this is, in my opinion, one of the best stories the Nebraska Department of Health and Human Services has to share. And so these impacts would be devastating. We need to be solution oriented and I'm committed to working with all of you in the interim period to make sure we can do that in 2013. I'll reserve the right to close but am of course happy to answer any questions. [LR549]

SENATOR CAMPBELL: Senator Gloor. [LR549]

SENATOR GLOOR: Thank you, Senator Campbell and members of both committees.

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It's nice to have a larger group of senators hearing some of the testimony today. And my thanks also to Senator Conrad for her willingness to do this jointly. I think we'll all benefit as a result of it. Senator Conrad obviously comes at this based upon her experience in the Appropriations Committee and some of the challenges that have been identified through that committee. I come at this through my involvement in not just the Health Committee, Health and Human Services Committee, but also my years serving in healthcare. And I remember when Senator Jim Jensen, whose brilliant idea setting up the Health Care Trust Fund is one of the reasons that we're here, chaired this committee; took the opportunity to take the committee out and about, and at that time I'm still running a hospital, asked if they couldn't meet and visit with the members of my administrative team and board members in Grand Island; did the same thing in a number of hospitals across the state. And we got to talking about the Health Care Trust Fund, and back then the issue was sustainability, how long will the dollars last, what about rates of return on those dollars. So even back during the initial stages, this was an area that was of concern to Senator Jensen and members of the committee way back when. I, like Senator Conrad and other members of the committee, will be interested to hear the testifiers. For me this is as much educational as anything but I'm looking forward to it; also happy to answer any questions and reserve the right to close. But I have been looking forward to this meeting for a long period of time. I would emphasize one of the areas Senator Conrad talked about with funding for a specific program. When originally established, there was \$7 million that went towards tobacco cessation in the state. That number is down to around \$3 million now. And I point that out because there is an incredible irony in the fact that we have money that comes to us through the recognition of the impacts on healthcare to Nebraska and Nebraskans as a result of tobacco usage, and instead of those dollars going up, those dollars have actually gone down. So thank you. [LR508]

SENATOR CAMPBELL: Thank you, Senator Conrad and Gloor, and with that we will start our list of testifiers this morning. Our first testifier is Jeff States. Good morning. And for the record, we'll have you state your name and spell it, please. [LR549 LR508]

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JEFF STATES: (Exhibits 2 and 3) Yes. My name is Jeff States. That's J-e-f-f S-t-a-t-e-s. I'm the Nebraska state investment officer, working for the Nebraska Investment Council. And, Senator Campbell, Senator Heidemann, I want to thank you on my behalf and the council's for having the opportunity to visit with you this morning and share our thoughts and some ideas about what the future funding of the Health Care Cash Fund and the trusts look like. I believe you each have a copy of the presentation materials that we had sent in advance, so it should look like this. This, for those of you who were here last year, pretty much is following the same methodology and process that we used in that presentation, the council, and it's updated for what's happened to the trusts and the funds over the last year, as well as a reflection of our investment consultant's current capital market assumptions, which unfortunately are just a little bit weaker than they were in the past. As you know, the Health Care Endowment's investment goals for us are to provide the funds for the current spending needs, so fund those annual appropriations; increase the portfolio to support future needs. And the revenues that come into this fund from a contribution state today are the contributions from the Tobacco Settlement Trust. Initially, there were both monies from the Tobacco Settlement Trust and monies that came into the Medicaid Trust, but the Medicaid funds have ceased four or five years ago from being received. And so the only new funds that come into this to provide funding on an annual basis, in addition to investment returns, are the annual contributions that come from the tobacco settlement. The asset allocation the council has been using and continues to use for this has been a relatively aggressive one. The purpose of that has been to try and achieve the growth that I think everyone would like to see, as well as continue to meet the funding. And with that, I will just turn you to page 3 so you can see again the two sources of funding. There are still monies in the Medicaid Trust and the Tobacco Settlement Trust; are the corpus of what's invested. And on a prorated basis, between those two sources, we transfer money on an annual basis to the Health Care Cash Fund along with funds that are received in the additional monies that come annually from the tobacco settlement. The consultant prepared kind of three scenarios for your consideration. One of those would

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be a relatively low expenditure and that would...and what we're looking at here in these scenarios is taking the current projections of additional dollars coming in to the Tobacco Settlement Trust, which are numbers that were provided to us from the State Budget Division and I think they're developed off of the information that they receive on a regular basis at the national level on what's going to be distributed for the Tobacco Trust. So it's looking at that and then adding incrementally some level of spending over and against that annual contribution and assessing what that does to the corpus of the fund, knowing that each dollar over and above what's coming in on an annual basis is a dollar that is being transferred out of the funds and so it's not available for reinvestment. So the fact is right now we have to use some of the dollars that would be coming from investment in order to supplement the funding. They also provided a projection for the 50 percent if we change to a more conservative investment strategy, but quite frankly the end results in many cases haven't been that different. So I'll focus on the current policy because I think that's probably what's relevant for this discussion. Within that allocation, you can see on page 4 that we use both real estate, private equity, fixed income, and then the equity markets themselves, both global and U.S. public equities. And the corpus of the fund as of 7/31, when the consultant prepared this, was about \$313 million. I think that should be...yeah. And the...well, I just disrupted myself. And the balance actually as of, I think, July...or September 30 was up to about \$327 million. The third quarter of this year was a good quarter. Some of that has been given back. And I think one of the difficulties in doing these projections has been that there is no good point-in-time projection for each year because the capital markets have been quite choppy. And even in the best of times, each year is different. It kind of is a representation of that. If we looked at the one-year return for the investments as of June 30, over that one-year period we earned just about zero on the funds because of the equity markets being down in the first half of this year, and fixed income, because of intentional policy of the Federal Reserve is basically returning (inaudible) at best maybe 2 percent. You step forward to September, because the September quarter was very good--and you don't have this number, I'm sorry--the performance for the funds is much stronger and the capital markets, just with that one additional month added--and my

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returns have disappeared--pushes the returns up for the year over 12 percent, that one quarter, adding a quarter, dropping a quarter, because just for the one quarter, the quarter itself returned 5 percent and you annualize that number out. And so it's very difficult moving from period to period to also pinpoint this. Since inception in 2000, the investments, based on the analysis of our consultant, the investments have returned about 8 percent; but you step forward and you look at a number over the last five years and we've maybe returned 1.5 to 2 percent, and so great variability. And because of that, what we're presenting to you, starting on page 5, are a range of estimates with respect to what the forecasts could be (1) looking at the expenditures, and (2) taking into account the current capital market assumptions from the consultant, and (3) a range of scenarios with respect to economic expectations. And the consultant runs somewhere in the neighborhood of 500 scenarios through models and comes back with a probability distribution for what those outcomes are. And that's what you see starting on page 5. It looks like we did the \$10 million aggregate would be low spending, and as you can see on this first one the net spending of \$10 million with the aggressive, which is the current policy, the assumption is that if we get a median or better, a 50th percentile or higher projection, the trust would have about 119 percent of its funding in ten years. So the fund would actually see some capital appreciation over that time period; but recognizing that that means if you had \$10 million over and above the current contributions, which were about \$35 million, an expenditure level that would be about \$45 million, which is clearly lower than what's currently being done. If we skip to page 7, we'll look at the same scenario. If you step that up to \$25 million, you can see the fairly dramatic difference because we're now spending enough that we're not investing any funds based on at least the moderate assumption, so that the projection would be that at a 50 percent level, if we're spending \$25 million over and above what's coming in, there's only a 62 percent chance or lower...well, 62 percent of the outcomes or better would be losing money. If you want to sustain the trust, which would be kind of the...or 75th percentile, so it would be above the median and that kind of gets us back, if you were drawing a line across, just above 100 percent of where we're at today, on page 7. You have to get there. It's the 75th percentile which means only 25 percent of the



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outcomes would get us, if we're spending as much as \$25 million, based on the projections. So that means there's 75 percent of the outcomes at this level that would result in the fund having a lower return. The third projection, and this is one that you've never done but just to point out the vulnerability of the trust, if we were spending \$40 million on an annual basis, which would be somewhere in the neighborhood then of about \$75 million or \$80 million, the trust, whether you use the aggressive policy that's on page 9, the trust would be...basically the probability is that we would exhaust it over the period. With a 75 percentile, the returns would be...or the corpus might be as much as 50 percent of its current level but a high probability that we would totally exhaust the funds if the capital markets are like are being projected. If you look at a slightly more conservative investment policy, and I'll only look at it from this level, even with a much more conservative allocation so that we have more in fixed income and took a little less risk, we narrow the bend. But the probability is still that basically even to the 95th percentile the trust would be expended. It gives us kind of a narrow range, at least from a forecast, of what is available, assuming that the capital markets return. And I would tell you that what's included in these numbers from a capital market assumption is a fixed income return, as I mentioned, that's about 2.1 percent, and that's a reflection primarily currently of both an economic forecast over the next ten years, and longer, of relatively low inflation and slow growth and not a lot of...it does kind of project an expectation that, on a core basis, that investment grade fixed income will just continue to provide a relatively low return based on policy and economic outlook. The blended rate for the equity investments ends up being about 7.9 percent, if you take the Global Equity, U.S. Equity, and International Equity portfolios and average a rate; but when you put those two rates together, 30 percent of the allocations, the fixed income and the rest where 25 is, and the rest is to the equity, you would find that our forecasts have an embedded return from capital markets, if they just hit the assumed rate, of about 6.6 percent. So it's a lower level than where we were at maybe a year ago and that's a combination of policy and, as you know, I'm in the current economic outlook. I gave you a second handout and the purpose of this one was to put dollars to the face of this. It also has on the cover, the first sheet, which says the "Distribution of Real Market

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Values, Net of Spending--the Policy Allocation," looks at initially what the status of the fund would be if the appropriations were at the current legislated levels for the next four years, which step down the spending, and then just would continue that \$50 million spending out. So it matches the current expectations from the tobacco spending with the spending level that was at least set out as some guidance in the last session, going out through, I think, 2015, and we just then carried that out. It uses the same capital market assumptions. And you can see median, 50th percentile or above, we would be slightly lower than where we're currently at, at about \$297 million. And you know, I mean that's why I said the range of outcomes is so huge. If we have good markets the trusts can manage themselves, but the expectation is that only 50 percent of the outcomes are going to be above that level, and the 75th percentile the number starts to pick back up to stay in the \$300 million-plus range. If you look at the dollars that affix themselves to the probability distributions that I gave you, and on the third page back is the distribution. If it's the current policy, which is the 75/25 asset allocation, by spending just the \$10 million over the expenditures, the trust, as I had said before, has a probability of better than 50 percent of actually growing. And it would be, at the 50 percent level, would rise to \$373 million from the current level as of the end of August, when the consultant did this, of about \$317 million. So this is the scenario, at least, or that level of spending is what, based on the projections, we feel has a reasonable probability of being able to meet and sustain the fund. And I think the trust has monies which can be expended at its current level with income over a number of years. But when it comes to the issue of sustainability, and this is where the council had become concerned as we looked at that a year ago, it now is that every other year I send the Clerk a letter talking about the sustainability of the fund; and for a long time we said it was, and kind of felt that our guidance wasn't being, I suppose, fully transparent, because it assumed a point in time with a high level of certainty. And it also didn't reflect the big dramatic change, I think, kind of in the capital market assumptions, because we were looking at capital markets even a couple of years ago that we might have expected to be returning 7 or 7.5 percent when you blended the rates, and just all the numbers today are more like 6.5. So the markets are giving us less. We're still trying to

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earn back, to some extent, what was lost in 2008 and '09 from a fairly aggressive policy, and then balance the fact that the tobacco settlement monies are fairly reliable but do gradually also themselves decline. [LR549 LR508]

SENATOR CAMPBELL: Senator Fulton had a question, then we'll come around. [LR549 LR508]

SENATOR FULTON: I did. Thank you. Thank you, Madam Chairman. Thank you for testifying. Just a question,... [LR549 LR508]

JEFF STATES: Yes, sir. [LR549 LR508]

SENATOR FULTON: ...and this is more to illustrate and maybe to shine some light for...I guess on the strategy of the NIC. I'm hearing that overall the anticipated return is 6.6 percent. Was that correct just overall? [LR549 LR508]

JEFF STATES: Yes, if you just take a point in time and blend the current asset allocation with the assumptions. [LR549 LR508]

SENATOR FULTON: Yeah. Has there been, given the Federal Reserve's strategy at least, I think they've announced through 2014 interest rates and what they're doing with interest rates, has there been a conscious effort on the part of the NIC to move into yield-bearing equities as opposed to...? I mean capital appreciation is always part of what equity, for equity strategy, but there are a lot of investors moving into yield-bearing equities because you can't get anything from interest rates. Has that been part of the NIC's movement recently? [LR549 LR508]

JEFF STATES: Senator Fulton, members of the committee, we have over the last year looked at that and taken some actions to kind of shift the focus of that fixed income. We have done that more with some of the other endowments than this, but we have a

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strategy that could be used here. Part of this is because we have managed the healthcare fixed income portion initially, and a significant portion of it is kind of short term, as part of the state's operating investment pool. And so it's tended to be a high investment grade which doesn't permit the high yield, the higher yielding fixed income instruments. We have made some changes with respect to looking for yield on the equity side to dividend-paying stock so that we could get some fixed coupon, and we have made some changes there to allocate more of the money to value-oriented stocks and to pick up what we estimate might be, you know, a .5 to 1 percent additional incremental return. [LR549 LR508]

SENATOR FULTON: Okay. Thank you. [LR549 LR508]

SENATOR CAMPBELL: Senator Conrad. [LR549 LR508]

SENATOR CONRAD: Mr. States, thank you so much for your analysis and being here today to share this information with the joint committees. I had a chance to respond to this information via e-mail last week after you were kind enough to provide it in advance, and I think that you've addressed some of the questions that I posed but I did just want to maybe simplify things for the record... [LR549 LR508]

JEFF STATES: Sure. [LR549 LR508]

SENATOR CONRAD: ...and for those who are following this analysis. If the Legislature were to not implement the reductions directed in last year's budget bill, LB969, and continue to distribute about \$59 million a year, can you just generally say what the impact would be? [LR549 LR508]

JEFF STATES: That would come reasonably close to kind of the \$25 million scenario. [LR549 LR508]

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SENATOR CONRAD: Okay. [LR549 LR508]

JEFF STATES: Current \$35 million coming in, \$25 million on top of that would give you an expenditure level of about \$60 million, and what you had appropriated I believe for...that we paid out this year was about \$59.3 million. We actually distributed a little bit less than that because there was some net funding, I think, that was...but so we're only about \$1 different so...or \$1 million different on that scenario. So it would be very similar to the \$25 million a year... [LR549 LR508]

SENATOR CONRAD: Okay, and... [LR549 LR508]

JEFF STATES: ...expenditure level over and above the capital market. [LR549 LR508]

SENATOR CONRAD: And just to follow up, that would pose sustainability questions in approximately what year or what time period? I know you've detailed these greatly in your materials, but I'm just trying to provide a general sense for the members and the audience. [LR549 LR508]

JEFF STATES: Well, as...of course, it's subjective because... [LR549 LR508]

SENATOR CONRAD: Sure. [LR549 LR508]

JEFF STATES: ...because there's such a wide range of outcomes. And if you look at page 7, it kind of tries to highlight that in the...we start day one, because we're spending more than we're bringing in, and we're spending more at \$25 million than the estimated annual investment income would be. It's gradually starting to deplete the trust right now in small increments, unless the markets are extremely strong. As I say, when you...you can just follow on this page kind of the gradual path down if we have the median outcome of expectations on a regular basis, so that...sustainable, you know, it's 62 percent probability that returns are going to be at that 50 percent level or at this level,

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which would...if I go to the...maybe it's easier to look at the dollar level ones. It shows that, you know, I mean in ten years the trust would be at \$193 million or \$195 million. So it's gradually depleting itself on a decline and that decline would just continue itself right on out. So if you just kind of projected that, it doesn't kind of bottom out and flatten out. It continues to show some progression downward because of the tobacco settlement dollars getting less. I'm not giving you a good answer because it's progressively not sustainable. I mean if you want to preserve the corpus of the fund at its current level and...it will immediately be declining. [LR549 LR508]

SENATOR CONRAD: I appreciate that it's hard to provide a simple answer for a very complex situation and analysis. But I think that the point I'm trying to make is that if we are all committed to the good work that flows from the funding of the Health Care Cash Fund, isn't it fair to say that we have some time to craft responsible solutions to ensure that sustainability? [LR549 LR508]

JEFF STATES: I...you know, that...the expenditure policy is yours and I think you're right. [LR549 LR508]

SENATOR CONRAD: It's a policy decision, right. [LR549 LR508]

JEFF STATES: I mean if you look at the same sheet I was looking at, the 75th percentile, on the dollars, shows that at that level we would stay, if the range of outcomes were in that upper quartile of probabilities, at \$300 million or above. So we do stay relatively close to where we're (inaudible). The point is that there's 75 percent of the outcomes that show the fund gradually being depleted. But, Senator, you're correct. It's not a zero at the...yeah. [LR549 LR508]

SENATOR CONRAD: Right. Oh, thank you. And just one final question: After I introduced this interim study, I've had a few people approach me during the interim who are also interested in this issue and trying to be helpful in developing policy solutions to

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secure and sustain the funding that flows from this. And of course, for a variety of reasons, even though we treat this like an endowment, it's not an endowment like we're used to in the private sector, so to speak. But one idea that was presented was that maybe potentially a one-time infusion into the corpus to help promote stability and sustainability. And if you'd like to offer any thoughts or exchanges as to what that number might be or how that would improve the sustainability concerns that you've addressed, that would be...I want to provide you that opportunity now. [LR549 LR508]

JEFF STATES: I would be honest to tell you I don't have a number today. It would need to close the gap between what we're generating from investment income. [LR549 LR508]

SENATOR CONRAD: Right. [LR549 LR508]

JEFF STATES: And so what I can tell you is, I think you had asked the question about \$25 million,... [LR549 LR508]

SENATOR CONRAD: Uh-huh. [LR549 LR508]

JEFF STATES: ...\$25 million clearly would not be sufficient, because all it would do is kind of cover one year, if we're currently...if we maintain the \$59 million to \$60 million level. It just moves us out once and then we continue down the path. So it has to be significant enough so that the 6.5 to 7 percent return off the investments would help us close the remainder of that gap. And today, if we're earning \$20 million to \$25 million in income and we want to have some money to reinvest, then you need enough to do that. So to generate \$6.5 million to \$7 million, you know, we need another \$100 million in, you know, based on the capital market assumptions, just annual return in order to get \$7 million of income that would help us close the gap and give us some reinvestment, and you can just kind of incrementally add that. So you would probably need a couple hundred million dollars to give us some much higher level of probability that the

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investment income would cover the expenses and still put us in a position if, you know, all we know is the markets will be wrong. But the last ten years proved to us that our assumptions were wrong on the high side and I can't promise you whether that's going to be more or worse. And so we're trying to build a better margin, I think, for a range of outcomes that are a much wider spread than maybe we had realistically thought in the past. [LR549 LR508]

SENATOR CONRAD: Thank you. [LR549 LR508]

SENATOR CAMPBELL: Chairman Heidemann and then Senator Nelson. [LR549 LR508]

SENATOR NELSON: Thank you, Senator Campbell. [LR549 LR508]

SENATOR CAMPBELL: Oh, sorry. [LR549 LR508]

SENATOR NELSON: Thank you for your presentation, Mr. States. These...I just want to follow up a little bit on Senator Fulton's question... [LR549 LR508]

JEFF STATES: Sure. [LR549 LR508]

SENATOR NELSON: ...and to make sure I'm reading the charts correctly. This is based on an average 6.6 percent return or between 6 and 7 percent? [LR549 LR508]

JEFF STATES: Yes. [LR549 LR508]

SENATOR NELSON: Are all the charts based on that assumption? [LR549 LR508]

JEFF STATES: All the charts are based on the same capital market assumptions, yes. [LR549 LR508]



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SENATOR NELSON: Okay. And how did you derive? Is that an average over the past years, I mean as far as 6., between 6 and 7 percent? [LR549 LR508]

JEFF STATES: Senator, Mr. Chairman, the capital market assumptions are the current assumptions from the council's investment consultant, and so they're forward-looking projections for the various asset classes and then applied to our current asset allocation, so. [LR549 LR508]

SENATOR NELSON: Okay. So you've got an aggressive asset chart and a conservative. Now what's the difference here? [LR549 LR508]

JEFF STATES: The aggressive chart assumes that we continue as we currently do to have 75 percent of the investments in equity in some form. The more conservative allocation would be a 50 percent equity exposure to 50 percent fixed income. Given the current markets, we know that there's such a gap between fixed income and equity... [LR549 LR508]

SENATOR NELSON: Yeah. [LR549 LR508]

JEFF STATES: ...that that would just right now exacerbate the problem. [LR549 LR508]

SENATOR NELSON: So, yeah, a 50 percent is certainly going to be... [LR549 LR508]

JEFF STATES: So that's what was considered conservative. [LR549 LR508]

SENATOR NELSON: ...yeah, be a reduced amount. And so... [LR549 LR508]

JEFF STATES: Yeah. [LR549 LR508]

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SENATOR NELSON: ...you're still with the 6.6 percent return if you've got a 50/50 up here? [LR549 LR508]

JEFF STATES: No, the return would actually, on that 50/50, drop down. The capital market assumptions would be the same, but if 50 percent of the portfolio is now earning the 2.1 percent instead of...so you have 25 percent of the portfolio that would be earning instead of an equity return, which is almost 8 percent, to a 2 percent return. You've got, you know, a 6 percent spread on 25 percent of the assets. So it would be a couple...it would almost be a couple percent lower. [LR549 LR508]

SENATOR NELSON: All right, thank you. [LR549 LR508]

SENATOR CAMPBELL: Chairman Heidemann. [LR549 LR508]

SENATOR HEIDEMANN: I think the Legislature has a policy decision to be made here whether they want to make this sustainable and when they want to start going down that road. If you was put in charge of this fund today, knowing or where you think the markets are going to be over the next ten years, and your only goal was to make it sustainable, where would you set the spending? [LR549 LR508]

JEFF STATES: Senator, because it has the highest probability of the outcome that it kind of maintains its current level, so if it's preservation of principal and then income to distribute, it's somewhere in that \$10 million to \$15 million range over the current annual tobacco settlement. So the funding level would be back in the \$45 million to \$50 million range, somewhere stepped down to that level would give us a much higher comfort level that we can meet the objectives or continue the fund, yeah. [LR549 LR508]

SENATOR HEIDEMANN: So to think if you would want to make it sustainable and feel comfortable where you think the markets are going to go, you'd be closer to the \$50 million. [LR549 LR508]

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JEFF STATES: That's correct, sir, yeah. And slightly lower would make us even more comfortable, but, you know, we always prefer to have a low hurdle and beat expectations than to set the hurdle too high and disappoint. And I think that's kind of where we've been out for a number of years, and not intentionally, but it's just been the results of the market. [LR549 LR508]

SENATOR CAMPBELL: Senator Gloor and then Senator Krist. [LR549 LR508]

SENATOR GLOOR: Thank you, Mr. States. I'm going to look at--this as a great segue I think--I'm going to look at the other side of this equation and that is the Master Settlement Agreement amount we get on an annual basis. What number did you plug in annually for that? I've got a handout here that's got a number. Is that... [LR549 LR508]

JEFF STATES: We used the numbers from the handout from the Budget Division, so they should be the same numbers. [LR549 LR508]

SENATOR GLOOR: And if I'm looking at that, the only justification for that reduction seems to be the disputed amount for the nonparticipating manufacturers. Is that correct? [LR549 LR508]

JEFF STATES: You know, I would not be the correct person to respond to that. I think there is some natural decline to that because there are less...there are fewer people smoking actually, I mean, but I don't know that. So, yes, there is a significant, as I understand it, factor that's related to the funds being not received or payments not being made, but I think that you would need to ask the Budget Division to provide that information. [LR549 LR508]

SENATOR GLOOR: Yeah, and that...I mean it's an important part of this overall equation, is I'm kind of familiar with this and although I wish I could say that my

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expectation is that we'd see an overall drop in tobacco use that would result in that, I'm not so sure that we can make that leap of public health faith. But I would say I'm familiar with the disputed amount, and just a couple of years ago this body passed legislation that was supposed to strengthen the hand of the Attorney General's Office to make sure that that disputed amount wasn't at risk. And my error on this, but I should have made sure that somebody from the Attorney General's Office was here to speak to us about it because I think not a...a sizeable amount of this decline I would guess is related to taking a number that's a decline, and projecting it forward, and I'm not so sure that that's accurate. I think that the disputed amount will, in fact...this paper talks about \$3 million to \$5 million per year. I know the reasons behind that legislation, because I carried it, was to in fact shore up the Attorney General's hand in this negotiation debate with the manufacturers, and I think we've got to look into that. I think we've got to get a better handle on that because it's an important part of the equation. Just some of that is in a commentary. You... [LR549 LR508]

JEFF STATES: I wouldn't disagree because just the data we have shows that there's \$3 million to \$5 million a year that's being withheld because of that failure to pay, so. [LR549 LR508]

SENATOR GLOOR: Yeah. Thank you. [LR549 LR508]

SENATOR CAMPBELL: Senator Krist. [LR549 LR508]

SENATOR KRIST: This is 2012. We go into session in 2013 having not made any strides in what I brought to the body's attention in 2010, which was if we spend at the rate we're spending we will exhaust the Health Care Cash Fund, as it is called. Then a colleague of mine that had sat next to me, Dave Pankonin, who is a well-known banker, I had a discussion with him about how to manage this as though it was an endowment fund and that we would secure the corpus as soon as humanly possible in order to make it sustainable over the years. And we basically talked about a scenario where at

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the beginning of every biennium you would tell us how much money we had to spend and maintain the corpus at a frozen level and add to the amount of money that we needed to in order to secure what all of those people want to make sure has happened--they get all their money. [LR549 LR508]

JEFF STATES: Uh-huh. [LR549 LR508]

SENATOR KRIST: And that's essential to this program and I understand that. Everybody out there doesn't want one dime cut from their programs because they have things they think are very important, and I do too. But I guess my point in bringing this up is we finally have gotten to a point where we realize, whether it's your projections, whether it's the reality of a fiscal cliff, whether we're 6 or 4 or 3 or 10, we're going to have to freeze the corpus and have the intestinal fortitude to say, as Senator Conrad pointed out, what does it take to keep the corpus where it is in the bad times and we add that money to that. Now I doubt seriously we're going to be given \$100 million-plus this year for brick and mortar. That's probably a priority that went on last year. But this coming year, my question is this: Is it possible, as Senator Pankonin and I talked about in 2010, to come up with a number at the beginning of this legislative session that we would have to add to the total, to the corpus, to maintain the corpus only...and sustain it, and only spend what we made on the fund and be able to identify that number to add an additive factor to spend what they want us to spend? [LR549 LR508]

JEFF STATES: I will say, Senator, yes, but with hesitation only because constantly each year the markets provide something different. And so a number each year unless we've already earned it, which means you kind of do it a year after the effects, I mean that would be the way we could do it with certainty would be to know what we earned the prior year, add it to what's coming in, and say this is what's available,... [LR549 LR508]

SENATOR KRIST: So we have... [LR549 LR508]

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JEFF STATES: ...and doesn't then touch the corpus of the fund. [LR549 LR508]

SENATOR KRIST: So theoretically, we could have a stopgap amount right now. You could go backwards and tell us what we earned and we would only spend that amount and maintain the corpus beginning in 2013, and be able to readjust it potentially in 2014, but maintain the corpus. [LR549 LR508]

JEFF STATES: Yes. Having said that, it maintains the corpus as it was absent the markets. And unfortunately, I mean investment results sometimes will be better and sometimes will be less, which means in years when we lose money, if we have a down cycle, then there is no additional funding to give you. And, in fact... [LR549 LR508]

SENATOR KRIST: I'm not following so let me... [LR549 LR508]

JEFF STATES: Well,... [LR549 LR508]

SENATOR KRIST: ...let me just put it in pilot's terms. I got \$100 million in the bank and I do not want to lose that money. My outflow is \$20 million a year. I didn't make \$20 million on that \$100 million last year. I only made \$10 million. So I have to take \$10 million out of my pocket and put it in, in order to maintain \$100 million. That's not a difficult concept for me to grasp. How is your explanation different than that? [LR549 LR508]

JEFF STATES: No, if you're actually talking about somehow being able to fund that loss, because that's basically the only thing you could do, yes, then we're on the same page. [LR549 LR508]

SENATOR KRIST: And the only way to be... [LR549 LR508]

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JEFF STATES: I was thinking about not funding the loss, yeah. [LR549 LR508]

SENATOR KRIST: And the only way to be 100 percent sure of that is to use past year's performance as you project into the following year. [LR549 LR508]

JEFF STATES: Yes, I believe so. [LR549 LR508]

SENATOR KRIST: Thank you. [LR549 LR508]

SENATOR HOWARD: That makes sense. [LR549 LR508]

SENATOR CAMPBELL: Or you begin infusing large amounts of dollars to do that. I'm just going to follow up with one question. Could you also...I mean I'm thinking from a budgetary standpoint it would be difficult for every single year, you know, we all sit in anticipation, but I'm thinking of the Appropriations Committee trying to plan ahead. Would there be any benefit to looking at a trailing average so that you're looking like at a three-year or a five-year trailing average and so it's not like you're having to budget every single year but you can look ahead and say based on the last 36 months, that type of scenario, following Senator Krist's idea of...? [LR549 LR508]

JEFF STATES: Yeah, Senator Campbell, I think that smoothing might provide, you know, some assistance better for budgeting if...you know, depending on what the period is, you know. I mean an extreme year, if we had a repeat of 2008, kind of throws you off. [LR549 LR508]

SENATOR CAMPBELL: Right. [LR549 LR508]

JEFF STATES: But in normal times, similar to what...maybe I shouldn't use this analogy but what we've...you know, attempting to do on the retirement side, to use to smooth across the cycles by, you know, using averages for a couple years would give us at

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least a targeted level. And we could get a range that would spread that out so it wouldn't be quite as volatile from year to year and could be a concept I think that, you know, we can make work. [LR549 LR508]

SENATOR CAMPBELL: Senator Conrad, did you have a question? [LR549 LR508]

SENATOR CONRAD: Yes, just very quickly to follow up on the dialogue with Senator Heidemann, and I appreciate your candor and directness in regards to his question. I think that you've already alluded to this but I want to make sure it's clear for the record. The sustainability question that Senator Heidemann asked you is in fact one perspective, one policy issue that this Legislature must attend do. But as with any area that we must legislate upon, we don't have the luxury of being able to have at sole focus but instead, wouldn't you agree, we must balance a variety of different public policy issues on any given issue? I think that we could all agree on that. [LR549 LR508]

JEFF STATES: I think that's what you're all here to do, yeah. [LR549 LR508]

SENATOR CONRAD: That's right. Thank you very much. [LR549 LR508]

SENATOR CAMPBELL: Senator Nelson, did you have a follow-up? [LR549 LR508]

SENATOR NELSON: No. No, thank you. [LR549 LR508]

SENATOR CAMPBELL: Okay. Seeing no other questions, thank you, Mr. States, very much... [LR549 LR508]

JEFF STATES: You're welcome. [LR549 LR508]

SENATOR CAMPBELL: ...for your presentation this morning. Our next invited testifier is Liz Hruska. Good morning. [LR549 LR508]



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LIZ HRUSKA: (Exhibit 4) Good morning, Senator Heidemann, Senator Campbell, members of the Appropriations Committee and the Health and Human Services Committee. My name is Liz Hruska and I am with the Legislative Fiscal Office. My last name is H-r-u-s-k-a. Thank you for the invitation to present on the Health Care Cash Fund. Basically, I will just give you an overview of the fund and the programs that it is currently funding. I think you are all aware that the Medicaid Intergovernmental Trust Fund and the Tobacco Settlement Fund are the two funds that fund the Health Care Cash Fund. Those two funds are called a trust fund, but they aren't a trust fund in the normal sense of the word that they are held in trust. The Legislature at any point in time can change the use of the money or the amount coming out of that money, both the holding funds or the level in the Health Care Cash Fund. As you've just had a discussion, you're all aware that the current statute says that the amount transferred into the Health Care Cash Fund and then distributed to the various programs currently will decline by 5 percent each year. And because of that, the Legislature will need to make some decisions as to how to reprioritize the programs that are funded. I'll just go down the list of programs that are funded. The Legislative Council receives \$75,000 and the Health and Human Services Committee decides the use of those funds. They can use it to hire staff or to contract with consulting services or possibly for a study. Those are the types of uses the fund has been used for in the past. And that amount can vary from year to year as different issues come before the Health and Human Services Committee that they want to study. The Attorney General and the Department of Revenue are both charged with enforcement of the tobacco settlement. As Senator Gloor mentioned, his bill LB590 kind of gave them additional enforcement tools and also provided increased funding for the Department of Revenue. So these two amounts, \$395,000 to the Attorney General and \$267,000 to the Department of Revenue, are really critically important to the state to maintain that tobacco settlement funding coming in, because we can either be penalized, as we...as currently was noted, about \$3 million to \$5 million is being put into a dispute account on an annual basis, but we could actually risk the entire amount in any given year that comes from the tobacco

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settlement. So those are relatively small amounts of funding but very important to maintain the overall revenue coming into the state. Tobacco Prevention and Control was a program that has been funded since the very beginning. It goes for educational purposes to reduce tobacco usage in the state and also for enforcement programs and cessation activities; and it's varied. Right now it's at \$2.3 million. As Senator Gloor mentioned, originally it was funded at \$7 million because the program needed to start up, and the Legislature changed priorities. They never actually have used more than about \$3 million to \$3.5 million, and they are able to adjust their programs depending on the level of funding. We fund the six respite care service areas with some personnel and operating costs, and we also fund direct respite care services. Of the \$1.6 million, \$1.2 million goes for direct services to help family members who are taking care of an elderly or disabled person, and \$404,000 goes to the regions for their operating expenses. In 2002 there was a bill that changed some provisions regarding EMS technicians. Emergency medical services are the only licensed area that is funded by the General Fund. Because some of the EMS providers are volunteers, it's been a state policy that the General Fund provides it versus a licensing fee. When this bill was passed, rather than funding it with General Funds, \$13,600 was put in for enforcement, and this is the smallest amount, the smallest appropriation that comes out of the Health Care Cash Fund. We also fund gambling assistance, both some administrative costs of \$25,000 and \$225,000 for direct services. This was originally meant to be just a temporary measure. There was a constitutional amendment that would have provided additional funding for gambling assistance, but that failed. Once that failed, this became permanent funding in the Health Care Cash Fund. The Parkinson's Disease Registry, which Senator Conrad had mentioned earlier, this is the only registry in the country that deals with Parkinson's Disease Registry, and it is used by academic institutions in their research. And they have been able to obtain outside funding in addition to the \$26,000 that's provided from the Health Care Cash Fund. When the Health Care Cash Fund was created, we put into the base provider rate increases for various behavioral health providers, so in the behavioral health program which goes to the regions, Medicaid, and CHIP, we provided funding for rate increases. Oh, child welfare is the other program.

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Some of the providers had gone years without an increase. Even those that had had increases, they were relatively small, so we put in about just under 8 percent to kind of bring them up to a level where we could sustain our provider base. That was just a one-time allocation of funding, and since then it's been held constant. So it was originally a provider rate increase. Now it is just really part of the base in all of those programs. So if we take...if this money was to be reduced or eliminated, we would need to provide General Funds for that because these are all entitlement programs. Mental health and substance abuse treatment, \$7.5 million was put in both to increase services in the juvenile justice area and also with the regions; and if that amount was decreased we would probably see a decrease in service provisions there. Emergency protective services receives \$1.5 million in funding; and again, that's just part of their base. If that amount is reduced, service levels would be reduced. Public health, we fund the 18 public health departments with core functions and we also provide money for minority health across the state, and both the public health funding and the minority health funding are distributed on a formula basis, that is. The CHIP program, currently this is...we fund \$5 million, which is again base funding in the CHIP program. If that amount is decreased, then the General Fund would have to pick it up because it is an entitlement program, and so. But in the current year and last year, we did provide some additional Health Care Cash money for the CHIP program that is to revert back to the \$5 million base funding, starting next year though. And that funding was taken from reallocating from some other programs. Medicaid smoking cessation, which is provided in the Medicaid program, \$450,000 is used to provide the match for the federal funds, and again that's just part of the Medicaid base and would translate into a General Fund cost. There was a statute passed to provide \$1 million a year for five years for autism treatment, but that program is no longer funded. Developmental disabilities funding of \$5 million a year, it originally was there to fund the waiting list; now it is there to provide ongoing services. And a reduction in this area would either translate into General Funds or a reduction in DD services. Stem cell research, that was a bill passed in 2008 for \$500,000 for grants for stem cell research, and that money probably could be adjusted somewhat, except for any grants that may be ongoing beyond a year. Currently, in the

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current year, we are funding it only at \$450,000. Biomedical research is funded at \$14 million, and the eligible institutions are the University of Nebraska Medical Center, the University of Nebraska, Creighton University, and Boys Town Research Hospital. And those funds are also distributed on a formula basis and I think you'll be hearing more about those programs from other testifiers. The Poison Control Center receives \$200,000 for their general operating. Children's Hospital had run it at one point and then they were no longer able to continue it, so the University of Nebraska Medical Center took over. They have looked at other means of funding this program, generating revenue, which did not come about. So we provided \$200,000 from the Poison Control Center. Just recently a federal plan amendment in the CHIP program was approved so the \$200,000 now can be used to match Medicaid, so in total the \$200,000 will generate a total of about \$500,000. And that is the end of my presentation. [LR549 LR508]

SENATOR CAMPBELL: Questions? Let's start on this side and then work over. Senator Krist. [LR549 LR508]

SENATOR KRIST: It's only fair. There's a theme that I heard and I'd like you to talk to it. That is, at its inception this fund was triggered towards one time or helping in this area or helping in that area. And yet, as they became items on the appropriations, some of them have really taken the place of General Funds; and if they were vacated or reduced, we would see an additional burden on General Funds. Would you like to talk about that at all? [LR549 LR508]

LIZ HRUSKA: Well, and these are legislative decisions. And again, when the Health Care Cash Fund was created, kind of the whole area of health and public health was underfunded. We really...we were--I think some of the public health people can probably verify this--I think we were like 49th in the country as far as funding public health, so there was a need there. We were very conservative as far as rate increases throughout the late 1990s, and providers were just kind of in need of an increase or we would see

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services decreasing. The CHIP program was started actually with \$25 million in Health Care Cash Fund, and then, as that was exhausted, a decision was made to fund it at a level funding of \$5 million a year. So I mean, like the CHIP program is entitlement or the rate increases fund basically entitlement programs, and they do take the place of General Funds; but as the Legislature was funding these programs they didn't...and even though like the rate increase was a one-time set amount, the Legislature, when it funded that, didn't intend it to ever go away. They intended it to continue to offset the General Fund, similar with the CHIP program. [LR549 LR508]

SENATOR KRIST: So the point, I guess, is that there are programs out there that are 100 percent or a good percentage dependent upon this money and I just wanted to make that for the record. The other part of my question is very simple. You say we can adjust these as a legislative body, make those decisions both on policy and on fiscal matters; but part of this is actually in statute. In order to change it, we would have to change by statute. Is that correct? Isn't biomedical in that category? [LR549 LR508]

LIZ HRUSKA: No. They're actually in the appropriations bill. [LR549 LR508]

SENATOR KRIST: Okay. [LR549 LR508]

LIZ HRUSKA: So, yeah, I think all of them are actually now addressed just in the appropriations bill. The formula distribution, I think I'd have to...I can't remember. I think the formula distribution might be sometimes in the statute, but the dollar amounts are in the appropriations bill. [LR549 LR508]

SENATOR KRIST: That would be critical for us to understand as we go through potentially not just making wholesale 5 percent cuts but actually making cuts dependent upon budgetary issues. So if you could get back to us with that, that would be wonderful. [LR549 LR508]

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LIZ HRUSKA: Sure. [LR549 LR508]

SENATOR KRIST: Thanks, Liz. [LR549 LR508]

SENATOR CAMPBELL: Senator Gloor. [LR549 LR508]

SENATOR GLOOR: Thank you, Senator Campbell. Thank you, Liz. Liz, talk to me a little bit about the biomedical research and the 60 percent and how that 60 percent is calculated to be divvied up. Do you know? Do you know how this... [LR549 LR508]

LIZ HRUSKA: I think there's somebody here to talk about that. [LR549 LR508]

SENATOR GLOOR: Okay. [LR549 LR508]

LIZ HRUSKA: This is just a formula that the Legislature decided. [LR549 LR508]

SENATOR GLOOR: That's okay. I'll wait until the institutions...this gives me a chance to tee it up for them to address when they visit with us. Thank you. [LR549 LR508]

LIZ HRUSKA: Yeah, the formula is 24 percent to the University of Nebraska and the Med Center, and then 16 percent to Creighton and Boys Town. I don't really know how that came about. I was assisting the Legislature... [LR549 LR508]

SENATOR GLOOR: I can guess. (Laughter) [LR549 LR508]

LIZ HRUSKA: ...but I don't think I was in the room when that formula was decided. [LR549 LR508]

SENATOR KRIST: I don't think you'd want to be. [LR549 LR508]

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SENATOR GLOOR: Okay. Thanks. [LR549 LR508]

SENATOR CAMPBELL: Senator Conrad. [LR549 LR508]

SENATOR CONRAD: Liz, thank you so much. Great job as always. It's no question that you're a fantastic resource on these and many issues. And really to dovetail on I guess Senator Krist's point is the exact point that I wanted to make, was...and, as you know, we had a spirited debate about these issues in the last budgetary cycle. But just the perspective that you helped to draw out this morning I think is critical for this committee and the body and the citizenry to understand that moving forward with indiscriminate cuts to the Health Care Cash Fund in order to achieve some type of sustainability is really only part of the picture,... [LR549 LR508]

LIZ HRUSKA: Uh-huh. [LR549 LR508]

SENATOR CONRAD: ...because we don't have anything within that budget bill or on the table that comes to any...that could be identified as a plan for replacing General Funds, that could be a plan for what the impacts would be on our public health system to our vulnerable Nebraskans, etcetera. And so I'm glad that you were here to help to begin that dialogue in balance of this discussion. [LR549 LR508]

LIZ HRUSKA: Right. As you look at this, you may need to set priorities on it and understand the impacts. Some do have that automatic General Fund shift or shift to the General Fund, but other programs also have implications as far as what might happen. And some programs it's easier to vary the funding than for others just because there is some flexibility in some of the programs versus an entitlement program where we don't really control who is eligible and not eligible. In theory, we do; but that is going into statute and fine-tuning it, and it's a more complicated process, I guess. [LR549 LR508]

SENATOR CONRAD: Thank you. [LR549 LR508]

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SENATOR CAMPBELL: Other questions? Senator Hansen. [LR549 LR508]

SENATOR HANSEN: Thank you. Liz, thank you for being here today. On page 8 you have the programs that are held flat and the programs that have increased since 2003. It seems to me that's where we need to look for possible reductions. And I think this hearing is all about sustainability and I think it's very important, and that gives me a clue where to look. Would you agree that some of the programs that were added later, even though they...we looked at the fund, I'm sure, over the years as an Appropriations Committee. We didn't have the General Funds to do it so we've used money from this fund, and now it may be time to go back to the General Fund. [LR549 LR508]

LIZ HRUSKA: I think that's probably one factor in your decision, but there are reasons why and... [LR549 LR508]

SENATOR HANSEN: Sure. [LR549 LR508]

LIZ HRUSKA: ...why some new programs came about or why funding was added or decreased. I think you really do need to look at probably every priority and what the impact is, either on the state funding or on the program, and kind of reset priorities or...yeah, I guess that's what...so I wouldn't solely base it on this. I think there's multiple inputs that you'd want to look at. You know, this just kind of gives you an overview of what the Legislature has done over time but it doesn't really tell you the reason any of these decisions were made. So I think, you know, you probably want to look at that... [LR549 LR508]

SENATOR HANSEN: Sure. Certainly. [LR549 LR508]

LIZ HRUSKA: ...and look at what the programs are currently doing and, again, what those impacts are, which I'm sure you'll hear a lot about. [LR549 LR508]



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SENATOR HANSEN: Yeah. [LR549 LR508]

SENATOR CAMPBELL: Senator Krist. [LR549 LR508]

SENATOR HANSEN: Thank you. [LR549 LR508]

SENATOR KRIST: One tiny follow-up. This is easy. Talk to me just a little bit about why we differentiate stem cell research from other research that's done in the biomedical field. Why do we give a special pot of money to stem cell and not give that to the university, to the universities and the medical system to include in their research? [LR549 LR508]

LIZ HRUSKA: Stem cell research came about as a result of a bill, and again I wasn't in on that. I just...basically, after the bill was worked out within the Legislature, they were looking for funding and it came to the Health Care Cash Fund. But it's different. It's handled by grants. Where the biomedical research is more ongoing institutional research, I think the stem cell...it's handled differently. It's handled by a committee that looks at grants; where the biomedical research does have a formula distribution and it's expected to be longer term. I think...and I'm not an expert on this but they came about differently and I think programmatically they are differently. The expectations maybe for stem cell is that it is on a shorter time frame,... [LR549 LR508]

SENATOR KRIST: Okay. [LR549 LR508]

LIZ HRUSKA: ...versus the biomedical, which is actually sort of part of the institutional funding. [LR549 LR508]

SENATOR KRIST: Well, to quote my colleague and friend, Senator Gloor, we'll tee that one up for a future person coming up here. Thank you, Liz. I appreciate it. [LR549

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LR508]

SENATOR CAMPBELL: For the Health Committee members, you may remember that we reviewed the resumes of that committee pretty extensively because their appointments were up before the Health Committee, and that's the grant money that they're distributing. Liz, I don't need this now but I'm going to follow up on Senator Hansen's point in the sense that I would really like to have somebody circle in your numbers 1 through 28 those that have a General Fund implication, either through an entitlement or they're related. Because one of the things that we talked about last year was if we cut this, they're just going to take the door--Senator Heidemann and I talked about this at length--they're just going to take the door and knock on Appropriations and say, this is a part of our base, this isn't the General Fund. And if you wouldn't mind doing that at some point, I would like to see that, because I think to some extent we have to realize the reach that some of these programs have into the General Fund.

[LR549 LR508]

LIZ HRUSKA: Sure. [LR549 LR508]

SENATOR CAMPBELL: That would be helpful. Any other questions? Thank you, Liz, as always. [LR549 LR508]

LIZ HRUSKA: Thank you. [LR549 LR508]

SENATOR CAMPBELL: We will now start with the testifiers that have been arranged to testify, and I'm asking the clerk to resort at this point to the light system. So you have five minutes. You will see yellow at one minute and red when you are depleted of time, and you will also look up and I'm anxiously trying to give you some message. So please do try to keep that, knowing that the senators are going to have questions. Our first testifier is Topher Hansen. Good morning. [LR549 LR508]

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TOPHER HANSEN: (Exhibit 5) Good morning, Senator Campbell, Senator Heidemann, members of the Appropriations Committee, members of Health and Human Services Committee. My name is Topher Hansen, T-o-p-h-e-r is the spelling of the first one and H-a-n-s-e-n, no relation, is the spelling for the second one. I am the president of the Nebraska Association of Behavioral Health Organizations, known as NABHO. NABHO is made up of a variety of organizations, including consumer groups, provider groups, and payers, such as the regions. We come here today to give support to this, and my remarks will be directed at both interim studies. The Health Care Cash Fund was a one-of-a-kind resource in the country, and we commend those who had the vision to establish it solely for health-related funding in the state of Nebraska, your predecessors in a group meeting such as this. Since the '80s, behavioral health providers struggled to provide treatment services to the Medicaid population because of less-than-cost reimbursements and overall discrimination in both the public and the private sectors. We were losing the battle on providing services and getting paid at rates that met our costs. The Health Care Cash Fund was the resource that saved many providers in both rural and urban Nebraska from likely closure, which would have resulted in a dramatic reduction in access to any type of service for thousands of Nebraskans. The rate increases funded out of this resource established a baseline reimbursement rate without which we could not serve the Medicaid population and working poor. Today the stigma of mental health and substance use treatment remains; but through science, reliable data, and public education we know much more about the complexities of these diseases of mental illness and substance addiction. We also know that one in five Nebraskans will have an episode of mental illness in their lifetime, and this is a wide range of illnesses, but we know one in five in the country and in Nebraska will experience that in their lifetime, and one in ten will experience substance use problems. The data also tells us of the success of treatment for many of these disorders. The Affordable Care Act ensures that the longstanding discrimination against behavioral health services no longer results in reduced reimbursement compared with physical health in both public and private sectors. The future needs in this area continue. The good health of our entire state requires that we continue to serve the uninsured and the

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underinsured populations. Positive health outcomes is our focus. New and innovative approaches, like medical homes and one-stop facilities providing both physical health and behavioral health services, will be our future. These needs continue to increase. Together we can address the demand with effective services that also achieve business efficiencies. Those senators who had the vision to establish the Health Care Cash Fund understood that healthcare needs would increase. The nearly 50 organizations comprising NABHO urge you to stay invested in Nebraska by protecting this vital resource that helps so many of our fellow citizens get back on their feet and return to a healthy and productive life. Thank you. [LR549 LR508]

SENATOR CAMPBELL: Thank you, Mr. Hansen. Questions from the senators? Senator Krist. [LR549 LR508]

SENATOR KRIST: Addressing the comments and concerns of my colleagues, as science has progressed we know more about mental health, we know more about dependencies, we know more about the things that you are concerned with. [LR549 LR508]

TOPHER HANSEN: Uh-huh. [LR549 LR508]

SENATOR KRIST: And I'll point out to them that if you look down this list, there's a good reason why there's an increase in behavioral health rate increase. On page 8: mental health/substance abuse; mental health/substance abuse service capacity; behavioral health rate increase; behavioral health rate increase; developmental disability, which also includes some behavioral issues; and county public health aid I would say probably goes to the same point. So it is logical that as we have progressed as a society, science has taken us forward, that we have recognized that we can get ahead of this game with intervention and with your organization. Would you like to comment on that? [LR549 LR508]

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TOPHER HANSEN: We aren't shooting from the hip anymore. We understand more and more about what the issues are behind many of these illnesses. We understand causes. We understand more innovative and effective treatment approaches. And what we know is, this is not a simple issue; this is life and death service. This is life and death service. People die when they don't get the kind of help they need for these services. We all know someone who has either a mental health disorder or an addiction. We know the complexities and the difficulties of it, and we now are able and more equipped to begin to do interventions, cognitive behavioral therapy, motivational interviewing, things that are effective techniques at helping people get squared away and begin to move back toward a healthy and productive life. There is no question we are much better now than we were 15 years ago, 25 years ago in doing this; and the costs are going up. My electric bill has not reduced in, well, years, and so I not only need to make those costs; I need to be able to provide the right kind of care for that person to get better. Ethically, I can do no other. And I can also show you on my costs how, if I take state rates and go down the line with each service, I can show you how I lose money in almost every single program, which then is incumbent on me to then turn around and figure out how do I make up that difference by being a good business person. And that's a requirement in healthcare today. [LR549 LR508]

SENATOR KRIST: Thanks, Topher. [LR549 LR508]

TOPHER HANSEN: You bet. [LR549 LR508]

SENATOR CAMPBELL: Senator Conrad. [LR549 LR508]

SENATOR CONRAD: Topher, thank you so much for your testimony and speaking on behalf of the many, many members of NABHO. I think you provided a very important dynamic that had yet to be addressed, was that Nebraska can be very proud of how we originally utilized and have since utilized these funds to support and promote a healthier Nebraska and a better life for many Nebraskans and particularly vulnerable

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Nebraskans. And just simply, if the Legislature were to move forward with the indiscriminate cuts, as contained in the last budget bill, do you believe that would have dramatic negative consequences for many vulnerable Nebraskans? [LR549 LR508]

TOPHER HANSEN: Oh, no question. We're not sitting here about me. [LR549 LR508]

SENATOR CONRAD: Right. [LR549 LR508]

TOPHER HANSEN: We're sitting here about the thousands of people that are being served by organizations like the one I operate across Nebraska. There is no question about that. We serve individuals who are at no income to low income to moderate income. We're not talking about the group right here. It's not about us. It's about the most vulnerable and the most needy that we're serving in these organizations throughout the state. [LR549 LR508]

SENATOR CONRAD: And in your experience in dealing in this world, in the healthcare world and with vulnerable populations for a considerable period of time, when we make cut someplace do we actually end up saving money in other respects, or are we going to see increased costs if these cuts go into practice when it comes to our law enforcement, when it comes to other societal obligations? [LR549 LR508]

TOPHER HANSEN: Senator, I think all you need to do is ask a county sheriff in any remote part of Nebraska--like not inside Lincoln or Omaha, Grand Island, North Platte, someplace that is an urban area that has more resource--but stretch it out a little further. Ask any one of them what the impact of this will be and they'll talk about how they are already thin to having zero access and that this would make it worse. I've heard from several of those people who testify in hearings and talk privately about the impact on them in their duties every single day with wrestling with mental health and substance issues, and the increase in resources that's needed, not to mention then how exponential these cuts are in that we and the hospitals that are here today can tell you

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about the increase in the emergency room, if there's a crisis center, if there's a jail available. We already have a huge problem with too many people that have behavioral health issues that are driving them to a jail facility and probably not necessary. We need to reduce that, not increase that. [LR549 LR508]

SENATOR CONRAD: Thank you so much. So in your opinion, basically it would be incredibly myopic for this body to move forward just with cuts and with no plan to address these other funding obligations or the real-life impacts to Nebraska. [LR549 LR508]

TOPHER HANSEN: Can I answer that by saying let's keep the vision? [LR549 LR508]

SENATOR CONRAD: Yes. Thank you. [LR549 LR508]

TOPHER HANSEN: It was...I was new to the business. It was a hallmark day that the Appropriations and Health and Human Services Committee went away in private session and came out with this kind of vision, and I was a proud Nebraskan that day as most every day. [LR549 LR508]

SENATOR CONRAD: Very good. Thank you. [LR549 LR508]

SENATOR CAMPBELL: Senator Gloor. [LR549 LR508]

SENATOR GLOOR: Thank you, Senator Campbell. Topher, if you answered this question or if it was addressed in some way during my absence, I apologize. But my question really is, does NABHO feel better about having a small portion of the base here in the Health Care Cash Fund or more...are you more vulnerable because it's in the cash fund? In other words, if we could roll these dollars some way or another into the General Fund and have them in the General Fund, would that be a good thing, or is having this small amount here as part of the base a good thing? Have you thought

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about it from that context? [LR549 LR508]

TOPHER HANSEN: I haven't; but I'd say, generally, stability is the issue for funding. This isn't a discretionary dollar that is being allocated. This is really part of our base. And so that stability is the critical piece and I think NABHO's voice would be we want to have that level of stability because it's hard enough doing what we do every day and receiving cuts and increased costs and so on. And so to have another area be unstable would not be beneficial to the business. And I can tell you, there...I know of several, I can count one handful, of organizations right now that are extremely vulnerable across our state in terms of continuing their operation. Blows like this where our rates would be undercut in any way would begin to close operations down. [LR549 LR508]

SENATOR GLOOR: Do you have any idea of what this amount is as a percentage of overall support that you get from the state? [LR549 LR508]

TOPHER HANSEN: That I or NABHO? [LR549 LR508]

SENATOR GLOOR: Across...NABHO would collectively. [LR549 LR508]

TOPHER HANSEN: I don't know that I can give you a percentage off the top of my head. [LR549 LR508]

SENATOR CAMPBELL: I think we have to ask Liz that. [LR549 LR508]

SENATOR GLOOR: Yeah. Thanks. [LR549 LR508]

SENATOR CAMPBELL: I think we have to follow up our questions with that with Liz. A quick question: You do reference in your testimony the Affordable Care Act. What do you envision the Affordable Care Act will do with reimbursement to the NABHO agencies with the mental health parity? [LR549 LR508]



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TOPHER HANSEN: Well, it makes...it levels the playing field for behavioral health and physical health. And so rather than having a very reduced amount of reimbursement for certain areas, as in theory our private insurance and Medicaid systems sort of come together, then we would see that be leveled out a little bit and provide more opportunities for treatment for people who right now are struggling to receive any treatment. So it probably...it means more people standing in the front door waiting for services and that have a funding stream attached whereas before they may not have, and we would rely on state behavioral health dollars should that person qualify. So it will offset that expense as well. [LR549 LR508]

SENATOR CAMPBELL: One of the things that...a couple of comments and these are just comments on my part. One of the things that I think we're all going to have to take a look at, both from the Health Committee and Appropriations, is begin looking at areas and seeing where they are multiply-funded in our budgets and how do we look at that total funding for an area. Because from the Health Committee's standpoint, we only see one part of any bucket and you probably see that totality. In order to set health priorities in the state, I think we're going to have to start looking at where does all this funding come, how did the braided funding come together? That's number one. And number two, I have to say a personal frustration on my part with the Health Care Cash Fund is that all these priorities were set initially but that does not allow for the Health Committee to advise the Legislature on emerging health issues or to relook at the priorities. And I fully appreciate your point about stability; but on the other hand, we do have to begin looking at that. And that's been a frustration for the Health Committee, in all honesty to our colleagues on Appropriations, is that all these priorities are set, and then, well, how do we change them or how do emerging priorities get funded? It's a frustration commentary, I realize, but I just thought I'd make that comment. [LR549 LR508]

TOPHER HANSEN: Thank you for making the comment. (Laugh) [LR549 LR508]

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SENATOR CAMPBELL: Yeah. I mean I think all of you in the room have talked about those two issues too. [LR549 LR508]

TOPHER HANSEN: Uh-huh. [LR549 LR508]

SENATOR CAMPBELL: So thank you very much for coming today... [LR549 LR508]

TOPHER HANSEN: You're welcome. [LR549 LR508]

SENATOR CAMPBELL: ...and for your testimony. [LR549 LR508]

TOPHER HANSEN: Thank you. [LR549 LR508]

SENATOR CAMPBELL: Our next testifier is C.J. Johnson, testifying on behalf of the behavioral health regions. Good morning. [LR549 LR508]

C.J. JOHNSON: (Exhibit 6) Good morning, Senator Campbell. Good morning, Senator Heidemann, members of the Appropriations Committee, members of the Health and Human Services Committee. My name is C.J. Johnson, C.J. J-o-h-n-s-o-n. I am here to testify on behalf of the regional behavioral health authorities. The regional behavioral health authorities are responsible for the development and coordination of publicly funded behavioral health services within the behavioral health regions, pursuant to rules and regulations adopted and promulgated by the Department of Health and Human Services. The Nebraska Health Care Cash Funding Act, as passed in 2001, provided the six behavioral health authorities with approximately \$10.5 million annually for addressing rate increases, expansion of behavioral health services, and the emergency protective custody system. This funding was intended to support the eventual implementation of LB1083, otherwise known as the Nebraska Behavioral Health Services Act that eventually passed in 2004. The initial Health Care Cash Funds allocated to the behavioral health regions had six priorities, as established by the

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Governor and the Legislature at that time. These priorities were: decrease the number of postcommitment days; decrease the number of emergency protective custody situations; decrease the number of days consumers are served in inappropriate levels of care; decrease the number of commitments to regional centers for substance abuse; increase the service capacity available to special populations, including those who are in the criminal justice system; and ensure services are equitably provided in all counties within the region based on need. As one can see in the attached charts, the funds allocated to the regions under the Health Care Cash have been utilized by each of the regions based on the specific need in those geographic areas to address the priorities as outlined. Over 60 services have been impacted by the Health Care Cash Funds across the state. These services address both mental health and substance abuse, as well as adult and children's services. This funding was critical in providing a foundation for LB1083, allowing the funds from the Behavioral Health Reform Act to further expand services and provide community-based treatment options for hundreds of individuals residing in state regional centers. With the ongoing funding from the Health Care Cash Funds, in conjunction with the Behavioral Health Reform, each of the regional behavioral health authorities have been able to continue to modify the public behavioral health service delivery to address current system needs and the ever-changing landscape in the behavioral health field. The regional administrators would like to thank the joint Health and Human Services and Appropriations Committees for its thoughtful interest in the Health Care Cash Fund Act since its passage over a decade ago. The funding continues to support critical components of the public behavioral health system, following the implementation of LB1083 and the Behavioral Health Reform Act, resulting in thousands of individuals being able to receive community-based treatment rather than receive treatment in state-operated hospitals. I'm more than happy to answer any questions at this time. [LR549 LR508]

SENATOR CAMPBELL: Any questions from the senators? Thank you very much and for providing all the supplemental information too. Thank you, Mr. Johnson. [LR549 LR508]

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C.J. JOHNSON: Okay. [LR549 LR508]

SENATOR CAMPBELL: Our next testifier is Dave Holmquist, who represents the American Cancer Society Cancer Action Network. And what I found out last week is that it's a brand-new name. [LR549 LR508]

DAVID HOLMQUIST: It is. It's a mouthful, isn't it? We say ACS CAN for short, but the official is. I am David Holmquist, D-a-v-i-d H-o-l-m-q-u-i-s-t. I am a registered lobbyist and I am the legislative director for the American Cancer Society Cancer Action Network in Nebraska. Thank you for the opportunity to testify, Senator Heidemann and Senator Campbell and members of the Health and Human Services Committee and the Appropriations Committee. It's hard to believe that it's been 12 years since the first inception of the Health Care Cash Fund. It seems like yesterday somehow. As it was originally envisioned, and I thank Topher Hansen for bringing up the word "vision," the idea was to bring Nebraska forward into...basically into the twenty-first century. A slight correction in the testimony: We were 51st in the nation in spending on healthcare. We were behind Washington, D.C., and Mississippi, with all due regard to our distant neighbors in Mississippi, and something had to be done, and I think the Legislature, under Senator Jensen's direction, did the right thing. It was one of those times when the right thing was the best thing to do. Over this period of time, obviously, the spending has increased by about \$10 million on an annual basis. One of the things that I wanted to speak to specifically was the Tobacco Prevention Fund, otherwise known as Tobacco Free Nebraska. Originally, it was funded at \$7 million per year for three years. That money was then cut to \$405,000 a year for the next two years, and now we're back up to \$2.3 million. The money that comes into the fund, that continues to flow into the fund at whatever rate it is, \$35 million a year, is from the tobacco settlement, and the original intent of the tobacco settlement funding was to address an issue that had to do with youth initiation of smoking. We've done a great job in terms of reducing the youth initiation of smoking in this state. It's gone from 39 percent in 1999 down to 18 percent

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in the most recent survey that's been done. That's a huge cut, but it isn't...and it's been done, frankly, with low funding, and I think we could do a lot better job with some additional funding. What I really wanted to talk today about, though, is making the Health Care Cash Fund sustainable over a long period of time, and I think the only way to do that is to infuse it with some new monies, whatever that amount happens to be. As you may imagine, I have had the idea that we should increase our cigarette taxes and other tobacco product taxes for some time. Actually, Senator Gloor introduced a bill two years ago that would have raised those taxes from 64 cents per pack, 38th in the nation, up to \$1.99 per pack. It got stuck in committee and hasn't gone anywhere. That funding could be used to reduce the number of people who smoke in this state, because every 10 percent increase in the price of a pack of cigarettes has a consequent decrease of about 7 percent in youth initiation and about 4 percent of adults will quit. So if you take a current price of about \$5 a pack and you add 50 cents per pack to that, you will see significant decreases in the numbers of smokers. As you know, we've seen an occupation tax passed in Omaha of 3 percent. While it has a laudable effect of providing funding for the cancer center that needs to be built at the Medical Center, it also does not have the public health consequences that we would like to see happen because the amount, frankly, wasn't enough. But if we could raise the cigarette tax and other tobacco products' taxes significantly in Nebraska and put a significant portion of that funding into the Health Care Cash Fund, we could make it sustainable and we could, in fact, make it an endowed fund, I believe. I also agree with Senator Campbell's comments that we need to look at the fund and we need not to simply tack on new programs as they come up. We need to make sure that we are doing what is appropriate in the public health arena. I would argue that many of the programs that we're currently funding are important and need to be sustained and need to continue, but perhaps we do need to look at different formulas. If they are better served by coming out of the General Fund, because they are entitlements, then perhaps that's something we should look at. I guess we all need to probably bite the bullet. But the 5 percent reduction across the board I think will harm too many organizations and agencies and will also have a net negative effect, particularly in many areas, as Mr. Hansen spoke on behavioral health.

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We currently spend \$138 million a year to treat smokers in Medicaid. If we could reduce the numbers of smokers, we could reduce the amount of money spent in Medicaid and that would help the General Fund balance as well. So those are my comments. I'm happy to take any questions that you might have. [LR549 LR508]

SENATOR CAMPBELL: Thank you, Dave. Questions from the senators? Senator Hansen and then I'll come back around. [LR549 LR508]

SENATOR HANSEN: Thank you. Dave, it's good to see you again. [LR549 LR508]

DAVID HOLMQUIST: Good to see you. [LR549 LR508]

SENATOR HANSEN: If we were 50th...or did you say 50th or...? [LR549 LR508]

DAVID HOLMQUIST: Fifty-first. [LR549 LR508]

SENATOR HANSEN: Fifty-first, okay. If we were 51st in healthcare spending, what are we now? [LR549 LR508]

DAVID HOLMQUIST: You know, I don't know, and I knew somebody was going to ask that question when I decided to say it, and I will find out for you. I don't know where we are now. [LR549 LR508]

SENATOR HANSEN: Okay. [LR549 LR508]

DAVID HOLMQUIST: It should be a simple answer but I don't have it. [LR549 LR508]

SENATOR HANSEN: Okay. Thank you. [LR549 LR508]

DAVID HOLMQUIST: Thank you. [LR549 LR508]

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SENATOR CAMPBELL: Senator Conrad. [LR549 LR508]

SENATOR CONRAD: Dave, if you had to guess, have we made improvements? Are we higher than 51st today? [LR549 LR508]

DAVID HOLMQUIST: Oh, we've made...yes, we've made great improvements. [LR549 LR508]

SENATOR CONRAD: Okay. [LR549 LR508]

DAVID HOLMQUIST: I would say we're probably in the middle of the pack somewhere. [LR549 LR508]

SENATOR CONRAD: Okay. And it's the vision and the support that emanates from the Health Care...for establishing and then maintaining the Health Care Cash Fund that is the key critical factor in improved outcomes for those rankings. Is that fair to say? [LR549 LR508]

DAVID HOLMQUIST: Absolutely,... [LR549 LR508]

SENATOR CONRAD: Okay. [LR549 LR508]

DAVID HOLMQUIST: ...in all of the areas for which the money serves. We were lauded at the national level when Nebraska created the Health Care Cash Fund out of the Settlement Agreement, because most states used it to... [LR549 LR508]

SENATOR CONRAD: Right. [LR549 LR508]

DAVID HOLMQUIST: ...build highways... [LR549 LR508]

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SENATOR CONRAD: Right. [LR549 LR508]

DAVID HOLMQUIST: ...or plug holes in funding gaps and so forth; and we have sustained it. And my argument is that we need to sustain it and make it a real endowment. [LR549 LR508]

SENATOR CAMPBELL: Other questions from this side? Senator Krist. [LR549 LR508]

SENATOR KRIST: I will stifle myself in speaking about the current legislation or ordinance in the city of Omaha and I'll address it in the upcoming session. However, I wanted to be clear with my colleagues and for the record. We had some disagreement a few years ago on how much money and how it's spent. You provided me with enough information that I am very comfortable that the cessation program that you're running is not only effective but it's probably underfunded--it will probably stay that way for a while--but it's underfunded in terms of what you do. And I think it should be said that you went from media and marketing in one way and evolved over the time that you have to make the best use of the money. So I commend you for your efforts. [LR549 LR508]

DAVID HOLMQUIST: Well, thank you. And one point that I did want to make along those lines of the tobacco control funding, for a number of years, and three or four years at least, the statute said that the Legislature must appropriate \$3 million annually to the program. Unfortunately, they were appropriating the funds but the spending authority was different. So it makes the program look like it's not spending all the money that's been appropriated, because it's not. The money is appropriated but it lays over in another fund because they don't have the authority to spend \$3 million. So if it's been appropriated at \$3 million and they only have a spending authority of \$2.7 million, there's \$300,000 in some fund. I don't know where that money is, but it's there; and I don't know what happens to it at the end of the fiscal year either. So I think one of the things that needs to be looked at is, that the money that's given to the program they



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have the authority to spend. [LR549 LR508]

SENATOR KRIST: And that goes to Senator Campbell's comment of how much gets appropriated from what pots of money, and what is the authority to spend, that sometimes we miss. [LR549 LR508]

DAVID HOLMQUIST: Right. Yeah, exactly. [LR549 LR508]

SENATOR KRIST: So thank you for your comments. [LR549 LR508]

DAVID HOLMQUIST: Thank you, Senator Krist. [LR549 LR508]

SENATOR CAMPBELL: Any other questions from the Health folks? Thank you very much. [LR549 LR508]

DAVID HOLMQUIST: Thank you. [LR549 LR508]

SENATOR CAMPBELL: Our next testifier is Kay Oestmann. Kay represents the Friends of Public Health in Nebraska, which includes all the public health departments. Good morning. [LR549 LR508]

KAY OESTMANN: (Exhibits 7 and 8) Good morning, Senator Campbell, Senator Heidemann, members of the Appropriations and the Health and Human Services Committee. I bet it seems like I've been before you enough... [LR549 LR508]

SENATOR CAMPBELL: Kay, do you want to...we do have to have you spell your name for the record. [LR549 LR508]

KAY OESTMANN: Oh, I'm sorry. [LR549 LR508]

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SENATOR CAMPBELL: You're fine. [LR549 LR508]

KAY OESTMANN: Nobody would know how to do that either. My first name is Kay, K-a-y, O-e-s-t-m-a-n-n, Eastman (phonetic). I have been here frequently and I have talked about public health because it's not only my profession but it's my passion. So I appreciate Senator Conrad and Senator Gloor recognizing the fact that this is where the Health Care Cash Fund started, the meeting of these two committees to form the Health Care Cash Fund and to help us develop a public health system throughout Nebraska. When the Health Care Cash Fund provided the funding for the local public health departments, there were 18 local health departments that served 22 counties, and we now have local health departments providing public health in all 93 counties, which is a big step and it's happened in the last 11 years. These departments provide scientifically based programs dependent on local health needs and priorities determined through a regular, comprehensive community health planning process. One of the core functions of public health is assessment. We've all done that. We're no longer just deciding what our community needs. We have hard data, we have assessments that show what our counties' needs are; and the funding that we receive goes toward those programs and what the community sees as the important needs and what we see scientifically as things that will improve their health. I have given you a couple of handouts. One is my testimony, which I'm going to go off of, and the other is a public health fact sheet of some of the things that have been done. I want to supplement that a little bit with some key points. By statute, the local health departments present an annual report which not only shows our activities but shows how we spent the money from this fund. It's available for not only our districts but it's also available to DHHS, who presents a report annually to I think just the Health and Human Services Committee, but it's available to any of you, that reports on what we do and what we've done with our money and how much bang you're getting for the buck. All health departments are governed by a board of health. That, too, is defined by statute, and we have a physician, a dentist, community members, and local officials, usually a county commissioner from each county in our district. Some of us that are rural have added a veterinarian. Some of

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them have added...you know, you can add what you want to, but this is minimum. We have been present for the crisis. I didn't think last year that I would ever ask for rain. We had significant flooding in my district and we dealt with that for six months, and now this year it just flipped. And so you deal with the crises as they come. One thing about public health, you never know what's going to happen when you walk in the door in the morning. So it's...you meet the needs as they show. The current wildfires, we've had districts that have helped with those. The investment in public health provides the greatest opportunity for cost containment in healthy communities. We're about prevention. And we're in place for the Affordable Care Act because things like the obesity epidemic lead to chronic health disease, like diabetes and cardiac disease and things like that. So if we can prevent these things from happening, you know, we're right in line to assist with whatever comes down for the Nebraska Affordable Care Act. We have counties that have leveraged money. We have helped with two new federally qualified health centers that exceed \$650,000 annually. We've had counties that have assisted with hospitals in a box, which are trauma centers, \$868,000 in those communities. We are putting prevention to work of \$5.7 million to promote health promotion. We've provided 15,676 disease investigations in the last three years. This is food-borne illnesses, this is tuberculosis. My time is up so I will entertain any questions that you have. [LR549 LR508]

SENATOR CAMPBELL: Questions for Ms. Oestmann? I have a couple...or one question and a comment. Kay, how many counties in the state, of the 93, supplement this with county appropriations? [LR549 LR508]

KAY OESTMANN: It's getting to be more and more. I can't give you a significant number, but as things come up, you know, the districts are going to the counties for support. The formula that was developed in the original Health Care Cash Fund was done by...the formula was that there were...\$100,000 were awarded to counties that had 30,000 to 50,000 people; \$125,000 to 50,000 to 100,000; and then \$150,000 to counties with 100,000 residents and more. And then, in addition, the money that was left

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from...we currently get \$5.6 million. The money that's left after that is distributed, is distributed on a per capita basis so that it gives some equalization to Omaha and Lincoln and Grand Island rather than Pawnee City, you know, so it makes it more of an equitable way of funding. So some of those counties, you know, I, for instance, have one of the poorest counties in the state in my district. They have a hard time maintaining their roads. Other counties that want more done that have the ability to fund, you know, and you go to those and I, you know, I get some funding from foundations and things like that. It's not just county funding that you get them from. You know, we're creative. We're frugal. We're fiscally responsible. And we, through our assessment, why, we assure that the programs that are being done aren't redundant. We're using our money to the best of our ability. And you know, so, yes, some of them are getting money from...those that were getting money from the counties already still have to get it, so that's in the statute. [LR549 LR508]

SENATOR CAMPBELL: I would...you certainly don't have to do it immediately but if you could get us a rundown... [LR549 LR508]

KAY OESTMANN: We can. [LR549 LR508]

SENATOR CAMPBELL: ...of the counties, and I'm particularly interested in what those are because those counties are using property tax dollars,... [LR549 LR508]

KAY OESTMANN: Okay. [LR549 LR508]

SENATOR CAMPBELL: ...how well I remember, and I would want to know them. And I'm going to make one comment and then we'll go to Senator Conrad's. I also want to say to everyone here, and this is a comment, not a question, when the ACA comes available, part of its stated goal was to provide access to people. A concern of the Health Committee all along has been how well are we prepared in the state for access to healthcare, knowing that we have a work force problem that we need to deal with. It's

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my belief that the county health departments will become a more critical element than they are now in terms of some access and may have to reshape some of their programs and how they serve people to help us with that access. Just a comment. Senator Conrad. [LR549 LR508]

SENATOR CONRAD: Well said, as usual, Senator Campbell. I was just going to ask Kay, just very directly and on the record, one, if we were to move forward with the kind of indiscriminate cuts that are put forward in last year's budget bill, would that put additional pressure on property taxpayers at the county level? [LR549 LR508]

KAY OESTMANN: Well, it depends on what is important to them. [LR549 LR508]

SENATOR CONRAD: Uh-huh. [LR549 LR508]

KAY OESTMANN: We've had 11 years to show how important public health is and what we can do and what direction we're going, that we aren't just about services; that we're about the water they drink and the food they eat, about obesity epidemics and things like that. Yeah, it will put a real...in my area? I'm not sure that, you know, it would...I don't know what direction they would go. I really don't. There are basic services that have to be funded that are dictated by the Legislature to the counties. [LR549 LR508]

SENATOR CONRAD: Uh-huh. [LR549 LR508]

KAY OESTMANN: You can only put so much on property tax. When you have 19,000 in a county,... [LR549 LR508]

SENATOR CONRAD: Uh-huh. [LR549 LR508]

KAY OESTMANN: ...you can only put so much, you know, to the people to have them support. So I don't know. [LR549 LR508]

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SENATOR CONRAD: And as we look at... [LR549 LR508]

KAY OESTMANN: I can hope, but hope isn't a plan, you know? [LR549 LR508]

SENATOR CONRAD: Amen. As we move forward and we prepare to meet the challenges and the stated goals of full implementation for the Affordable Care Act, would it make it easier or harder for Nebraska to meet those access goals if we allowed cuts to public health? If we punch holes in our existing public health infrastructure, as is part of these indiscriminate cuts, is it harder or easier to meet those challenges? [LR549 LR508]

KAY OESTMANN: I would think...I think that would be a big mistake... [LR549 LR508]

SENATOR CONRAD: Okay. [LR549 LR508]

KAY OESTMANN: ...because the very people that the Affordable Care Act addresses are the people that we're already in contact with, are directing to what they need, are managing what they need to survive, you know, or incorporating in what we already do. So I, you know, I guess that would be a no. [LR549 LR508]

SENATOR CONRAD: Great. Thank you. [LR549 LR508]

SENATOR CAMPBELL: Seeing no other questions, thank you, Ms. Oestmann, for coming. [LR549 LR508]

KAY OESTMANN: Thank you. On the record or off the record, I want to thank all of you that have been so supportive to public health, and those of you that are leaving the Legislature at the end of this session, particularly my senator, thank you, Senator Heidemann, for all you've done for us. [LR549 LR508]

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SENATOR CAMPBELL: Thank you, Ms. Oestmann. Our next testifier is Andrea Skolkin. Andrea comes to us from OneWorld Health Center, representing Health Center Association of Nebraska. Good morning. [LR549 LR508]

ANDREA SKOLKIN: (Exhibit 9) Good morning. Good morning, Senators. My name is Andrea Skolkin, A-n-d-r-e-a, Skolkin, S-k-o-l-k-i-n, and I'm pleased to be here today to provide testimony in support of the minority health funds that are part of the Nebraska Health Care Cash Fund. I am the chair of the Health Center Association of Nebraska, which represents Nebraska's six federally qualified health centers. I'm also the chief executive officer of OneWorld Community Health Center, which is located in south Omaha, where 86 percent of our patients are racial and ethnic minorities. As you know, federally qualified health centers are community-based organizations that provide comprehensive primary care and preventive care, including medical, dental, behavioral health, pharmacy, and a number of supports to persons of all ages, backgrounds, and according to their ability to pay. Accompanying me today in the audience is Dr. Richard Brown from Charles Drew Health Center. He is their CEO. Other health centers in Nebraska are located in Norfolk, Columbus, Gering, and Lincoln. In 2011, our centers were the healthcare homes for over 63,000 patients, providing care through 213,000 visits; and 89 percent of our patients had incomes under 200 percent of poverty; 53 percent of them were uninsured; 65 percent were racial and ethnic minorities. All of our health centers are in the process or have attained the status of patient-centered medical homes from NCQA or joint commission. These minority health funds are currently and will continue to be essential to the intensive case management needed for quality of care and the strong healthcare outcomes for our minority patients. In 2001, when the Legislature established the Health Care Cash Fund, minority health funds were set aside for services in OneWorld and Charles Drew Health Centers in Omaha because of the high concentrations of underserved racial and ethnic minorities in their service areas receive funding. Since that time, the two health centers have almost tripled the number of minority patients cared for from almost 10,000 to almost 29,000 in 2011. The intent of

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the Legislature in 2001 has been clearly met and thousands of medically underserved have had healthier lives because of the actions of the Nebraska Legislature. Additionally, thanks to the foresight of the Legislature in designating these minority health funds, Nebraska's other health centers in Columbus, Norfolk, and Lincoln now serve over 13,000 racial and ethnic minority patients and provide care at 21 sites. They partner with their public health departments in applying for funding for their minority populations through the grant portion of the minority health fund. Like Omaha-based health centers, the majority of their patients are also living in poverty and this funding is vitally important to these centers serving their communities' needs as it is for the centers in Omaha. In addition to the fact that large numbers of minorities are able to receive health services due to these funds, additional key services that are of high importance to good healthcare outcomes for poor and minority patients are also funded because of this. Interpretation services, specialized health education, transportation are vital to our minority patients. Many of our patients are refugees and low-income immigrants, people with significant barriers to accessing needed health services. Our centers provide interpretation services for 25 different languages. As an example, and I won't read them all, but Somali, Vietnamese, Dinka, and many others. Last year, 53 percent of patients at our health centers were uninsured, and it's because of the funding through the Health Care Cash Fund that we are able to provide the needed healthcare. Yes, the Affordable Health Care Act is coming and we are hopeful that many of our uninsured patients will have access to peace of mind and health insurance through the Affordable Care Act. But, yes, many of these patients are in poverty and will churn in that system, whether it's Medicaid or buying insurance on the insurance exchange, and still remain uninsured as a result of that, and thus, community health centers will still be providing the needed healthcare from mental health issues to homelessness to meeting all of their medical and other healthcare needs. The Health Care Cash Fund is essential and a key part of the safety net, even with the ACA, and we urge your protection of these dollars that provide direct services and enabling services to medically underserved and vulnerable populations. We thank you for this opportunity to speak with you today about the importance of maintaining these funds, and I'm happy to answer any questions. [LR549



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LR508]

SENATOR CAMPBELL: Questions from the senators? Senator Howard. [LR549 LR508]

SENATOR HOWARD: Thank you. Thank you so much for coming down. You always do such a good job with the testimony. I think one of the important things to point out with your organization especially is that you just don't rely on the state to provide income. You also actively do fund-raising--you just had a great event here a few days ago---... [LR549 LR508]

ANDREA SKOLKIN: Uh-huh. [LR549 LR508]

SENATOR HOWARD: ...so that you are doing your part and more to really make the program a success. If you want to talk about that at all, go right ahead. [LR549 LR508]

ANDREA SKOLKIN: Senator, thank you. I think that would be true for all six of Nebraska's health centers. While we do receive a federal grant, that's only a piece of our budget. We leverage other dollars, from the state dollars to private donor dollars, as well as what patients can pay. We are not free health centers by any stretch of the imagination. So we are masters in making the dollar go far. [LR549 LR508]

SENATOR HOWARD: I would agree with that. [LR549 LR508]

SENATOR CAMPBELL: Senator Conrad. [LR549 LR508]

SENATOR CONRAD: Thank you, Andrea. I agree with Senator Howard's overview. You always do a great job. And I know that I'm very thankful for the fantastic public health center in my district in north Lincoln as well, and I know that they serve our communities and our state very well on a statewide basis. But I wanted to ask you just briefly, because you're so familiar with this population that would be affected by these cuts and

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other healthcare issues, if you could address just generally how this is really a work force issue as well. It's about people's quality of life, it's about healthy lifestyles, it's about wellness, but really what it means for working Nebraskans and their productivity when they're able to have a reliable and stable medical home or access to the programs that you provide. [LR549 LR508]

ANDREA SKOLKIN: Senator, thank you. I think you've kind of answered the question, but the six Nebraska health centers keep people... [LR549 LR508]

SENATOR CONRAD: I have a tendency to do that. (Laugh) [LR549 LR508]

ANDREA SKOLKIN: ...keep people healthy and keep them working in the communities. In the neighborhoods where we serve, particularly the immediate surrounding areas, people are able to go to work and work in those rather many times backbreaking labor jobs that many people don't want, and so they're healthy and can go to work. [LR549 LR508]

SENATOR CONRAD: Thank you. [LR549 LR508]

SENATOR CAMPBELL: Andrea, one last question. We thought we might have another site in Nebraska and I thought we had hoped for Grand Island. Is there any other word on a possible...another site in Nebraska? [LR549 LR508]

ANDREA SKOLKIN: I know that we as an association are always hopeful to have additional sites. I do understand that there may be another round of federal funding that will be issued. What the criteria around it is I'm not certain, but it's not only the resources to establish a health center. As I said, it takes a patchwork, a quilt of many funding sources to keep it operating. A lot of money comes for start-up, but then you have ongoing operating costs. So, yes, there should be one more announcement that we're expecting. [LR549 LR508]

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SENATOR CAMPBELL: Good, because it goes back to the access question and comment I made earlier. [LR549 LR508]

ANDREA SKOLKIN: Uh-huh. [LR549 LR508]

SENATOR CAMPBELL: We need that. Thank you very much... [LR549 LR508]

ANDREA SKOLKIN: Thank you. [LR549 LR508]

SENATOR CAMPBELL: ...for your testimony. Our next testifier is Mr. Walt Radcliffe, who is representing Boys Town and the University of Nebraska. Good morning. [LR549 LR508]

WALT RADCLIFFE: Good morning. My notes. (Laugh) [LR549 LR508]

SENATOR CAMPBELL: That's very hopeful for us, isn't it? (Laughter) [LR549 LR508]

WALT RADCLIFFE: Very. Very helpful, Senator Campbell. Senator Campbell and Senator Heidemann, members of the joint committee, my name is Walter Radcliffe and I'm appearing before you on behalf of the University of Nebraska and Boys Town Research Hospital. I'd like to bring us back to the beginning of the hearing and just state this fund and the programs have...the viability of the fund and the programs themselves have never really been an issue or questioned. We're really here today to talk about the funding and the viability of the fund as far as the money is concerned. Now those of you who were with this from day one or who have been with it at all, when any of these programs, after the initial ones were added, there was always a study done, an analysis done that showed that the fund at that time, given certain assumptions, was sustainable. So no programs were ever added or enhanced without a finding by the Legislature and a showing to the Legislature as to sustainability. So what does that

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prove? It proves that any long-term projections, the only thing we know about them for sure is that they're going to be wrong. (Laughter) And, well, but that's true, I mean, and change is the only certainty. And that's why you're here today and why we've been looking at this for the last two years, because circumstances have changed. And the circumstances that you have now say that, under the analysis by the Investment Council, that if you continue with the assumptions they make that at some point in time the corpus is going to be invaded. Okay, let's not argue or let's not even think about that. Let's think the way this committee has done for the last several years, which is acknowledge changing circumstances and say to yourself what we have to do is look at things on an annual basis or on a periodic basis; and quite frankly, with the economy the way it is now, that becomes an annual basis. And what you did last year was just that. You set up a process to review the status of the fund and you said, furthermore, that there are going to be cuts made in the program unless an affirmative act is taken by the Legislature. I think that's a responsible approach. Both of the clients that I represent are committed to maintaining the corpus of the fund. That's number one. Secondly, like everybody or pretty much everybody in this room, nobody wants to cut, and what I'm saying to you today--and we will have some witnesses that follow me that can speak in economic terms that are as understandable as any economic terms can be--that cuts are not necessary this next year. I'm not saying that at two years, three years from now that there may not be either cuts or additions to the funds, one or the other, but this next year what I would encourage you to do is to continue the program you have in place. Leave the 5 percent cuts. That's because whatever that would be, but extend them; don't let them take effect for another year. Come back next year, look at the economics that are there and make that decision. Now why do that instead of make cuts now? Because I don't think you need to nor do you want to do anything precipitously. If the corpus isn't going to be endangered in the next year, why make cuts in the next year? So with that, I will be happy to try to answer any questions and I would...I'm looking forward to hearing the testimony that follows. [LR549 LR508]

SENATOR CAMPBELL: Senator Krist. [LR549 LR508]

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SENATOR KRIST: I think, as always, Walt, very loud spoke and very well-thought-out. The problem is that if you look at where we've come from in the last five years, we have reduced the amount of the corpus. It has been reduced. We've drawn into our savings, so to speak. So I don't know if you were here for my analogy, my pilot analogy earlier... [LR549 LR508]

WALT RADCLIFFE: Your pilot analogy made as much sense to me as the other analogies did, Senator, yeah. (Laughter) [LR549 LR508]

SENATOR KRIST: Okay. Well, let me try to make more sense of it. We have... [LR549 LR508]

WALT RADCLIFFE: (Laugh) No, I mean it did make sense. [LR549 LR508]

SENATOR KRIST: Yeah. We have a corpus that we want to preserve, I think, and that's the sustainable part of the discussion. I don't know if you want to speak to it now, but I'd be interested in hearing whether the university, your clients, are willing to look at a snapshot from behind and a spending-appropriate level in a biennium that maintains that corpus on a fiscal basis. [LR549 LR508]

WALT RADCLIFFE: I haven't talked to them about it, but I've never known them to say no to try and to examine what's out there. I think the biggest problem you have is to say what's going to happen ten years from now. I mean, hey, if you can tell me what's going to happen ten years from now or five years from now with the economy, none of us should be in this room this afternoon. We'll go down and borrow some money and walk away. I mean the way things are right now, you've got to take it a step at a time, which is a year at a time. There's nothing the matter with doing what you're saying, Senator Krist, and I think it would be a good idea too. I mean if we did not believe that we could sustain the corpus for the next year, we would be here with a different testimony, talking

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about how that could be addressed, because that is our commitment. I'll be honest with you, I had a rather lengthy conversation with both my clients about their position to want to maintain the corpus, because I said the reality of it is if times really get tough the Legislature is going to come in and reallocate that money, I mean if times really get tough, because it isn't a trust fund and we don't have any guarantee. But I learned a long time ago you sing the tune that your client gave you, which is they are very committed to maintaining the corpus. [LR549 LR508]

SENATOR KRIST: I think I'd like to make one more comment and that is when I looked into this in '09-10 time frame, I read many of the reports that are required, and you do it on a rotating basis. And I was alarmed at some of the studies that were granted within different institutions--whether or not a male or female has a larger propensity to be obese in a particular structure--and the money that we spent on that study. It's alarming. Once... [LR549 LR508]

WALT RADCLIFFE: I remember your comments at the time, Senator. [LR549 LR508]

SENATOR KRIST: Yeah. Well, I'm still there. So as we move forward, it's alarming that when we do spend money and we put that...particularly the biomedical research, we have no control over what's being done. And in some cases I think that is a concern. On the other side of it, I understand that a sustainable rate of money invested in biomedical research means that we can go forward in different areas, and that has never come to light more clearly than the last few months. But I think that it's...if it is time...if we again spend money out of the corpus, it would be time to do something, and it's time to come to the table, everyone come to the table. [LR549 LR508]

WALT RADCLIFFE: Well, Senator, clearly the Legislature in this area has two distinct areas of oversight. One is on the fiscal side, which really we're talking about here, and the second one is on the program side. And very honestly, I've sat through...well, maybe not sat through but I've paid attention to every hearing for the last 11 years on this, and

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very honestly, there has not been a lot of conversation about the programs themselves other than presentation as to what they're doing. I should say there hasn't been much critique or much of a critique of the programs themselves. Yours is one that I do specifically recall... [LR549 LR508]

SENATOR KRIST: And to that point,... [LR549 LR508]

WALT RADCLIFFE: ...I think it's a thing you should do. [LR549 LR508]

SENATOR KRIST: And to that point, when biomedical research money is given to biomedical research and we review, if we reviewed the line-item budget on how that money was spent, there's some recruiting efforts, there's some other efforts in there that in good times there's plenty of money to go around; in not-so-good times or when we're trying to be conscionable about maintaining the corpus, we should discuss those areas. So I bring that up because it's not just a matter of appropriating. It's appropriating and applying the oversight, as you suggest, so. [LR549 LR508]

WALT RADCLIFFE: I agree. And I'm sure if you get to a point where you're making cuts, those are the kinds of things that you would be looking at. I just don't think cuts are necessary this next year and I'm confident we have the documentation to back that conclusion up. [LR549 LR508]

SENATOR KRIST: Thank you. [LR549 LR508]

SENATOR CAMPBELL: Not only have we not evaluated the programs but, we're going to go back to my earlier point, we haven't reviewed the priorities either. [LR549 LR508]

WALT RADCLIFFE: Oh, absolutely. And, Senator Campbell, when this was established there were discussions about, just as there were when the lottery was set up way back when, about putting in, for lack of a better word--these are my words--sunset dates on

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the programs. In other words, wipe the slate clean, come back, start over again. Well, the people at the table weren't going to bid against themselves... [LR549 LR508]

SENATOR CAMPBELL: Yeah. [LR549 LR508]

WALT RADCLIFFE: ...so naturally that wasn't done. [LR549 LR508]

SENATOR CAMPBELL: Perfectly understandable. Thank you very much, Mr. Radcliffe. [LR549 LR508]

WALT RADCLIFFE: Thank you. [LR549 LR508]

SENATOR CAMPBELL: Our next testifier is Tom Murray from Creighton. Mr. Murray, I would certainly like to talk about basketball with you, but I don't think that's why you're here today. [LR549 LR508]

TOM MURRAY: That's correct, but I'll be happy to, at lunch, talk about basketball with you. That would be fine. [LR549 LR508]

SENATOR CAMPBELL: Okay. [LR549 LR508]

TOM MURRAY: (Exhibit 10) Good morning, Senator Campbell, Senator Heidemann, members of the Health and Human Services and Appropriations Committees. I'm Tom Murray, the associate vice president for health sciences research and the chair of the Department of Pharmacology at Creighton University's School of Medicine. And today I'm here representing the four institutions that receive the tobacco settlement funds to conduct biomedical research, to discuss the impact of these funds on the lives of Nebraskans and Nebraska's economy. And those institutions, as you've already heard, are Creighton University School of Medicine, the University of Nebraska-Lincoln, Boys Town National Research Hospital, and the University of Nebraska Medical Center. The



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Nebraska Tobacco Settlement Biomedical Research Development Fund continues to be an invaluable, irreplaceable source of support for biomedical research enterprise in the state of Nebraska. An investment in biomedical research pays a lifetime of dividends in better health and quality of life for Nebraskans. And I add to the comments that you've already heard this morning in that we all applaud Nebraska legislators for their insight and vision in assigning tobacco funds for biomedical research, making ours the only state in the nation focusing these funds on helping people live healthier lives. The stable, long-term funding allows Nebraska research institutions to attract world-class researchers who come to the state to share their talents and discoveries. Research also fuels Nebraska's economy, providing jobs, growth, and importantly, brain gain to the state. I myself moved to Nebraska in large part due to the progressive use of tobacco settlement funds to support research in this state. Between 2002 and 2011, every \$1 million in Nebraska tobacco settlement research funding resulted in \$6.1 million in new National Institutes of Health, the NIH, grant awards to the state of Nebraska. This has contributed to Nebraska's 106 percent gain in scientific research jobs compared to the U.S. growth over the same period of only 64 percent. Based on the 2011 NIH awards to researchers in Nebraska, adoption of a 5 percent cut would likely reduce new NIH funding into the \$4 million to \$5 million range per year in the state. Boys Town National Research Hospital, Creighton University, the University of Nebraska-Lincoln, and the University of Nebraska Medical Center are using tobacco funds as a springboard to increase funding from federal agencies such as the NIH and other organizations. The resulting research leads to major medical breakthroughs, medical advances, and discoveries of cures. At Creighton these funds have played a role in the outstanding progress of the Hereditary Cancer Program led by Dr. Henry Lynch. Dr. Lynch is widely recognized as one of the world's best-known clinical geneticists and is responsible for the description of discrete cancer family syndromes, including the one named after him, the Lynch Syndrome. With early detection, the Lynch Syndrome and other colon cancers are curable in 90 percent of patients. Dr. Lynch has identified approximately 900 families in the state of Nebraska that are carriers of Lynch Syndrome genes. There are 15,000 to 20,000 people with epilepsy in the state of Nebraska. During the past

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year, a recently recruited Creighton researcher received NIH funding to better understand the remarkable effectiveness of the ketogenic diet in the treatment of epilepsy. Senator Krist was able to come and visit Creighton and visited this laboratory. Additionally, just yesterday, a Creighton faculty member supported by the Tobacco Settlement Fund published a new study demonstrating potential neural repair therapy to improve recovery from stroke, and this is currently a nontreatable condition. At the University of Nebraska Medical Center in the last year, the Tobacco Settlement Funds have been used to fund projects aimed at improving farm safety and health, particularly hearing loss and lung disease; identifying early markers for the diagnosis of pancreatic cancer; understanding how normal aging affects how we learn; and understanding the genetics of cleft lip and palate. Tobacco settlement biomedical research funding has improved both the human and economic health of the state of Nebraska, and we support the Legislature's efforts to ensure the long-term availability of this funding. With that, I'll close and thank you for the opportunity. And I'd be happy to answer any questions. [LR549 LR508]

SENATOR CAMPBELL: Thank you. Senator Gloor. [LR549 LR508]

SENATOR GLOOR: Thank you, Senator Campbell. Dr. Murray, can you answer my question about how the decision is made and how the formula works to distribute that 60 percent? [LR549 LR508]

TOM MURRAY: Yes. The 40 percent of the formula is fixed. The 60 percent is based on the total NIH funding that comes to the state and the relative proportion of that NIH funding that each institution generates. The 60/40 split on that 40 of the fixed amount was in the original legislation and I presume that was based on the relative sizes of the institutions, and that's about right in terms of the ratio of that funding. [LR549 LR508]

SENATOR GLOOR: But the 60 percent seems to me to have been set up to reward those institutions or that institution that does the best job of trying to get that increased

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funding... [LR549 LR508]

TOM MURRAY: Yeah. [LR549 LR508]

SENATOR GLOOR: ...from the National Institutes of Health. [LR549 LR508]

TOM MURRAY: Yeah. I think that's correct. And this actually gets back to Senator Krist's point. That formula I think is healthy. I think it provides an incentive for institutions to do well and to be very thoughtful and careful stewards of this very precious resource. And so my report card, for example, at Creighton, as associate vice president for health sciences research, is what's the return on the investment and our expenditures of this fund. And so I'm very careful in how we allocate this funding, either in the recruitment of a new faculty, seed grant programs, and in bridge funding to make sure we get those dollars in the right hands that are going to do productive, scholarly research that not only will...likely to further our understanding of disease but also generate new NIH dollars that will come back to the state. [LR549 LR508]

SENATOR GLOOR: But it's also an aha for me that the Legislature needs to be aware of the fact that this is an example of decisions we may make for allocations of funds that might go to one institution or the other have the potential to tip the balance of who might have an opportunity to move forward a little bit in securing those grants. [LR549 LR508]

TOM MURRAY: Uh-huh. [LR549 LR508]

SENATOR GLOOR: I mean I like the competitiveness of it,... [LR549 LR508]

TOM MURRAY: Yeah. [LR549 LR508]

SENATOR GLOOR: ...but I also have to recognize the fact that that competitiveness is something that can be influenced, even if slightly, by decisions sometimes made by this

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institution. That's a commentary. [LR549 LR508]

SENATOR CAMPBELL: Senator Krist. [LR549 LR508]

SENATOR KRIST: I'd like to follow up on that for my colleagues and for the record. I've spent some time visiting the institutions and I'm convinced that what Creighton does in terms of prioritizing the money that's spent and going out and finding the additional funds to grow the money, as in the biggest bang for your buck in terms of theory, is indeed commendable, absolutely. I have no issue with what's there. In fact, if I compare reports that I've seen in the last couple years from the one that was provided to me by your lobbyist in 2009-2010, what you're spending your money on is much more focused and you're better stewards of the money in my--not that that makes any difference--but that's my opinion. My question, though, goes back...or my point. It's not a question, and I'll ask you to comment on it. My point goes back to Senator Campbell's insistence, and rightfully so, that we don't know where all the money is coming from going into the institutions or the programs, because on one hand we're funding the University of Nebraska, the Medical Center and all of their programs in one budget or another, and on the other hand we're not doing anything for you in terms of budgetary funding. You have to...and the old sales term, "you have to eat what you kill," because that's the only money you're going to get from us. So in the balance of this, I agree with Senator Gloor. It's good that there is competitiveness out there and that is something that we need to insist on, because that keeps you hungry. [LR549 LR508]

TOM MURRAY: Uh-huh. [LR549 LR508]

SENATOR KRIST: But on the other hand, I want to know in terms of the budget and how it's being spent and also what the other money is going into the general budget that's being used in the same way. My point being, stem cell research is being funded on one side, biomedical research on the other side. So that's really a total amount of money that we're spending on research across and we're funding different institutions at

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different levels, so...to the point. And you can comment on that if you want to but that's my rants for the day. [LR549 LR508]

TOM MURRAY: Well, I think my only comment would be that, being at Creighton, this is the life at a private institution. You know, you don't get states to support. And we might be a little bit leaner and a little bit hungrier, but it influences my life because I regard this funding as a very precious resource and we're very careful how we spend it. [LR549 LR508]

SENATOR KRIST: Thank you. [LR549 LR508]

SENATOR CAMPBELL: Any other questions? Senator Nelson. [LR549 LR508]

SENATOR NELSON: Thank you, Senator Campbell. Thank you, Dr. Murray. Every \$1 million in settlement funding resulted in \$6.1 million in NIH grants. How does this work? Is this basically through recruitment of people that bring grants with them or could you kind of elaborate on how that works? [LR549 LR508]

TOM MURRAY: Sure, I'd be happy to. It's actually both, and the Creighton model has been that we use these monies to recruit new junior faculty, young faculty that are just coming out of postdoctoral fellowships at good research institutions across the United States. We bring them in and we mentor them, use these monies to allow them to get their research laboratories up and running. We call it start-up funds. And those dollars that we spend on start-up funds and seed grant programs then lead to successful competitive grant applications that go to the federal government where national peer review is the standard, the worldwide model for, you know, handling grant allotment; and then they are awarded these NIH grants, and that's where that return on the investment comes. So I might...Dr. Kristina Simeone, who's studying epilepsy, we spent about \$200,000 on her start-up package; and she came in, and within 12 months generated a \$2.7 million NIH grant. [LR549 LR508]

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SENATOR NELSON: Dr. Lynch has been there for a long time. [LR549 LR508]

TOM MURRAY: Yes, he has. [LR549 LR508]

SENATOR NELSON: Does he get grants also? And do you give him money for development or does he go more directly to NIH? [LR549 LR508]

TOM MURRAY: He still is a active grant writer and awardee. He currently has an active grant from the Department of Defense. And, yes, we do use these funds to support Dr. Lynch. He has a very large, 40-year history of a database, the cancer registry that we help him maintain. He also has a biospecimen tissue bank in his facility and we help him maintain that as well. [LR549 LR508]

SENATOR NELSON: All right. Thank you. [LR549 LR508]

TOM MURRAY: Yes. [LR549 LR508]

SENATOR CAMPBELL: Any other questions? Thank you, Dr. Murray. [LR549 LR508]

TOM MURRAY: Thank you. [LR549 LR508]

SENATOR CAMPBELL: Our last listed testifier is Ernie Goss, also from Creighton University. And we have several handouts, do we not, sir? [LR549 LR508]

ERNIE GOSS: (Exhibits 11 and 12) Yes. I've distributed two handouts there. Thank you, Senator Campbell, Senator Heidemann, and members of the joint meeting of the Appropriations and Health and Human Services Committee. My name is Ernie Goss, that's E-r-n-i-e G-o-s-s. And as Dr. Murray has indicated, historically, at least over the period of 2002 to 2012, the fund, the distributions to the Research Consortium--that's, of

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course, as identified by Dr. Murray--has generated \$6.11 for every \$1.00. And as Dr. Murray also indicated, scientific research jobs expanded by 106 percent in Nebraska, by a much smaller 63.8 percent in the U.S., and I would attribute at least some of that gain to the distributions from the tobacco settlement proceeds. Now if you turn to my second...my second...actually it's the third page. Now what I'm here to address is the solvency of the trust fund but also the tax impact of distributions from the trust fund. Now scenario one, as you see before you, that's adherence to LB969; that's with the cuts. Now as you see in column one is the fiscal year, column two is the settlement additions. Now those are drawn from Hewitt and Ennis. That's the consultant that's been identified earlier. I just took those as is. The third column is distributions as dictated by LB969. Now the fourth column is what I'll call the benchmark rate of return. Now that's the historical rate of return that you would have achieved had you invested in the Standard and Poor's 500, that's a spider, adjusted for dividends and administrative costs in 1993 to 2012. That's 8.1 percent. Okay, that's I think important. The fifth column is the Investment Council's rate of return, which has been identified earlier which is 6.56 percent rate of return, annual compounded. The sixth column is the...I'm sorry, that's the sixth column there is the trust fund balance at the end of the fiscal year, assuming the benchmark, and that would be number (6), number (7) is assuming the Investment Council rate of return. And as you see, at the end of fiscal year '23, the balance is greater using both assumptions. Under the assumption of the benchmark, that's 8.1 percent rate of return; your trust fund balance is going to be \$499.6 million. If you use the Investment Council's smaller rate of return of 6.56 percent, you get \$455.2 million. Now turning to the next page, now assuming that we don't go with the cuts in LB969, using everything else the same, in other words assuming that we go to the distributions as they existed last year, okay--and go on with that distribution--and then growing it by .8 percent. Now where did I get the .8 of 1 percent? That's the historical growth in the distributions of the fund between 2002 and 2012. That's the rate of return. If you look at the bottom, again looking at the bottom of column six and seven, you see that the trust fund balance is a bit lower under the benchmark of about \$376.9 million compared to the beginning balance of \$379.1 million. Now if you look at the final column, the

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Investment Council's 6.56 percent rate of return, you look at the balance, it's \$368 million at the end. So that's the most pessimistic view and that's only 3 percent down from the beginning balance. So that's 3 percent down using the Investment Council's rate of return of 6.56 percent. And then if you look at the next slide, you'll see the tax impacts of the distributions, and I'll go through those quickly. These are the tax impacts over the 2002-2011, \$1.6 billion; wages and salaries, \$574 million; \$106 million; and 1,286 jobs. And I'll flip to my final slide, the final slide. Adherence to LB969 cuts will result in a loss of \$247,000 in state and local taxes yearly, a loss in NIH funding of \$4.3 million annually, and growing the trust fund up. And finally, I'd say that it reduces the rate of return from trust fund dollars. The rate of return from trust dollars has been about 38.5 percent. Now where do I get that? Taxes gained from the trust fund distributions of about \$49 million, divided by the distributions only to the Research Consortium of \$128 million; 49 divided by 128 is a rate of return of about 38.5 percent from trust fund distributions only to the Research Consortium. So thank you and I'll take questions now. [LR549 LR508]

SENATOR CAMPBELL: Senator Krist, then we'll come around. [LR549 LR508]

SENATOR KRIST: Given your projections...and I have no reason to doubt. You have a wonderful reputation, Dr. Goss. But given your projections, you're suggesting that over here we lose tax base, we lose investment potential; over here we're talking about sustaining the corpus. So the two of them weighing out, I understand that logic. At some point though, as this goes down, if we don't add to that, so we could take money, you're saying, potentially out of the additional here in General Funds and infuse it back on the other side, should we have to, but your conclusion is that we don't need to take any action at this point. [LR549 LR508]

ERNIE GOSS: That's correct and that...and now I'm looking at ten years and I'm looking at the projections based on the Hewitt and Ennis and also the Investment Council. [LR549 LR508]



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SENATOR KRIST: So that would be not adhering to the current piece of legislation. So it would be... [LR549 LR508]

ERNIE GOSS: Correct. [LR549 LR508]

SENATOR KRIST: ...then my natural assumption at that point is if we don't allow...if we let that statute stay in place but we do the opposite of the Congress, we vote not to take the 5 percent this year on a yearly basis, is that a better course, if you understand the question? [LR549 LR508]

ERNIE GOSS: I do. [LR549 LR508]

SENATOR KRIST: Is that a better course of action, based upon what we're seeing? [LR549 LR508]

ERNIE GOSS: In my judgment, the better course of action, based upon the numbers that I'm seeing and the rate of growth that we're seeing on investments, now that's the S&P 500,... [LR549 LR508]

SENATOR KRIST: Right. [LR549 LR508]

ERNIE GOSS: ...and what we're...and as I look out over the next few years, I think the loss of funding, NIH funding potentially, the loss of tax collections makes that, in my judgment, if I were in your position, I would probably not go with those cuts. I would go with the current spending levels...or distribution levels, I should say. [LR549 LR508]

SENATOR KRIST: Thank you, sir. [LR549 LR508]

SENATOR CAMPBELL: Senator Gloor. [LR549 LR508]

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SENATOR GLOOR: Thank you, Senator Campbell. I need to ask the question of diminishing return. A 38 percent rate of return is great, but at some point in time... [LR549 LR508]

ERNIE GOSS: Uh-huh. [LR549 LR508]

SENATOR GLOOR: ...I mean hypothetically we could just continue to fund money and money and money into research. At that rate of return, we'll drive the whole economy. We can forget about agriculture and we'll just become a research state. But at some point in time, that number doesn't work anymore. And so my question to you is, where is the reasonableness...as it relates to that rate of return, where is the reasonableness in that rate of return? [LR549 LR508]

ERNIE GOSS: That's a very good question and it depends on Dr. Murray and his group, how successful they are with getting NIH funding. If that should diminish, and I can't comment to their success, but the numbers show that there's been huge growth in the NIH funding beginning in 2002 when this fund distributions were made, that there's been a heck of an increase. Now one could argue perhaps on the other side that if you throw in another \$15 million, or whatever, that the NIH funding might not go up as much as what we've seen historically. But thus far I would argue the data show that your distributions have been very prudently used and that the distribution...now I'm only looking at the NIH funding. There are other funding that's been achieved by the other groups that have been identified earlier but also with the Research Consortium. I'm only looking at the NIH funding. There have been some other achievements as well. But to your point, that could well be that there could be diminishing returns. [LR549 LR508]

SENATOR GLOOR: Well, and I flash back to my previous life where I'd be approached by, say, a physician group that would say if we buy this piece of equipment there's a 38 percent rate of return as it relates to surgical procedures. But at some point in time, as

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you grow that, you have capital expense related to more facilities to be able to handle it; you have staffing expense related to adding additional staff, and that lends itself to a whole new host of expenses and problems. And so I just make that comment in that I don't doubt the numbers but I also know there is a certain point where there is a diminished rate of return for any venture that you get into or any program or research entity that you get into. [LR549 LR508]

ERNIE GOSS: I certainly agree, and I think historically the data again show a pretty good rate of return and use of the funds in achievement of National Institutes of Health funding. If I were...now to be on the...I know Jim Cavanaugh is probably going to shake when I say this back there but... [LR549 LR508]

SENATOR GLOOR: We'll watch him. [LR549 LR508]

ERNIE GOSS: ...(laugh) but, you know, if I'm looking at where are the risks, and we all have to look at risk, I mean would be, well, what happens if the Tobacco Trust Fund...the Tobacco Settlement Funds changed dramatically? But again, I'm going on the Hewitt estimates and they've been fairly stable. I was...now I looked at them and looked historically, and they've, even though I suspected they would show more volatility, they haven't been that volatile. They've been fairly stable and it tends to be a pretty good source of funding for this endowment fund. [LR549 LR508]

SENATOR GLOOR: Well, I can reassure you Mr. Cavanaugh won't be shaking because you segued into a question I was going to ask you anyway along those lines. Some of the information I've gotten since we started this hearing about the annual trust fund settlement is that the legislation we passed doesn't go into effect until January 2013. And the Attorney General's Office and the enforcement at that point in time, their feeling is that there's a strong likelihood that there won't be a reduction in funds from here on out because we've strengthened their hand considerably, in addition to which, and although I don't have the exact number, there's been a withhold of that \$5 million by the

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big four. And I don't know whether that's three, four, five years, but we could be talking about an additional \$15 million, \$10 million, \$20 million. I'm not sure where that dollar amount is right now, but those funds would then be infused back into the trust. So we could be talking about a cash payback in addition to reestablishing those annual amounts. So my question to you is, with those additional monies coming back in, does that change some of your projections even more or are those dollar amounts small enough so that they may not affect those projections? [LR549 LR508]

ERNIE GOSS: They would. We're talking potentially \$5 million and that would. [LR549 LR508]

SENATOR GLOOR: And a lump sum from what's been withheld over the past three, four, five years. [LR549 LR508]

ERNIE GOSS: Correct. And with that lump sum distribution, that of course would fatten the endowment fund and make even my more pessimistic projections pretty positive... [LR549 LR508]

SENATOR GLOOR: Okay. [LR549 LR508]

ERNIE GOSS: ...at the end of ten years. And I think that's the requirement is to look out ten years and examine it. And again, the problem we face and all economists face is looking out. We're dealing with what we just saw over the last three years and what we're about to see over the next year and expecting that to be what we see over the next ten years, and that's obviously risky. And we, as Mr. Radcliffe indicated, we just don't know and no economist does know. But looking back over, since 1993, an 8.1 percent rate of return is...that's...you can just put it there, forget about it. If you put it in the spiders, that's the S&P 500 ETF, exchange-traded fund, you would have earned 8.1 percent. That's...now the actively traded funds actually earned in some cases less than that, so that's not...and the Investment Council's estimate is 6.56 from their

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sustainability analysis. That's the rate I used and that's obviously less. [LR549 LR508]

SENATOR GLOOR: Thank you. [LR549 LR508]

ERNIE GOSS: Thank you. [LR549 LR508]

SENATOR CAMPBELL: Questions from Appropriations? Any questions? Thank you, Mr. Goss, very much for your materials. We have them both in a PowerPoint and this supplemental booklet. [LR549 LR508]

ERNIE GOSS: Yes, and that's the details behind the estimates in the PowerPoint, and I thank you very much for allowing me to testify. Thank you. [LR549 LR508]

SENATOR CAMPBELL: Thank you. Mr. Cavanaugh, oh, Mr. Cavanaugh, are you testifying? [LR549 LR508]

JIM CAVANAUGH: No, I'm not, Senator. Thank you. [LR549 LR508]

SENATOR CAMPBELL: Oh, okay. Well, they kept alluding to you and I didn't want to leave you out. (Laughter) [LR549 LR508]

JIM CAVANAUGH: I appreciate that. Thank you. [LR549 LR508]

SENATOR CAMPBELL: Is there anyone else in the hearing room who wishes to testify today? Seeing none, we will officially close the hearing. [LR549 LR508]