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Transcriber's Office

Appropriations Committee  
January 17, 2017

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[LB22 LB23 LB24]

The Committee on Appropriations met at 10:00 a.m. on Tuesday, January 17, 2017, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB22, LB23, and LB24. Senators present: John Stinner, Chairperson; Kate Bolz, Vice Chairperson; Robert Hilkemann; Bill Kintner; John Kuehn; Mike McDonnell; Tony Vargas; Dan Watermeier; and Anna Wishart. Senators absent: None.

SENATOR STINNER: Welcome to the Appropriations Committee hearing. My name is John Stinner. I represent District 48, which is Scotts Bluff County, and I serve as the Chairman of the Appropriations Committee. Today and all during this process you may see members come and go. Don't take offense to that. They have...there are other hearings that are starting. Even myself, I have to go to Banking this afternoon sometime. Don't take it as me being inattentive or the other members being inattentive. To better facilitate today's proceedings, I ask you to abide by the following procedures. Please silence or turn off your cell phones. Move to the reserve chairs that are already up here for the testifying. Order of testimony: We'll have the introducer introduce it and I'll talk about that later. Testifiers sign in. Hand your green sign-in sheets to the committee clerk when you come up to testify. Spell your first name and your last name for the record before you testify. Be concise. I may request a five-minute limitation on testimony. If you will not be testifying today at the microphone but want to go on record as having a position on a bill being heard today, there are white sign-in sheets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. Written materials may be distributed to committee members as exhibits while testimony is being offered. Hand them to the page for distribution to the committee and the staff when you come up to testify. We need ten copies. If you have written testimony and don't have ten copies, please raise your hand and the page will make ten copies for you. On my immediate right is Mike Calvert, our Fiscal Analyst. To my left is the committee clerk, Jennifer Svehla. And I will have, starting on my left, each senator introduce themselves.

SENATOR KINTNER: Hi. I'm Bill Kintner, Legislative District 2.

SENATOR McDONNELL: Mike McDonnell, LD5, south Omaha.

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

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

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SENATOR BOLZ: Senator Kate Bolz, District 29, south-central Lincoln.

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

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

SENATOR WATERMEIER: Dan Watermeier from Syracuse, District 1, southeast Nebraska.

SENATOR STINNER: And this morning we have Bobby Larsen, who is our page. He's from Papillion. We will begin our hearing today on LB22, LB23, LB24, as introduced by the Speaker at the request of the Governor. These bills have been requested by the Governor to be expedited; thus, these hearings are a change from the committee's typical calendar. I appreciate the efforts of those who have gotten us to this point so quickly. I would ask that the Governor's representative step forward to introduce all three bills, but before he starts I should point out that this morning's hearing is intended to give opportunity for the general comments on these bills. Therefore, as published in the hearing notice, we will open testimony on specific fund transfers contained in Section 148 of LB22 and the funds transfer contained in LB23. The hearing schedule for this afternoon and tomorrow would be devoted to the specific recommendations by agencies as published in the Journal. We will follow the order for each time period as posted outside the hearing room. Mr. Olig...I'm going to mess up your name. Oligmiller (phonetically) or Oligmuler (phonetically), which one would you like? [LB22 LB23 LB24]

GERRY OLIGMUELLER: Oligmueller is fine. [LB22 LB23 LB24]

SENATOR STINNER: Either way? Okay. [LB22 LB23 LB24]

GERRY OLIGMUELLER: (Exhibits 1 and 2) Any one works fine, Mr. Chairman. Let's see how I pronounce it actually as we get going. (Laughter) Chairman Stinner and members of the Appropriations Committee, for the record, my name is Gerry Oligmueller. My name is spelled G-e-r-r-y O-l-i-g-m-u-e-l-l-e-r. I am the State Budget Administrator and Administrator of the Department of Administrative Services--Budget Division. I'm appearing here today on behalf of Governor Ricketts in support of LB22, LB23, and LB24. These three legislative bills contain the Governor's recommendations for budget adjustments to the current FY 2016-17 budget, the second fiscal year of the 2015-2017 biennium. The contents of this legislation have been summarized and presented to you in a printed publication entitled "Governor's Budget Recommendations, FY 2016-17 Budget Adjustments," dated January 5, 2017. I provided a copy of that printed publication along with my prepared remarks to the committee clerk for your record. In addition, we have posted this publication on the State Budget Division Web site. The

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Governor asked the Speaker of the Legislature to introduce these three legislative bills on January 5, 2017, as a matter of priority and first order of business in addressing the fiscal challenge presented by the current tax receipt shortfall and revised tax receipt forecast. There are less than six months remaining in the current FY 2016-17. Expedited enactment of FY 2016-17 budget adjustments will provide a foundation for the next biennial budget and ensure that state agencies operate with the necessary fiscal restraint for the remainder of the current fiscal year. The Governor appreciates your prompt consideration of LB22, LB23, and LB24. During the fiscal...during the first year, FY 2015-16, of the current biennium, actual tax receipts were \$95 million below the certified net General Fund tax receipt forecast, upon which the budget was based. The Nebraska Economic Forecasting Advisory Board, in October 2016, revised the forecast for the current or second year of the biennium, FY 2016-17, downward by \$172 million. These changes in actual and estimated tax receipts total \$267 million. The Governor's recommendations contained in LB22, LB23, and LB24 include specific adjustments to the current FY 2016-17 budget. These adjustments total \$276 million and include: \$77.5 million in FY 2016-17 reappropriation reductions; \$93.8 million in FY 2016-17 appropriation reductions or new appropriations as we sometimes refer to them; \$20 million in FY 2016-17 appropriation increases in response to specific deficit requests; \$21.5 million in specific fund transfers to the General Fund; \$92 million Cash Reserve transfer to the General Fund; and \$11.2 million additional revenue anticipated from on-line sales. The Governor's recommended adjustments exclude approximately 70 percent of the General Fund state budget from an across-the-board reduction. Appropriations for TEEOSA K-12 school aid and the Department of Corrections are not reduced. The Governor's recommendations provide for a 3 percent minimum reserve of \$263 million in the General Fund and maintain a \$500 million unobligated balance in the Cash Reserve Fund. The Department of Revenue continues to report lagging tax receipts since preparation of the Governor's budget recommendations. While the Nebraska Economic Forecasting Advisory Board is scheduled to update its tax receipt forecasts in late February and again in April, prior to the Legislature's enactment of the 2017-19 biennial budget, it is apparent that our current experience and the Forecast Board's October 2016 forecast warrant the budget adjustments recommended in LB22, LB23, and LB24. Thank you for your prompt consideration of these legislative bills. The Governor, his staff and agency directors remain available to assist if necessary in your further consideration of these important matters. Are there any questions? [LB22 LB23 LB24]

SENATOR STINNER: Questions? Senator Bolz. [LB22 LB23 LB24]

SENATOR BOLZ: Thank you, Chairman Stinner. I have two questions for you. [LB22 LB23 LB24]

GERRY OLIGMUELLER: Okay. [LB22 LB23 LB24]

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SENATOR BOLZ: The first is maybe a topic for our discussion. In putting together these recommendations, part of the way we got here was the Governor and you, using your authority to hold back or to allocate dollars in a way that is not typical, right, in a way that withheld--and I know you don't prefer that term--used your fiscal authority to disburse the amount that you thought was appropriate. That strategy, I guess my question is, are we setting a precedent and is that how we expect to do business in the future? Or is this a one-time, unique set of circumstances and we don't expect those allocations to flow out in that way in the future unless absolutely necessary? [LB22 LB23 LB24]

GERRY OLIGMUELLER: Well, the law provides for the State Budget Administrator to, once appropriations are established, to administer the budget through an allotment process, okay? And so typically that, I suppose absent a fiscal challenge, would occur on a 25 percent per quarter basis. And obviously, in the case of most appropriations, there isn't a need for, nor would it be a particularly good practice, to make available any more than that on a quarter-by-quarter basis. There are certain appropriations, for example, for retirement, I think, that would require a full allotment to make that appropriation available the first month of the fiscal year. So there are some exceptions to that. We have in the past reduced the quarterly allotment, particularly as we've approached the end of a fiscal year, and you know a fiscal challenge has become apparent. So I don't know that it would be precedent-setting necessarily. The approach we used was to allot 24 percent, or 1 percent less than would have been typical, during that first quarter, and then 1 percent less each subsequent quarter. And that, I think, sort of preserves the prerogative of the Legislature, in particular in a challenging fiscal situation, to see that we're managing the state budget, exercising fiscal restraint, and preserving the prerogative of the Legislature if they so choose to reduce appropriations. So that's the allotment process, I guess, in a story fashion. [LB22 LB23 LB24]

SENATOR BOLZ: Sure. Well, I appreciate the discussion. And in part for the record, I want there to be some record that there was dialogue about this. I think if we discover that that allocation process was contrary to what we had thought was most important as an Appropriations Committee, I think that would be an important thing for us to discuss from a legislative perspective. I'm going to switch gears and ask you one more question and that is, you know, this deficit budget bill that I've gone through requests belt tightening from almost every agency. We're transferring cash funds. We're looking under every rock (laugh) and in every bush for funds. And I thought it was curious that the Department of Roads, which is a fairly large agency with a fairly large budget allocation, wasn't in any of the deficit budget discussion, despite the fact that we did have a sizable Cash Reserve Fund transfer the last legislative session. And I wondered if you could speak as to why the Department of Roads isn't in LB22. [LB22 LB23 LB24]

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GERRY OLIGMUELLER: Well, there really are no non-General Fund budget reductions proposed in any of LB22, LB23, or LB24. So the focus was on General Fund appropriated agencies. And that said, Department of Roads continues to be, obviously, a priority of the Governor and he's not advancing any specific recommendations regarding reductions to the Department of Roads. [LB22 LB23 LB24]

SENATOR BOLZ: To your knowledge, has the Transportation Infrastructure Bank funds, have those funds been fully allocated? Have they all been marked out and spent on...or at least obligated to specific purposes? [LB22 LB23 LB24]

GERRY OLIGMUELLER: Well, the \$50 million transfer from the Cash Reserve Fund has occurred to the Department of Roads and they, as I understand it, do have plans for the use of those appropriations along with the gas tax revenues as a consequence of, I believe it was, LB610, if I'm not mistaken, of a couple years ago. So, yeah, they have laid plans for use of those funds. [LB22 LB23 LB24]

SENATOR BOLZ: They have plans? Okay. Thank you, Gerry. Sorry, thank you. [LB22 LB23 LB24]

GERRY OLIGMUELLER: Yeah. No, that's great. [LB22 LB23 LB24]

SENATOR BOLZ: Thank you, Mr. Oligmueller. [LB22 LB23 LB24]

GERRY OLIGMUELLER: Thank you, Senator Bolz. [LB22 LB23 LB24]

SENATOR STINNER: Questions? I have a few, some questions and maybe some observations. My first question is, tell me the way that you went about selecting funds for the 4 percent reduction. We have some aid funds, operating funds you might want to just talk through for the committee's purposes. [LB22 LB23 LB24]

GERRY OLIGMUELLER: Okay. When you say funds, you're referring to exactly...? [LB22 LB23 LB24]

SENATOR STINNER: You used 4 percent to reduce the appropriations or the base. [LB22 LB23 LB24]

GERRY OLIGMUELLER: Appropriations? [LB22 LB23 LB24]

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SENATOR STINNER: Yes. [LB22 LB23 LB24]

GERRY OLIGMUELLER: Okay. [LB22 LB23 LB24]

SENATOR STINNER: I'm sorry. [LB22 LB23 LB24]

GERRY OLIGMUELLER: Well, as I mentioned, 70 percent of the General Fund budget was excluded and that, in large part, is a consequence of a number of substantive law changes that would have to occur in a short period of time to make any change, for example, to entitlement programs in particular, including TEEOSA school aid for example. So that represents a fair share of I guess an explanation for why they're not subject to the 4 percent across the board other than there may have been an expression of priority, for example, with regards to Department of Corrections as well, and it is excluded. So otherwise, the balance of the General Fund budget was included as part of that 4 percent across-the-board reduction. There were some instances where an exception was made because a specific reduction was identified and...but other than that, I'd say it's an inclusive list of agencies and appropriations as a consequence that are subject to that 4 percent without the exception. [LB22 LB23 LB24]

SENATOR STINNER: Okay. And just trying to tie back to Senator Bolz's comments about the allocation, you are given an authority to allocate funds but you can't change the budget until we can change the budget. So this is a request from your office, from the Budget Office, from the Governor to actually implement these types of fiscal restraints. Is that... [LB22 LB23 LB24]

GERRY OLIGMUELLER: Yeah. [LB22 LB23 LB24]

SENATOR STINNER: ...how I read it? [LB22 LB23 LB24]

GERRY OLIGMUELLER: That would be correct. We're simply making recommendations. No appropriation has been reduced. The appropriations that exist will be fully allotted at their enacted level unless you make further changes to them, of course, and then they'd be allotted at that reduced level at 100 percent of what the Legislature enacts or adjusts through LB22, LB23, or LB24. [LB22 LB23 LB24]

SENATOR STINNER: Okay. And actually said differently, if we wait for the fourth quarter, you would have to release all of the funds, which would leave us with that biennium to make the adjustments for the \$900 (million). [LB22 LB23 LB24]

GERRY OLIGMUELLER: Absolutely. [LB22 LB23 LB24]

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SENATOR STINNER: Okay. Reappropriations methodology, how you went through it, just kind of walk through that process that you went through and why 24 percent and tell me mechanically just for the committee's reference. [LB22 LB23 LB24]

GERRY OLIGMUELLER: Okay. Well, there were over \$300 million worth of reappropriations of unexpended General Fund appropriations from FY '16 into FY '17. The Governor's recommendation includes about a \$77 million reduction to that \$300 and...I think it was about \$313 million. I could check to be absolutely correct. But it represented about 25 percent of the total amount of reappropriations from '16 to '17, and the approach we took was to obviously recognize all prior-year obligations. This committee had actually included language in the current appropriations bill to provide for an accounting and a report by the Department of Administrative Services--Accounting Division of the encumbrances of prior-year appropriations, and that was used, obviously, to determine how much of those unexpended appropriations carried into 2017 were actually obligated for a prior-year obligation. And the amount remaining after prior-year obligations were satisfied or where an agency appealed to the Budget Division to recognize a prior-year obligation that had not been encumbered for one reason or another, we subjected the remaining balance to a 76 percent reduction. So that remaining amount that was subjected to a reduction generates about \$77 million in reduced reappropriations, or about 25 percent of the total that was carried into the fiscal year. [LB22 LB23 LB24]

SENATOR STINNER: Okay, 24 was arrived at by...? What method were you thinking in terms of 24... [LB22 LB23 LB24]

GERRY OLIGMUELLER: Well,... [LB22 LB23 LB24]

SENATOR STINNER: ...versus 25 versus 30? [LB22 LB23 LB24]

GERRY OLIGMUELLER: ...we initially allotted reappropriations at 24 percent,... [LB22 LB23 LB24]

SENATOR STINNER: Okay. [LB22 LB23 LB24]

GERRY OLIGMUELLER: ...just like we did appropriations for the first quarter, and obviously are recommending and accounting for all prior-year commitments. So we stuck with the original announcement and communication with agencies that 24 percent of that would be allotted. And I suppose the distinguishing characteristic here, getting into the detail of it, is that we recommended that 24 percent of the amount remaining beyond prior-year obligations be left in the budget for the agencies to use to deal with any exigent situations in the current year,

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including retirement payouts and those kinds of things that otherwise would put a demand on your FY '18 and '19 appropriations, so. [LB22 LB23 LB24]

SENATOR STINNER: Okay. The reappropriations, at least the way I look at it, is you use those as one-time items as opposed to normal operating. Is that how you look at reappropriations as well? [LB22 LB23 LB24]

GERRY OLIGMUELLER: Absolutely encourage them to be looked at as available to be used for one-time expense only. Otherwise, you have the likelihood of creating, through its use, a sustainable requirement or expectation that has to be satisfied with additional appropriations in '18 and '19. [LB22 LB23 LB24]

SENATOR STINNER: Some of the concerns that I've heard just over this short period of time is that agencies didn't either understand what encumbrances were, didn't convey them, that the reappropriations should have been lessened by these encumbrances times the 24 percent. This is code agencies versus noncode. I'm mostly hearing from noncodes that really didn't understand that. Do you have any...I mean what was...how did you communicate with them? What was your interaction? [LB22 LB23 LB24]

GERRY OLIGMUELLER: Well, there's a longstanding accounting practice that provides for the encumbrance of prior-year obligations and, you know, there's an opportunity to continue to account for and identify those that weren't encumbered and need to be considered when, you know, reducing reappropriations beyond what, you know, might have actually been encumbered. So that was part of our motivation for leaving 24 percent, was just out of deference to those kinds of situations. [LB22 LB23 LB24]

SENATOR STINNER: Okay. The specific cuts that you have outlined in here, I presume that you've gone through the agencies, you've looked at it. What was your process, just for the committee information purposes? [LB22 LB23 LB24]

GERRY OLIGMUELLER: Well, there's been a lot of meetings going back to June and perhaps as early as May as we prepared for the biennial budget process. And I personally had meetings, as did the Governor with all his cabinet member agencies, regarding the state's fiscal outlook going back to June and July in particular. I also met with the noncode state agency boards and commissions, either directly or through their independent agency group which meets periodically, to advise them of the fiscal outlook for the state of Nebraska and also to sort of reinforce the fact that the budget instructions would include 8 percent budget...a request for 8 percent budget modifications. And with the Governor's cabinet members, there were periodic meetings, with some more than others, depending upon the size, scope, and complexity of the



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agency, and the conversation was concurrent. As you know, the Governor issued communication in July of 2016 and with regards to the need to exercise fiscal restraint. That was reinforced in early to mid-October with the state agencies, and it generally took two forms: one, a direct communication to the Governor's cabinet; and then secondly, assuring of that communication with all the other noncode state agency boards and commissions. And so there were a number of meetings, consequently, that followed with the cabinet member agencies to have a concurrent discussion about exercising fiscal restraint with regards to 2016-17 and to prepare a budget that...request for the upcoming biennium, 2017-19, that was cognizant of the fiscal challenge facing the state of Nebraska. With the noncode group of agencies, they all have their independent governance structures. Some of them are elected, some of them are appointed. They, to one extent or another, are attentive to the communications of the Governor, or not, depending upon their individual perspective and situation with regards to the management of their agencies and...but nonetheless, the communications were shared. I personally met with many of them and certainly met with the independent agency groups to share that communication. Now with Governor's cabinet agencies in particular, it was what the Governor often refers to as a very iterative process, a good deal of communication. They had a hand in, if you will, and a role in identifying specific reductions that are included in the Governor's recommendations. [LB22 LB23 LB24]

SENATOR STINNER: Senator Kintner. [LB22 LB23 LB24]

SENATOR KINTNER: Gerry, I know it's probably a popular urban myth that you actually came with the building when it opened in 1934, but I know it's got to be an exaggeration. How many administrations have you...which administrations have you worked for? [LB22 LB23 LB24]

GERRY OLIGMUELLER: Nelson, Governor Nelson, Governor Johanns, Governor Heidemann, and Governor Ricketts... [LB22 LB23 LB24]

SENATOR KINTNER: Ricketts,... [LB22 LB23 LB24]

GERRY OLIGMUELLER: ...in this role. [LB22 LB23 LB24]

SENATOR KINTNER: ...in this role. And you worked for some others in some other roles, right? [LB22 LB23 LB24]

GERRY OLIGMUELLER: Senator Kerrey and Senator Orr. [LB22 LB23 LB24]

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SENATOR KINTNER: Senator Kerrey and Senator Orr. Okay. In terms of...I don't want to call it a fiscal crisis, but in terms of revenue downturns, how does this one rank of all the ones you've seen? Does this even make the top five? [LB22 LB23 LB24]

GERRY OLIGMUELLER: Well, I personally, in this position, have been through I guess three downward cycles, including this one, in terms of actually tax receipts' performance against forecasts. So the dot-com crisis, you know, of around 2002, the Great Recession, and then the experience we're currently having with the current forecasts and downward movement on tax receipts. So this...they all have their own sort of character. I mean it's hard to say one is particularly more challenging than the other. This one is interesting from the perspective that we're now in our longest economic expansion I think in U.S. history, but it's about half the rate of growth above your typical expansion following an economic downturn. So it's got its own sort of unique character to it. [LB22 LB23 LB24]

SENATOR KINTNER: That's all I got. Thank you. [LB22 LB23 LB24]

SENATOR STINNER: Senator Hilkemann. [LB22 LB23 LB24]

SENATOR HILKEMANN: I've got a question. On...this is a specific program that I want to talk about, Program 158, Department of Education, where we're deleting the funding for the Master Teacher Program. Are...do we take into consideration those people who, in good faith, started this program? Are we pulling the rug out from underneath them at this point or are we leaving enough funds in there to...for those who applied and are utilizing this program? Are we still accommodating them? [LB22 LB23 LB24]

GERRY OLIGMUELLER: I would have, you know, I do not know the answer to your question without taking a look at that in a little closer detail in terms of whether there's an individual in there that's midstream in that particular program, so. [LB22 LB23 LB24]

SENATOR HILKEMANN: So do we have...do we, as a state, have some liability to them? Say, hey, this is a program we have, and then they, in good faith, start this process and now they're informed, we don't have the funds available to help you out with that. Is there any...what happens with that? [LB22 LB23 LB24]

GERRY OLIGMUELLER: Well, I suppose it depends on how the Department of Education is administering the program. They certainly shouldn't have entered... [LB22 LB23 LB24]

SENATOR HILKEMANN: Okay. [LB22 LB23 LB24]

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GERRY OLIGMUELLER: ...into any contract that did not have an "out" clause with regards to an appropriation. [LB22 LB23 LB24]

SENATOR HILKEMANN: Okay. [LB22 LB23 LB24]

GERRY OLIGMUELLER: So that's a standard practice with regards to contracts. [LB22 LB23 LB24]

SENATOR HILKEMANN: So that's a question I need to ask of Education when they come in? [LB22 LB23 LB24]

GERRY OLIGMUELLER: That would be a good question... [LB22 LB23 LB24]

SENATOR HILKEMANN: Okay. [LB22 LB23 LB24]

GERRY OLIGMUELLER: ...and I'll pursue it nonetheless. [LB22 LB23 LB24]

SENATOR HILKEMANN: Okay. [LB22 LB23 LB24]

SENATOR STINNER: Senator Wishart. [LB22 LB23 LB24]

SENATOR WISHART: Well, first off, thank you so much. I can only imagine this took a lot of work over the summer, so thank you. One of the questions I have is on the process through which you look at cuts and whether there might be unintended consequences in the future because, you know, we're taking away investments in prevention programs and that potentially could cost us more down the line. So for example, if you look at cuts to probation services and some of their reentry services, if that's what happens, and then we end up with somebody back in the corrections system then it costs us more money. So what is the process where you kind of look at whether this cut is going to potentially cost us more in the long run? [LB22 LB23 LB24]

GERRY OLIGMUELLER: I guess that, you know, is to the eye, in the judgment of each one of us who at some point in time have a hand in making a decision with regards to appropriations. [LB22 LB23 LB24]

SENATOR WISHART: Yeah. Uh-huh. [LB22 LB23 LB24]

GERRY OLIGMUELLER: And it becomes a question of priorities... [LB22 LB23 LB24]

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SENATOR WISHART: Okay. [LB22 LB23 LB24]

GERRY OLIGMUELLER: ...because there certainly, you know, are a wealth of choices that are in front of us as we make adjustments to this current budget or as we construct the recommendations for the 2017-19 budget. And there's a consequence both to making an appropriation and not making one... [LB22 LB23 LB24]

SENATOR WISHART: Yeah. [LB22 LB23 LB24]

GERRY OLIGMUELLER: ...in each one of those situations, but I guess it's ultimately a question of priorities. [LB22 LB23 LB24]

SENATOR WISHART: Okay. [LB22 LB23 LB24]

SENATOR STINNER: Any other questions? I just have one more and it has to do with the rainy day fund. I think the Governor was really adamant about \$500 million as a number that he's hanging his hat on. Kind of a lot of things spin around that \$500 million. Give me some kind of reasoning for that or background information for that. [LB22 LB23 LB24]

GERRY OLIGMUELLER: Well, I'd first offer that his recommendations for adjustments to 2016-17 were also directed at reestablishing a 3 percent reserve in the General Fund, which is about \$263 million, and then obviously his recommendation includes leaving a \$500 million unobligated balance in the Cash Reserve Fund. I testified to the committee I believe last year or the year before when we enacted this current budget that ultimately that's a judgment call based on the flexibility you want to preserve in the face of, you know, fiscal challenges that might present themselves. And the Governor's comfort level was \$500 million. Some advocate for a higher percent. That represents about...I think about probably a little over 11 percent or so of annual spend or appropriations calculated on about a \$4.4 billion base. And I've heard others advocate for 16 percent, which would be considerably more than that. But between the balance you engineer, if you will, into the budget when you enact it, and a \$500 million unobligated reserve in the Cash Reserve Fund, that's the number that the Governor is comfortable with. [LB22 LB23 LB24]

SENATOR STINNER: Okay. Other questions? Thank you very much. [LB22 LB23 LB24]

SENATOR WISHART: Thank you. [LB22 LB23 LB24]

SENATOR STINNER: Thanks. [LB22 LB23 LB24]

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GERRY OLIGMUELLER: Thank you. [LB22 LB23 LB24]

SENATOR STINNER: Is there a show of hands how many people would like to testify? Okay. I'm going to limit it to five minutes and we will keep it up here on the...I think, what is it, one minute before they're finished is the...? Okay. It will be a five-minute limitation. Please come up here on the testifier bench here and be ready to testify, general topic. [LB22 LB23 LB24]

JOHN LINDSAY: Senator Stinner, members of the committee, for the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska Beverage Association. With respect to LB22 and LB23, our concerns with Section 16 of LB23 and on the transfer from the Litter Reduction and Recycling Fund on page 115 of LB22. And I know there will be one or two others that will testify about the operations of the Litter Reduction, excuse me, what the grants that are awarded under the Litter Reduction Act, how those are used and how they are used to reduce the amount of litter out there, to encourage recycling. But I wanted to give you a little bit of a perspective, a historical perspective of how this fund came about. Back in 1978, I actually have some recollection of this because I was a clerk at a liquor store at the time, there was a bottle bill going on and most retailers did not want to deal with a bottle bill. At the time, bottle bills were kind of the one way of trying to address recycling, but it wasn't the best idea out there. So the theme of that campaign was "right problem; wrong solution." And it ultimately went to the voters and the bottle bill was repealed. The following year the industry, including the Nebraska Beverage Association, came to the Legislature and said, we have a better idea for a...to address the litter problem in the state and to encourage recycling. And what the industry, other industry said was, tax us, we will pay a fee to address litter and recycling. So legislation was passed in 1979 that imposed a tax or a fee of \$175 per \$1 million of sales by wholesalers and retailers on products within categories that would cause or that would contribute to litter. The act, by the way, sunsets every five years. It gets extended because industry comes in and says, okay, it's still working, we've reviewed it, we've watched it, we'll keep paying that fee. Those fees are paid into the fund which, pursuant to this bill, will...or these bills, will sweep out that fund and transfer out those dollars that were imposed for a specific reason, for a specific use, paid by an industry that came in and asked to help with this problem. And I think when we start sweeping this fund, it just becomes another tax on wholesalers and retailers because it's lost its intended purpose. So on behalf of the Nebraska Beverage Association, we would ask that you consider that historical perspective. [LB22 LB23 LB24]

SENATOR STINNER: Thank you. Questions? Go ahead, Senator Kintner. [LB22 LB23 LB24]

SENATOR KINTNER: Thanks for coming in, John. Obviously, you've sat in our seats. You know what we're going through here. [LB22 LB23 LB24]

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JOHN LINDSAY: Oh, yeah. [LB22 LB23 LB24]

SENATOR KINTNER: During the last budget crisis, like 2009-10, at that time, what did we do with this fund? Did we sweep it at that time? [LB22 LB23 LB24]

JOHN LINDSAY: You know, I...when I was reading this over the weekend I meant to go check it and I did not check to see. I would guess Mr. Oligmueller would be the...would have some idea. [LB22 LB23 LB24]

SENATOR KINTNER: Okay. [LB22 LB23 LB24]

JOHN LINDSAY: I just don't know. [LB22 LB23 LB24]

SENATOR KINTNER: And my other question would be, now that the tax had been imposed for 30-some years, what was the practical effect of it? What difference did you see in litter or trash or whatever it was supposed to correct? What happened when we did that? [LB22 LB23 LB24]

JOHN LINDSAY: We've seen reductions. We've seen increased recycling. And again, I would defer to I believe Jane Polson will be, from Keep Nebraska Beautiful, will be testifying. But we...there's a variety of projects that have been done to encourage and make recycling more efficient, to encourage more folks to recycle. So we have seen improvements but I don't know what the number is. [LB22 LB23 LB24]

SENATOR KINTNER: So my guess is it started off trying to get people to quit throwing crap on the ground, and then as recycling took off it morphed over to more recycling. Is that... [LB22 LB23 LB24]

JOHN LINDSAY: Right. [LB22 LB23 LB24]

SENATOR KINTNER: ...kind of what happened, maybe in the '90s or something like that? [LB22 LB23 LB24]

JOHN LINDSAY: Yeah. Yeah, early '90s, late '80s that we started to see some more emphasis on recycling. [LB22 LB23 LB24]

SENATOR KINTNER: Okay. [LB22 LB23 LB24]

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JOHN LINDSAY: I'm thinking '89 or '90 was a bill that I remember that was taking that on. [LB22 LB23 LB24]

SENATOR KINTNER: All right. Well, thank you very much. Appreciate it. [LB22 LB23 LB24]

SENATOR STINNER: Senator Bolz. [LB22 LB23 LB24]

SENATOR BOLZ: Just briefly, I want to underscore what I think I'm hearing you say, which is your commentary is certainly about the Litter Reduction and Recycling Program. But there's also a comment you're making here about the broader framework, which is that the manufacturers, wholesalers, and retailers are the ones who have paid into this fund and so using it for a purpose other than what they were expecting when they paid into the fund is an issue worth questioning and a principle that we need to explore as an Appropriations Committee. Perhaps not the best practice, in your point of view. Is that a correct assessment? [LB22 LB23 LB24]

JOHN LINDSAY: I think that would be correct, yeah. [LB22 LB23 LB24]

SENATOR BOLZ: Okay. Thank you. [LB22 LB23 LB24]

SENATOR STINNER: Thank you. Questions? Thank you. [LB22 LB23 LB24]

JOHN LINDSAY: Thank you. [LB22 LB23 LB24]

COREY STEEL: (Exhibit 3) Good morning, Senator Stinner and members of the Appropriations Committee. My name is Corey Steel, C-o-r-e-y S-t-e-e-l, and I'm the State Court Administrator for the judicial branch and the Nebraska Supreme Court. I'm here today in opposition of one of those cash funds that would be...some money would be reduced, up to \$200,000 Governor has recommended transferred to the General Fund of the Supreme Court Attorney Services Cash Fund. I have some bullets of what this effect will have and some authority that we believe would limit the ability to do this. These cash funds consist of mandatory assessments and dues which must be paid annually by Nebraska attorneys if they wish to engage in the practice of law in the state of Nebraska. Currently statutory language allows for the funds to be used solely for the expenses related to regulation of the practice of law; no other purpose is permitted. That would be under Nebraska Revised Statute 24-231 and I have that for you and I'll just read a few sentences of this: The Supreme Court Attorney Services Cash Fund was created. The fund shall be under the control of the Nebraska Supreme Court and administered by the State Court Administrator. The fund shall consist of mandatory assessments and fees, grants, donations, and gifts. The fund shall be used for expenses related to regulation...to regulating the practice of law

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in Nebraska. Courts have clearly held that the judicial branch and only the judicial branch has the inherent authority to regulate the practice of law. This includes the power to collect fees and use them for the education and supervisory functions for attorneys. Therefore, the use of these funds for anything other than regulation of attorneys we believe is not admissible or permissible, excuse me, permissible. The Supreme Court Attorney Services Cash Fund collects fees and assessments that are used for the regulatory law in specific purposes: one, overall management of all duties related to the regulation of attorneys; administering the Mandatory Continuing Legal Education, or MCLE, programs of attorneys; and administering the unauthorized practice of law program and investigates persons who perform legal work without a license. So I'm here on behalf of the Supreme Court and the State Court Administrator's Office in opposition to the use of those funds. I'd be happy to answer any questions at this time regarding LB23. [LB22 LB23 LB24]

SENATOR STINNER: Questions? [LB22 LB23 LB24]

SENATOR KINTNER: Well, thanks for coming in today. Explain to me the dire consequences that are going to happen, the practical, what are the practical problems that are going to occur if for a year or two that money is not there to be utilized for the intended purpose. [LB22 LB23 LB24]

COREY STEEL: Okay. Let me...can I start by explaining how that money gets in there? [LB22 LB23 LB24]

SENATOR KINTNER: Absolutely, please, yes. [LB22 LB23 LB24]

COREY STEEL: Okay. So in order to practice law in the state of Nebraska, you must be a mandatory bar...you must be admitted into the mandatory bar. There's a \$95 fee an attorney pays each year in order to continue that. There is also regulations that take place for an attorney to stay in the good graces of Attorney Services. One of those would be the mandatory continuing legal education hours. And I'll direct it right back to the past few years the Legislature passing legislation that dictates attorneys must get education in these select areas in order to practice in these select areas. The first one is guardians ad litem in separate juvenile...or in juvenile court across Nebraska. In order to perform guardian at litem services, the State Court Administrator's Office must provide education, specific education to perform that duty in those courts. Also, right now last year there was legislation passed for juvenile defense counsel and it's going down that same road that says, if you're going to practice in juvenile court, you must take mandatory continuing legal education hours in these specific areas. We would be unable to perform those educational requirements if there was no funding there. We would also be able to not provide unauthorized practice of the law, so if you're an individual that maybe your license has lapsed,



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maybe you don't have a law degree, which we run into from time to time where we have people that stand in the middle of courthouses and will talk to you and say, hey, you want to get a divorce; let me help you fill out that paperwork; let me give you some advice on what you should do or how you should do it. We would no longer be able to investigate those individuals for unauthorized practice of law. They could go on and continue to perform those types of functions, which are not in accordance to Supreme Court rule or state statute. And it also, the overall management of all the duties related to the regulatory of law. We also perform and do the bar exam twice a year and so those new college graduates that come out and come in and want to take the bar exam, we administer the bar exam and the results of those bar exams, swear those attorneys in and perform that function. So it would really limit the ability to continue to regulate what attorneys can and can't do and do and don't do across the state of Nebraska. [LB22 LB23 LB24]

SENATOR KINTNER: If we took the \$200,000 out, would you have zero money or would you have a little bit of money still in there or...? [LB22 LB23 LB24]

COREY STEEL: The \$200,000 wouldn't deplete that fund. It is not a full depletion of that fund. But right now we believe it's a separation of powers type issue where there are funds that are paid in that are not appropriated. There's not one appropriation dollar that is placed in that Attorney Services Cash Fund. It is straight money that attorneys pay in to be licensed and regulated. If that money then is taken and then, as we look down the road, there's two other attempts to take that money in the next biennium budget as well, which would come close to depleting that fund at that point in time. So we really believe that the Nebraska Supreme Court and courts across the United States have determined that it is their function to regulate law; therefore, those funds shall not be used for the purposes to offset what we would consider a budget shortfall for other means. [LB22 LB23 LB24]

SENATOR KINTNER: Well, thank you for explaining that. Appreciate it. [LB22 LB23 LB24]

SENATOR STINNER: Senator Kuehn. [LB22 LB23 LB24]

SENATOR KUEHN: Thank you. Just as a point of clarification, since you're addressing a separation of powers issue, while certainly administration regulation of the practice of law is under the Supreme Court, the fees that go into this cash fund are established by the legislative branch. Is that correct, the fees that are set? You set your own fees or who sets those fees? [LB22 LB23 LB24]

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COREY STEEL: The fees I do not believe are set by the Legislature. Those are set by Supreme Court rule. Yes, and Supreme Court determines how much it costs in order to... [LB22 LB23 LB24]

SENATOR KUEHN: And who authorizes the Supreme Court to allow those fees? Is that statutorily set or...? [LB22 LB23 LB24]

COREY STEEL: It's in the...it's not statutory. It's their determination, yeah, to determine here's what it's going to cost us to regulate the... [LB22 LB23 LB24]

SENATOR KUEHN: Okay. And it is a cash fund so then does the authority to expend those cash funds go through the legislative branch? So while it's not an appropriation from the General Fund, the authority to expend those cash funds is a legislative function. [LB22 LB23 LB24]

COREY STEEL: That lies in statute what those...and it's those three purposes there is what the... [LB22 LB23 LB24]

SENATOR KUEHN: Right. But that authority to expend those cash funds is still a legislative function. [LB22 LB23 LB24]

ERIC ASBOE: We would say it is not. [LB22 LB23 LB24]

SENATOR KUEHN: Okay. It's an interesting take on it, so. Thank you. [LB22 LB23 LB24]

SENATOR STINNER: Thank you. Senator McDonnell. [LB22 LB23 LB24]

SENATOR McDONNELL: Thanks for being here today. Has this ever happened in the past? Is there a past practice of this ever happening? [LB22 LB23 LB24]

COREY STEEL: Not in this fund. There is past practices of other cash funds in the judicial branch where there has been some cash taken, but this specific fund, no. This specific fund is new, within the past three, three and a half years, to the Supreme Court. For a little history as well, this used to be with the Nebraska State Bar Association, so all of this function was with the Nebraska State Bar Association and there was a challenge to the fact of could a voluntary bar determine the type of rate for attorneys in the practice of law. And so a challenge came before the Nebraska Supreme Court, and the Supreme Court, at that point in time, said...took that function back and said they feel that it is the regulation of the law relies on the Supreme Court,

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and the Supreme Court has that authority to do that. And so this has now been moved three years ago, a little over three years ago, to the Nebraska Supreme Court. So this is a new pot of cash funds that we had not had previous to three to four years ago. [LB22 LB23 LB24]

SENATOR McDONNELL: Thank you. [LB22 LB23 LB24]

SENATOR STINNER: Senator Bolz. [LB22 LB23 LB24]

SENATOR BOLZ: A couple of questions. I don't want to put words in your mouth but I think what I'm hearing you say is if the funds in this cash fund were depleted, you could almost consider the statutory requirements for training as kind of unfunded mandates. [LB22 LB23 LB24]

COREY STEEL: We would not be able to perform them. [LB22 LB23 LB24]

SENATOR BOLZ: You would not be able to perform them in spite of the statutory requirement to do them. [LB22 LB23 LB24]

COREY STEEL: Correct. If we do not have the money, we would not be able to do unauthorized practice of law, provide the mandatory continuing legal education hours, and the other functions. [LB22 LB23 LB24]

SENATOR BOLZ: And my other brief question is could any of these decisions lead you to have to increase fees? [LB22 LB23 LB24]

COREY STEEL: They could. They could. [LB22 LB23 LB24]

SENATOR STINNER: I do have a question and I don't want to litigate this whole thing, whether separation of powers gets involved, but the way I look at cash funds, you have an obligation, statutory obligation, to fulfill a certain amount of things; you have a fee base that comes in. Is that fee base coming in enough to support and sustain what you're trying to get done on these bullet points that you gave us? [LB22 LB23 LB24]

COREY STEEL: At this point in time, they are. It's been a growth over the past three years. Anytime you start a new, whether, you know, Office of Public Guardian was another example where it's a brand new division in the judicial branch. This was brand new. And as we continue to grow and build and we continue to provide the education that we need and make sure that the

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practice of law is just, those continue funds will need to offset the expenditures that we have. So do we have enough? Yes, we've not come to the Legislature and asked for any appropriations in that and I don't see us ever coming to the Legislature to ask for appropriations either. We can adjust those through the fees for attorneys. [LB22 LB23 LB24]

SENATOR STINNER: I did go back and take a look at the fund, and the thing that I think went on the radar was the fact that the fund balance was building so that the fees were...we were fulfilling our obligations but the fees were... [LB22 LB23 LB24]

COREY STEEL: Right. [LB22 LB23 LB24]

SENATOR STINNER: ...were larger and so the fund buildup became a function of whether you needed that extra funding or not. [LB22 LB23 LB24]

COREY STEEL: The fee balance in there, it actually ebbs and flows because the dues are all...from attorneys are due at the start of the year, so there's a big increase in that fund at that point in time, which allows us then the expenditure throughout the year. So it's not set on a monthly, it's a one-time a year. So when attorneys do pay their mandatory dues, we do see a big spike in increase in that cash fund. [LB22 LB23 LB24]

SENATOR STINNER: Okay. [LB22 LB23 LB24]

COREY STEEL: But then they're depleted throughout the year for the services that we... [LB22 LB23 LB24]

SENATOR STINNER: Senator Wishart. [LB22 LB23 LB24]

SENATOR WISHART: What do other states do that have this obligation? [LB22 LB23 LB24]

COREY STEEL: We actually, when we brought this over several years ago, we modeled what we have off of several states and, actually, Iowa was one of those. So in turn, most states are in line with the way that the Nebraska Supreme Court has determined the last few years. [LB22 LB23 LB24]

SENATOR WISHART: Okay. [LB22 LB23 LB24]

SENATOR STINNER: Senator Vargas. [LB22 LB23 LB24]

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SENATOR VARGAS: This is just to clarify. Given the amount of revenue that you're expecting to come in from fees and this proposed cut, would you still be able to operate those programs that you listed in the next year? [LB22 LB23 LB24]

COREY STEEL: No. We would have to adjust probably some of our education and outreach to attorneys. [LB22 LB23 LB24]

SENATOR VARGAS: And how much of your current operating budget goes to just the program, separate from salaries and separate from some of the other things that you mentioned? [LB22 LB23 LB24]

COREY STEEL: There is some salaries in the management of the Attorney Services. Obviously, we have to have staff in order to put forth the service provision. So there is some salary in that but its majority of that goes back to the attorneys and is funded for the services that's outlined there. [LB22 LB23 LB24]

SENATOR VARGAS: Do you know how much you're expecting under this, how much you're expecting in revenue next year? [LB22 LB23 LB24]

COREY STEEL: I don't off the top of my head, but I can get that for the committee if they so choose. [LB22 LB23 LB24]

SENATOR VARGAS: Okay. Thank you much. [LB22 LB23 LB24]

SENATOR STINNER: Any other questions? Thank you. [LB22 LB23 LB24]

COREY STEEL: Thank you. [LB22 LB23 LB24]

JEFF PICKENS: (Exhibit 4) Good morning. My name is Jeff Pickens, J-e-f-f P-i-c-k-e-n-s. I'm the chief counsel for the Nebraska Commission on Public Advocacy. I'm here to testify in opposition to LB23's proposed transfer of \$250,000 from the commission's operations cash fund to the General Fund. The commission was created in 1995 to give property tax relief to counties that are required to provide criminal defense services to indigent defendants. Richardson County's financial problems in the '80s and '90s, caused by its responsibility to provide defense counsel to indigent defendants, is frequently cited as a reason for creation of the commission. In 1985, cult leader Mike Ryan, his 15-year-old son Dennis Ryan, and three other cult members committed a number of crimes near Rulo in Richardson County, Nebraska, including the torture and murder of a cult member. All five defendants required court-appointed counsel. Mike Ryan

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was sentenced to death for first-degree murder. Dennis Ryan was sentenced to life imprisonment for second-degree murder. Mike and Dennis Ryan each required two court-appointed lawyers at trial and on direct appeal. They also had court-appointed lawyers in postconviction. Qualified lawyers from adjacent counties and from Lincoln and Omaha were appointed to represent the five defendants. In 1993, John Lotter and Tom Nissen killed Teena Brandon and two other people in Humboldt, Richardson County, Nebraska. Lawyers from Omaha were appointed to represent Lotter, who received death sentences. A lawyer from Lincoln was appointed to represent Nissen who was sentenced to life imprisonment. According to the Omaha World-Herald, the Rulo cult murder cases and the Lotter-Nissen murder cases cost Richardson County \$1.3 million. The commission began taking cases in the spring of 1996. From 1996 to 2003 the commission received General Funds and was required by statute to charge one-third of our actual expenses to the counties in which we provided services. In 2003 the commission became a cash-funded agency. We received \$2.75 from court filing fees and we no longer charge counties for any of our services or expenses. In 2005 we received another 25 cents from court filing fees. We have not asked for an increase in filing fees since 2005 and still receive only \$3 from filing fees. Since 2003 the commission has provided property tax relief to counties throughout the state at no cost to the counties and without General Funds. The commission is a unique government program that provides property tax relief to counties without using any money derived from taxes. The \$3 we receive from court filing fees is assessed against those who use Nebraska's courts. The commission has represented indigent defendants charged and/or convicted of homicide and other serious violent felonies throughout the state for over 20 years. We represented most of the inmates who are presently on death row and we represent other inmates who are no longer on death row. I provided this committee with Attorney General Doug Peterson's fact sheet about the death penalty, which was posted on his Web site on October 31, 2016. The fact sheet includes the following statement found on page 1: The primary responsibility of the Nebraska Commission on Public Advocacy (NCPA) is to provide for indigent death penalty...to provide a defense for indigent death penalty defendants. Such defense is provided at no additional cost to county property taxpayers. The NCPA is funded by court fees with no reliance upon any General Funds. The fact sheet also contains this statement on page 4. "Six of the ten Nebraska death row inmates were represented at trial and/or on direct appeal by either the Nebraska Commission on Public Advocacy or the respective county public defender's office, which greatly reduces the cost of those cases." The death row inmates the commission has represented include, in Scotts Bluff County, Raymond Mata and Jeff Hessler. We represented them at trial and on direct appeal. In Madison County we represented Erick Vela at trial and on direct appeal. In Richardson County we represented John Lotter on direct appeal and in postconviction. We also represented Mike Ryan in postconviction until the time of his death. In Lancaster County we represented Jerry Simpson on direct appeal and on a motion for a new trial. His death sentence we vacated because he is mentally retarded and the Eighth Amendment and state statute prohibits executing inmates who are mentally retarded. We represented Roger Bjorklund on direct appeal and in postconviction until his death in 2001. We represented David

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Dunster on direct appeal; he died in 2011. In Hall County we represented Marco Torres in separate cases. In one case he was represent...he was...we represented him on a kidnapping charge at trial and on direct appeal. In another case we represented him on two counts of first-degree murder pending trial. We were forced to withdraw from both cases because of a motion Torres filed on his own. The commission has done jury trials, direct appeals, and postconviction in murder cases throughout the state. The commission has also represented defendants charged and/or convicted of other serious violent felonies throughout the state. The commission is required by statute to represent inmates under the DNA Testing Act and to pay the costs of DNA testing from our operations cash fund. We also provide other services. Am I out of time? [LB22 LB23 LB24]

SENATOR STINNER: Yes, you are. [LB22 LB23 LB24]

JEFF PICKENS: May I go on for just a little longer? [LB22 LB23 LB24]

SENATOR STINNER: Be brief. [LB22 LB23 LB24]

JEFF PICKENS: Okay. The chart that I provided, the table I provided shows the revenue and the expenses from 2005 to today or to last week, and you can see that our revenues have gone down every year and that's because court filings have steadily decreased every year. Our expenses have increased every year and for the last three years we have spent more than we've brought in. So there is a crisis. The Legislature has taken money from our agency five times. The Legislature has taken at least \$200,000. Notwithstanding the commission's decreasing revenue and increasing expenditures, the commission is a successful government program, has provided many millions of dollars in tax relief to county taxpayers without funds from other taxpayers. LB23's proposed transfer of another \$250,000 from our cash fund to the General Fund will compromise the commission's ability to carry out its mission in future years. I urge the committee to amend LB23 to remove the transfer of \$250,000 from the commission's operations cash fund. Thank you. And thank you for the extra time. [LB22 LB23 LB24]

SENATOR STINNER: Questions? Senator Bolz. [LB22 LB23 LB24]

SENATOR BOLZ: So in the past when counties have had to pickup these costs, can you just tell me about what the impacts of that have been? [LB22 LB23 LB24]

JEFF PICKENS: Yeah, I can give you examples of cases that we've worked on. Erick Vela was one of the Norfolk bank murderers. We had co-counsel, local co-counsel and I don't know what his fees were, but I know that Jose Sandoval, who was one of the co-defendants, and Jorge

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Galindo each had lawyers who submitted bills of at least \$1 million. In Vela's case, at one point...I represent him for seven years and at one point I had over 1,000 hours in on his case. If I was in private practice, I probably...or if I was in private practice and I was appointed by the court, I think the court probably would have paid about \$125 an hour. So you can imagine how much that would cost. We frequently represent people on murder charges in small counties that cannot afford to appoint lawyers. We come in, we do those cases for free to the county. [LB22 LB23 LB24]

SENATOR BOLZ: So absent your services...so I grew up in Otoe County. Absent your services, an especially difficult case occurs in Otoe County and Otoe County has to find an additional million dollars or they have to (inaudible). [LB22 LB23 LB24]

JEFF PICKENS: The county is responsible. And I'll give you another example in Otoe County. Kim Faust was tried and convicted of two counts of first-degree murder. She had retained counsel. At some point her counsel ran out of money and the court appointed lawyers to finish the case at trial and on sentencing, and that was a potential death penalty case. After she was sentenced to life imprisonment for both those counts, our office was appointed to represent her and I represented her on direct appeal. If I hadn't--and that was a very difficult, complicated case, and it was reversed on appeal by the Nebraska Supreme Court--I would have spent at least hundreds of hours working on her appeal. And again, that was free to the county. But after the conviction was reversed, that meant that we had to do another trial, and so I represented her in the second trial and that time around she was convicted of one count of first-degree murder and one count of second-degree murder. And then there was another direct appeal, and I represented her on that direct appeal. So there again, it's years of litigation being provided for free to the county. The purpose of this office was to take the burden off of the counties so they wouldn't end up in the kind of shape Richardson County was in the '80s and '90s. And with the transfer of money from our cash fund, this will be the sixth time that's happened. With the decreasing revenue and increasing expenses, it's just a matter of time before we won't be able to accept any cases and then the burden again will fall entirely on the county to pay those services. [LB22 LB23 LB24]

SENATOR BOLZ: Thank you. [LB22 LB23 LB24]

JEFF PICKENS: Thank you. [LB22 LB23 LB24]

SENATOR STINNER: Questions? Thank you. [LB22 LB23 LB24]

JEFF PICKENS: Thank you. [LB22 LB23 LB24]



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SENATOR BOLZ: Did you? [LB22 LB23 LB24]

SENATOR WISHART: I have...well, I just have one. [LB22 LB23 LB24]

SENATOR STINNER: Oh, Senator Wishart. [LB22 LB23 LB24]

SENATOR WISHART: Why are your expenses increasing? [LB22 LB23 LB24]

JEFF PICKENS: Well, that's over the last 12 years. [LB22 LB23 LB24]

SENATOR WISHART: Okay. [LB22 LB23 LB24]

JEFF PICKENS: Okay. The cost diverse...we're a state agency. All of our employees have insurance through the state except for one of our lawyers who is a retired Army lawyer. Every year the state's portion of insurance premiums rises, rent goes up, incomes go up, but one thing that we really don't have a lot of control over, and it is a case-by-case situation, is expert witnesses. In the cases that we litigate, very frequently we are required to use expert witnesses. And if we don't use the expert witnesses then we would be ineffective. And if the defendant was convicted, he or she would later be able to claim that the conviction should be vacated because of a violation of the person's Sixth Amendment rights. It's not unusual for us to be required to use expert witnesses who charge \$400 or \$500 an hour. Over the last few years, I've been litigating Miller v. Alabama cases. Those are cases where the defendants were sentenced to life imprisonment for first-degree murder when they were juveniles and then the U.S. Supreme Court, in 2012, said that violates the Eighth Amendment. So in Nebraska, 25 inmates had their life sentences vacated and then had to have new sentencing. Those cases are essentially death penalty cases. The mitigation work that is required on those takes lots and lots of attorney hours and, in the cases that I've done, the six cases I've done, I've required a forensic psychologist who's done a full battery of tests on the defendant. He gave us a break and only charged us \$150 an hour, but he has plenty of hours in. We also needed a brain expert in those cases and there is an expert at Boys Town that we use but she charges \$500 an hour. So that's what we've been doing the last few years. And the expenses, by using expert witnesses, is part of the problem but it's an unavoidable part of the problem. To be effective, we have to use those witnesses. And again, without us, the county would have to pay those expert witnesses in addition to paying the lawyers. [LB22 LB23 LB24]

SENATOR WISHART: Okay. [LB22 LB23 LB24]

SENATOR STINNER: Thank you. [LB22 LB23 LB24]

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JEFF PICKENS: Thank you. [LB22 LB23 LB24]

ELIZABETH NEELEY: (Exhibit 5) Good morning, Chairman Stinner and members of the Appropriations Committee. My name is Elizabeth Neeley and I'm the executive director of the Nebraska State Bar Association. I'm here today to express the legal profession's objection to two provisions of LB23. The first, the Supreme Court Attorney Services Cash Fund is not tax money. It is funded through a mandatory assessment charged to all lawyers to keep their law license in good standing. Those fees, paid solely by lawyers, go directly to the judicial branch and are used to pay the expenses of regulating the legal profession. The Nebraska Supreme Court has the inherent authority to regulate the legal profession. We would argue that a legislative transfer to the state's General Fund from monies collected from lawyers for the sole purpose of regulating the practice of law violates the separation of powers doctrine and unconstitutionally limits the court's inherent authority to carry out that very regulation. A similar bill was introduced in 2009 attempting to transfer money from the court's disciplinary assessment of lawyers to the General Fund. It was defeated. A copy of our memo from 2009 with case law supporting our argument is still relevant and is provided for you in a handout. Senator Kuehn, I think your questions about the court's authority to set fees for regulation is addressed in that memo if you have additional questions. Our second objection is to the reduction of the Commission on Public Advocacy Cash Fund. Just outcomes in the criminal justice system require capable counsel for both the prosecution and the defense, and recognizing that the Nebraska Legislature established the Commission on Public Advocacy Cash Fund in '95 to provide both quality legal counsel and property tax relief to counties with indigent defendants charged with capital and other serious felonies. As Mr. Pickens indicated, prior to the establishment of the commission, a capital case could potentially bankrupt a county in Nebraska. It is true that the commission currently has a substantial cash fund balance, however, the commission has not filed...had a filing fee increase since 2005. For the last decade, court filings have been on a downward trajectory, making less money available to the commission each year. At the same time, the Legislature has expanded duties of the commission, They're operating several grant funds. They are also now responsible for DNA testing, as Mr. Pickens indicated. Since 2013, the commission has begun drawing down from the cash fund in order to cover its operating expenses. Without a filing fee increase, which the current political climate would not likely support, a transfer from the cash fund will compromise the commission's future ability to serve counties. If the commission's ability to serve counties is compromised, additional strain will only be put on nine counties' property taxes. I'd like to offer to answer any questions that you have on either parts of that bill. [LB22 LB23 LB24]

SENATOR STINNER: Questions? Senator Kintner. [LB22 LB23 LB24]

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SENATOR KINTNER: Thanks for coming in because you actually, you (inaudible) context than what we're reading on paper, so I appreciate that. Are you arguing the separation of powers or poverty, you won't be able to execute the mission? [LB22 LB23 LB24]

ELIZABETH NEELEY: I am arguing separation of powers and I think that in that memo you will see that this exact same issue has been tried in state courts, specifically Minnesota, and it's been found that the Minnesota Supreme Court had the inherent authority to set fees and has the sole authority to regulate the legal profession, and that a transfer of this type, just as you're proposing, was found to be unconstitutional. [LB22 LB23 LB24]

SENATOR KINTNER: But...so you're not arguing that you won't have the money to carry out your mission. [LB22 LB23 LB24]

ELIZABETH NEELEY: I am not. I don't...the Nebraska State Bar Association is now a voluntary bar. We do not have any functions related to regulation of the legal profession. The Supreme Court has those. And so it's not my position to tell you whether or not there is enough funding to implement those regulatory functions. It's a separate kind of entity. [LB22 LB23 LB24]

SENATOR KINTNER: Well, thank you very much for coming in today. [LB22 LB23 LB24]

ELIZABETH NEELEY: You're welcome. [LB22 LB23 LB24]

SENATOR KINTNER: Appreciate it. [LB22 LB23 LB24]

SENATOR STINNER: Questions? Thank you. [LB22 LB23 LB24]

ELIZABETH NEELEY: Thank you. [LB22 LB23 LB24]

RENEE FRY: Good morning, Chairman Stinner and members of the Appropriations Committee. My name is Renee Fry, R-e-n-e-e F-r-y, and I'm the executive director of OpenSky Policy Institute. I'm here today in a neutral capacity and I wanted to raise some concerns about the process of this deficit appropriation bill and the timing. So I will tell you in conversations with people in the community who are impacted by either this bill or the general appropriations bills, there have been quite a bit of confusion about the timing of when people are supposed to weigh in. And as you all well know, we have two more Forecasting Board meetings before the end of session that may necessitate additional deficit appropriations bills, particularly given that we are below the revised forecast by \$51 million just in November and December alone. And we are

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concerned that this separate process in additional deficit appropriation bills may make it difficult to see the big picture with so many different moving pieces. We do also hope that you will look to the Revenue Committee as part of the solution. I recognize that raising taxes may not be a politically viable option, but there are many tax expenditures that should be reviewed for your return on investment, just like spending is reviewed. These are, just like appropriations, these are spending programs that are essentially off the table when they're not reviewed, and they include several incentive programs, various tax credits, and earmarks for such programs as Roads, and Game and Parks in there. And concerns, we also have concerns that the shortfall could be structural in nature, in which case we may need a different strategy for the long term. The GAO recently issued a report that found budget shortfalls in the states are likely to persist upwards of 40 years in order to close a growing fiscal gap, and that state and local governments will either need to reduce spending or raise taxes by 3.3 percent annually. Cuts made over the...or revenue changes made over the last decade cost about \$755 million in FY '16 alone, according to a list that was put together by Legislative Fiscal Office. And then there are also possible reductions in federal funding that could impact the state budget either through funding cuts to programs or through federal income tax changes that impact our income tax revenue because our tax code is so highly coupled to the federal tax revenue. So there are several issues on the horizon and so we have concerns about the timing of the process, concerns about possible structural issues, and therefore we would encourage you, to the extent possible, to slow down the process and only move forward with those pieces that you can absolutely agree with and look to setting aside maybe some of the more controversial pieces to be dealt with later with the mainline appropriations process. And with that, I'd be happy to answer any questions. [LB22 LB23 LB24]

SENATOR STINNER: Thank you. Questions? Senator Bolz. [LB22 LB23 LB24]

SENATOR BOLZ: Would you...thank you for coming this morning. Would you just elaborate a little bit more on your comment regarding the concern about a structural shortfall? [LB22 LB23 LB24]

RENEE FRY: Sure. So as was mentioned by Mr. Oligmueller, this is really the first time where we're facing a shortfall of this size that is not coming on the heels of a national recession. And for that reason, I think it raises some concerns about what is really the root cause of the shortfall that we're facing now. And I think that, in conjunction with a few other reports--the GAO report I mentioned, a recent report from the Rockefeller Institute, as well as a recent report from NASBO, the National Association of State Budget Officials--I think that there are some concerns about larger structural issues at play. If you look at what GAO pointed out was that there are concerns with, as our population ages and we're going to be looking at increasing pension costs, increasing healthcare costs, that would...that may plague us for the next 40 years. And so I think when you look at that, in conjunction with the past revenue changes that have been made in the state, and trying to sort out what all is contributing to the shortfall, I don't think it is quite clear

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and I'm not sure that it's clear to anyone. I think you can absolutely say that the agricultural economy is contributing, but I don't think that's the only factor. And so, you know, if this is not just a one and done and our revenues continue to fall, the issue becomes or the challenge becomes much different. If you look at the past two significant budget shortfalls, they continued to grow and they lasted the course of two biennia. And so they, just like what we're seeing right now, continued to grow and grow. And so I think we have to be prepared for that situation, in which case we may need to be talking about other strategies to address just the budget situation that we're dealing with. [LB22 LB23 LB24]

SENATOR BOLZ: Thank you. [LB22 LB23 LB24]

SENATOR STINNER: Senator Wishart. [LB22 LB23 LB24]

SENATOR WISHART: Do you have examples of other states who you look at and you see that they've done a pretty good job of dealing with a budget shortfall similar to ours? [LB22 LB23 LB24]

RENEE FRY: That's a great question. So I think I don't have an answer to that. I think it's something that we would need to look into. Yeah, I would need to get back to you on that. [LB22 LB23 LB24]

SENATOR WISHART: Okay. [LB22 LB23 LB24]

RENEE FRY: I mean I think the one thing that Nebraska has done really, really well is build up the Cash Reserve. We did dip into it a little bit more last year than we would have liked to see, but we do have a Cash Reserve that's much stronger than other states and that will certainly help us get through this budget situation. I think, you know, what I would encourage, and we would have to look more at what other states have done, but that this isn't just the Appropriations Committee. We had a symposium a couple of weeks ago and we had former legislators who were talking about how they've adjusted past budget shortfalls. It was a clear theme that it wasn't just dealt with by the Appropriations Committee alone but that it was a collaborative effort with other committees, particularly Revenue and Education. And so we can certainly look to see if there are other lessons, but I would encourage us to look at how we've done this in the past in Nebraska and how we've been successful, and that's really been by collaborating with senators outside of the Appropriations Committee to really look at how we tackle this, you know, with other committees as well. [LB22 LB23 LB24]

SENATOR WISHART: Okay. Thanks. [LB22 LB23 LB24]

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SENATOR STINNER: Questions? Senator Kintner. [LB22 LB23 LB24]

SENATOR KINTNER: Thank you for coming today. And I appreciate you learning this stuff, then coming in and communicating with us. I don't always agree with you but that happens sometimes. Is your central message to us raise taxes or is it go slow and maybe raise taxes or what? You said a lot. What's the central thing you want us to know today? [LB22 LB23 LB24]

RENEE FRY: So what I said was that I understand that raising taxes may not be politically palpable, but there were a lot of revenue changes that have passed over the last decade that now are reducing revenue, according to the Legislative Fiscal Office, by \$755 million per year. I would suggest that the general public is not benefiting from many of those changes and I think that we really need to step back and take a review of those tax changes and make a determination about whether they, you know, whether there is a good policy justification and whether there's a good return on investment for those. We scrutinize spending every two years. We do not do the same thing on tax changes that have passed. Senator Watermeier oversaw the audit of Nebraska Advantage. We did find that that was costing, in 2013, \$100 million, even though it was projected to cost significantly less. And I think that there is a valid question to be had about whether we should be expending that kind of money on a program that may not be giving us the return on investment that we would expect and may not be contributing to economic growth in our state. And so I think that's important for us to do a review of all of these tax changes that have been made as part of the solution, because they are spending programs just like the bills that you oversee. [LB22 LB23 LB24]

SENATOR KINTNER: So you would look at tax credits we've given. [LB22 LB23 LB24]

RENEE FRY: Uh-huh. [LB22 LB23 LB24]

SENATOR KINTNER: We gave the zoos a tax credit on... [LB22 LB23 LB24]

RENEE FRY: Yep. [LB22 LB23 LB24]

SENATOR KINTNER: ...sales tax. We've...Woodmen we gave a tax credit to. [LB22 LB23 LB24]

RENEE FRY: Yeah. [LB22 LB23 LB24]

SENATOR KINTNER: We've indexed tax rates. We haven't cut a single tax rate since I've been here. This is my fifth year, we haven't really cut a tax rate. [LB22 LB23 LB24]

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RENEE FRY: Although in 2012 we did. [LB22 LB23 LB24]

SENATOR KINTNER: Yeah, I wasn't here then. I didn't come here until '13. [LB22 LB23 LB24]

RENEE FRY: So, yeah, so we did actually (inaudible). [LB22 LB23 LB24]

SENATOR KINTNER: So then you look at Nebraska Advantage and all that. So you'd...I mean you'd look at everything. [LB22 LB23 LB24]

RENEE FRY: Uh-huh. [LB22 LB23 LB24]

SENATOR KINTNER: Okay. Fair enough. Thank you very much for coming in today. [LB22 LB23 LB24]

RENEE FRY: Thank you. [LB22 LB23 LB24]

SENATOR STINNER: Questions? Senator Watermeier. [LB22 LB23 LB24]

SENATOR WATERMEIER: Thank you, Chairman Stinner. Appreciate you being here, Ms. Fry. You're kind of suggesting that maybe we're not doing the process properly and if I were thinking what you're saying, if we'd have had a special session we would have probably still had the same bills come through Appropriations and not necessarily have a bill to Revenue, a bill to Education. I mean the way I see it, we're going to engage all the other committees indirectly after this comes on the floor. So am I missing something, that something would have been engaged differently had we had a special session? I mean I don't see it a whole lot differently. [LB22 LB23 LB24]

RENEE FRY: So... [LB22 LB23 LB24]

SENATOR WATERMEIER: I know this is abbreviated, and that's obviously an issue for the public. [LB22 LB23 LB24]

RENEE FRY: Right. [LB22 LB23 LB24]

SENATOR WATERMEIER: Pretty tight schedule here, so. [LB22 LB23 LB24]

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RENEE FRY: Right. I think if you look at how these budget shortfalls have been dealt with in the past, there has been a much broader conversation. For example, Speaker Flood instituted LR542, which tasked all of the Chairs of the committees and their respective committees to look at spending going on within their programs to make a determination of where they would recommend cuts be made or other changes be made, and that took place over an interim. I just think, you know, if we had done a special session, there would have been more of a focus on the big picture, how we're addressing this budget. So you would have had legislators here for that time, having conversation, having them, well, you also would have had...we would have come in, if we had done a special session, we would have had some...a little bit more experience and that's not necessarily a bad thing. But we would have had, I think, more engagement by the committees, more I think awareness and preparation for this session. And now we're a little bit expedited and I think there's a lot of confusion in the community about whether people are supposed to weigh in now, whether they're supposed to weigh in later because we've never done it like this before. And I'm not saying that this is...I'm concerned about the confusion that doing it differently is causing. And I am concerned about I think if you would have had a special session, there would have been more of a laser focus and more conversations between senators of other committees who would have really had to engage. By doing it now--and you're going to have, you know, this bill, possibly another deficit appropriation bill, then all of the mainline appropriation bills--I think it will really be fragmented and difficult to really get your arms around, unlike a special session would have been really homed in and focused on the budget and the impact. And I think there would have been a lot more clarity about what was happening and the timing of that. [LB22 LB23 LB24]

SENATOR WATERMEIER: I would give you that. It certainly would have been easier to focus with the past senators. And you bring in the new ones, it does create other challenge. Timing is everything. I just...I guess I'll take the challenge that we're going to have to do a better job maybe of educating. But there's some confusion out there on new members, but I think they understand the challenges coming as well. I really don't know how we could have engaged Revenue and Education any more than we have. I believe they will be fully engaged. [LB22 LB23 LB24]

RENEE FRY: Yeah, and I think at this point, you know, obviously we can't go back and get a special session, but I think to the extent that we can just slow down and make sure that people are... [LB22 LB23 LB24]

SENATOR WATERMEIER: Uh-huh. [LB22 LB23 LB24]

RENEE FRY: ...engaged in the process, to make sure that we're engaging members of other committees, I think that's going to be really important. And I think go through and do as much as you can that you all agree on in this initial deficit appropriation, but I am just concerned about



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rushing things through when people may not have had...may not have been fully aware of the timing and when they're weighing in. And so if there are things that pop up on the floor as this is being debated, there will be other opportunities, maybe in a time line that people are more comfortable and used to and familiar with. And so I would just urge you to not move...to move forward with what you're comfortable with, what you all are agreeing on, and those other issues, slow those down so they can be fully vetted in a, you know, throughout the legislative session as they normally would be. [LB22 LB23 LB24]

SENATOR WATERMEIER: I can appreciate that because it's going to be difficult for us, that we're getting all these funneled in requests of don't cut this but don't cut this cash fund, don't transfer this. It's going to be difficult for us to transfer this to the rest of the body. But... [LB22 LB23 LB24]

RENEE FRY: Yeah. [LB22 LB23 LB24]

SENATOR WATERMEIER: ...I don't really see any other way to do it. I mean the requests are going to probably come here anyway and it's our job to get that out to the rest of the body. And we're kind of insulating the rest of the body from a lot of phone calls. [LB22 LB23 LB24]

RENEE FRY: Right. [LB22 LB23 LB24]

SENATOR WATERMEIER: No doubt about it. Thank you. [LB22 LB23 LB24]

SENATOR STINNER: Thank you. [LB22 LB23 LB24]

RENEE FRY: Thank you. [LB22 LB23 LB24]

TOM SAGE: Good morning, Senators. My name is Tom Sage, T-o-m S-a-g-e. I'm the executive director of the Nebraska Racing Commission. I'm here to speak to you before about LB23, Section 2, page 2, which is transferring \$150,000 from the Racing Commission's Cash Fund. As you all are aware, the Racing Commission is a cash-funded agency. We have done everything in our power to cut expenses and build that cash fund for, as we've been told, a rainy day. I feel a rainy day is coming for the commission. Our funding is through the pari-mutuel handle. That is what's wagered on our horse racing. That is 99 percent of our revenue. We've had a good year and a half, 18 months. Last year, calendar year 2016, we were neutral. Our revenues and our expenditures were darn near equal. We didn't tap into that cash fund. That cash fund has risen. I see a number of things coming up in the near future that's going to dramatically affect our revenue. One is a casino in Council Bluffs is building a \$4 million simulcasting facility that will

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allow smoking. That is one of the biggest complaints we get from our horsemen or our horse players at Horsemen's Park is they can't smoke there. I feel a lot of our revenue is going to go across the river. That entails we're going to have to tap into that cash fund to survive. I feel that the commission has been great stewards of our state money, of our industry money. The money comes from our industry. We've done everything we could to make sure we built that cash fund up. But I do understand we are in a terrible financial crisis throughout the state. In fiscal year 2013 I came before this body. We were in a crisis in racing. Our cash fund was down to about \$35,000. I wondered if I was going to make payroll. I came to this body for the '13-15 biennium. They were gracious to give us \$15,000 from the cash fund to assist in drug testing. I realize that. I realize it's my obligation to give back and we want to give back. But we cannot give back \$150,000. If we give back the \$15,000, \$20,000, I have no problem with that. I will survive. We will survive. We've figured out how to survive and we will keep doing that. Many more points to give; I don't think I'm going to for lack of time. But I am here and would be glad to answer any questions. I am just greatly concerned. If our \$150,000 is totally transferred, there will be some very sleepless nights. Thank you. [LB22 LB23 LB24]

SENATOR STINNER: Thank you. Questions? Senator Bolz. [LB22 LB23 LB24]

SENATOR BOLZ: Could you just briefly give me a list of specific things that you may not be able to do or pay for if we went with the full \$150,000 reduction? [LB22 LB23 LB24]

TOM SAGE: Sure. First of all, we were trying to possibly get some additional personnel investigators. We feel we need some more investigative bodies in our barn area. When times get tough, I hate to say it but people sometimes cheat. We want to be able to do our regulatory authority, through statute. That would be one issue I've then put on hold. Obviously, we've been instructed by the Governor (inaudible) a hiring freeze except for noncritical positions. I think there could possibly be an argument that that's a critical position, but we've decided not to approach that until we know what's going to happen. Our biggest thing is we want to have the cash reserve in case the pari-mutuel handle disappears. [LB22 LB23 LB24]

SENATOR BOLZ: So just so I'm clear, your regulation responsibilities are statutory. [LB22 LB23 LB24]

TOM SAGE: Correct. [LB22 LB23 LB24]

SENATOR BOLZ: And you're concerned that you wouldn't be able to fully implement your statutorily required regulation... [LB22 LB23 LB24]

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TOM SAGE: Correct. [LB22 LB23 LB24]

SENATOR BOLZ: ...responsibilities. Thank you. [LB22 LB23 LB24]

SENATOR STINNER: Questions? Thank you. [LB22 LB23 LB24]

TOM SAGE: Thank you. [LB22 LB23 LB24]

LYNNE SCHULLER: (Exhibits 6 and 7) Lynne Schuller, executive director of the Nebraska Horsemen's Benevolent Protective Association. I'm appearing for LB23 today. It's L-y-n-n-e S-c-h-u-l-l-e-r. My concern is slightly different than Executive Director Sage's. My main concern is the handouts that the page is giving you right now. There are several outbreaks nationwide of EHV-1. Senator Kuehn might be able to help me out on this a little bit. (Laugh) It's a highly contagious disease that affects horses. The first signs are a high temperature and within 24 to 48 hours that horse is probably dead. It affects the brain and the nervous system. And horses can transmit it to each other simply by using the same trailer, walking on the same pathway, or using a stall of an infected horse. And, Senator, if I'm incorrect on any of my veterinary information, please correct me. [LB22 LB23 LB24]

SENATOR KUEHN: I'll let you know. [LB22 LB23 LB24]

LYNNE SCHULLER: Okay. This is so...becoming so widespread across the country that the Rose Parade has an equine event right before the Rose Bowl that was canceled because of this. There's a widespread outbreak right now in Louisiana. There was a horse that won a million-dollar race that was up for auction, set to be transported to the auction house in Florida. The auction house refused to accept this horse in their facility because they were afraid that it had been exposed to EHV-1. They obviously turned away a very nice commission simply because of the fear of this outbreak. We had a scare for the first time ever in Nebraska at Fonner Park last year. We lost two horses from this disease and we were under quarantine for 30 days at Fonner Park. If this happens again, I guarantee it's going to be bigger because we took every precaution we could and still were not able to prevent it from happening. I'm very concerned that if you take the money that the Racing Commission has in reserve that there won't be any resources to address an outbreak like this, which could be catastrophic to our industry. This money was raised by the industry for regulation of itself and for health and welfare of the horses. We don't use General Fund money at all. And if you take this money, I don't know where we would have any resources to address a medical emergency like this. [LB22 LB23 LB24]

SENATOR STINNER: Questions? Senator Kuehn. [LB22 LB23 LB24]

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SENATOR KUEHN: Thank you for testifying. Good job on that. [LB22 LB23 LB24]

LYNNE SCHULLER: Thank you. I was nervous about that. [LB22 LB23 LB24]

SENATOR KUEHN: Equine herpesvirus is always an interesting one, lots of different isoforms,... [LB22 LB23 LB24]

LYNNE SCHULLER: Yeah. (Laugh) [LB22 LB23 LB24]

SENATOR KUEHN: ...all that good stuff. All right, so well done. Just wanted to address whether or not your group has discussed, you know, certainly the...a large part of the disease surveillance... [LB22 LB23 LB24]

LYNNE SCHULLER: Yes. [LB22 LB23 LB24]

SENATOR KUEHN: ...and all these issues falls under the State Veterinarian in the Department... [LB22 LB23 LB24]

LYNNE SCHULLER: Yes. [LB22 LB23 LB24]

SENATOR KUEHN: ...of Agriculture. And do you have reason to believe that they would not have the resources available to be able to assist you in the event of an outbreak? Have you had discussions with them about their role? [LB22 LB23 LB24]

LYNNE SCHULLER: The Department of Agriculture did legally take over the property last year... [LB22 LB23 LB24]

SENATOR KUEHN: Uh-huh. [LB22 LB23 LB24]

LYNNE SCHULLER: ...when the outbreak happened. They were very fast and they really helped us. They came and did three town hall meetings, I guess you would call them, about what we should do. We tried to very strictly honor the guidelines that they gave us, spraying yourself with bleach, that kind of thing before you enter and exit, both, things like that. They did say that this can get very, very expensive if it happens again. That's our only concern. [LB22 LB23 LB24]

SENATOR KUEHN: Okay. [LB22 LB23 LB24]

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LYNNE SCHULLER: Obviously, you know, we're citizens of the state of Nebraska. We want to do our part if we can, but I'm just concerned about this. [LB22 LB23 LB24]

SENATOR KUEHN: Thank you. Appreciate that. [LB22 LB23 LB24]

SENATOR STINNER: Thank you. Questions? Thank you very much. [LB22 LB23 LB24]

LYNNE SCHULLER: Thank you. [LB22 LB23 LB24]

JANE POLSON: (Exhibit 8) Good morning, Senator Stinner and members of the Appropriations Committee. My name is Jane Polson, that's J-a-n-e P-o-l-s-o-n, and I am the president of Keep Nebraska Beautiful. I did send you a letter but I wanted to...interesting, I didn't know John Lindsay was going to be here, but what he said was some of what I wanted to share. I've been at Keep Nebraska Beautiful for 26 years. When the Litter Reduction and Recycling Act was passed in 1979, I was told right away that that was funds that were...in my world we call them encumbered. They were specifically for litter reduction, waste reduction, and recycling kind of programs. Keep America Beautiful, which we are a statewide affiliate of and there's 21 local and regional affiliates throughout the state that serve upwards of 70 percent of the population of our state, have the exact same focus areas that this Litter Reduction and Recycling Act has in terms of litter prevention, waste reduction, recycling, and beautification, community improvement. So it allowed...we had one affiliate at the time the act was passed, and that was Keep North Platte-Lincoln County Beautiful. But this fund that was created voluntarily by businesses, as John alluded to, to pay in this fee for the purpose of taking care of increasing litter and increasing recycling, it allowed affiliates to grow in the state of Nebraska to where we are today in terms of 21 local and us as the state affiliate, to do the work that this exact fund was created for. My concern is, well, as a nonprofit I would never touch encumbered funds. If somebody makes a donation to us, we hold that in high regard and don't spend it on anything other than what they ask us to spend it on. And I feel the same way about this fund. It was created for a specific purpose. Now we've grown the grass-roots network to address that specific purpose and then for it to be taken away is concerning for a number of reasons. My concern specifically is that these local affiliates depend on this fund for operational funds, and they went through a process to become an affiliate. It's not easy and in what was handed out you'll see what the process is. They have to pay a fee. There was, at the time that all of these became affiliates, there was two eight-hour workshops required. It involved...it had to involve the public sector, the business sector, and the civic sector of these communities so that it was a three-legged stool that brought these people together and engaged tens of thousands of volunteers to do the work. Most of these affiliates are a staff of one. A few have additional staff, but principally it's about one. To take these operating funds away, in my mind, could jeopardize their existence. And the amount of work they do through the volunteer network is incredible, and I'm sure you've heard from some of them. And

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some of the work that they do, some of the work that our organization does and the accomplishments we make it would greatly impact, the \$500,000 from the Litter Fund and the \$500,000 from the Waste Fund as well, because many of our programs are also funded through that Waste Reduction. So I'm just here to ask you to consider that encumbered funds and that the work of these affiliate organizations can continue. I'm afraid even one...a one-time transfer will close the doors of many of them. So I would just ask for your consideration of not transferring those funds so that the great work in the local communities can continue. And I'm available for questions. [LB22 LB23 LB24]

SENATOR STINNER: Thank you. Questions? Senator. [LB22 LB23 LB24]

SENATOR McDONNELL: Well, thank you for being here. Thanks for the 26 years of your work. Has this ever been proposed before to transfer these funds (inaudible)? [LB22 LB23 LB24]

JANE POLSON: There was a transfer, I know, of the Waste Reduction and Recycling Funds a few years ago in the same amount but not the Litter Reduction and Recycling Fund, that I know of, in those 26 years. [LB22 LB23 LB24]

SENATOR McDONNELL: And how did that impact you? [LB22 LB23 LB24]

JANE POLSON: I had to cut staff because our materials exchange program, which diverts 1.2 million pounds of materials from landfills every single month, is funded through that Waste Reduction and Recycling Program. So I had to cut staff of that program for that year cut. And, you know, I mean it impacted us. We were at over 2 million pounds per month before that cut happened, so I mean it just impacts what you can do. [LB22 LB23 LB24]

SENATOR McDONNELL: Thank you. [LB22 LB23 LB24]

SENATOR STINNER: Questions? [LB22 LB23 LB24]

JANE POLSON: Senator Kintner, I forgot to address, part of the requirements of the affiliates to remain in good standing is to take a litter measurement of their service area every year. And since this law was passed, reduction in litter is at 72 percent. [LB22 LB23 LB24]

SENATOR KINTNER: Great. [LB22 LB23 LB24]

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SENATOR STINNER: Thank you. [LB22 LB23 LB24]

JANE POLSON: Thank you. [LB22 LB23 LB24]

SENATOR STINNER: (Exhibits 9-42) Seeing nobody else, I do have, to enter the record opposition only to LB22, we have Master Teacher Program, 12 e-mails and letters in opposition; N-A-P-E, NAPE, is in opposition to LB22, as is North Platte NRD. I also have letters and e-mails opposing both LB22 and LB23. There is 13 entities that have issued e-mails and letters in opposition of both of those. So I just wanted to enter those into the record. There being no other testimony, we are adjourned till 1:30. Thank you. [LB22 LB23 LB24]