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Transcriber's Office

Floor Debate
May 08, 2019

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FOLEY: [RECORDER MALFUNCTION] --to order the seventy-second day of the One Hundred Sixth Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

FOLEY: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections.

FOLEY: Thank you, sir. Are there any messages, reports, or announcements?

CLERK: Mr. President, I have neither messages, reports, nor announcements at this time.

FOLEY: Thank you, Mr. Clerk. (Visitors introduced.) We'll now proceed to the first item on the agenda, General File budget bills, LB295. Mr. Clerk.

CLERK: Mr. President, LB295 was a bill introduced by the Speaker at the request of the Governor. (Read title.) Introduced on January 15, referred to Appropriations, advanced to General File. I have no amendments to the bill at this time, Mr. President.

FOLEY: Thank you, Mr. Clerk. Senator Stinner, you're recognized to open on LB295.

STINNER: Thank you, Mr. President. Members of the Legislature, as promised, if you look at the agenda, the Speaker has allowed me to rank order the legislative bills as it relate to the budget. It actually goes from easy to hard with the mainline budget, obviously, being the meat and potatoes of the budget. Now, before I get into this presentation, I'd like to express some gratitude. This process starts on July 15. And obviously, we're working through that process trying to get a budget out. And if I could get the gavel, I would appreciate that.

FOLEY: Members, please come to order.

STINNER: But there's a lot of stakeholders that are involved in that process. Certainly I want to thank the Governor and the Governor's budget staff, Gerry Oligmueller, for their help. They came out with the budget presentation that was very comprehensive, very thorough, and I

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appreciate all the work that budget office did in preparing a recommendation to the Legislature. Obviously, we used that a little bit like a template and certainly refer to that in our preliminary budget side of things. I'd also like to definitely thank the legislative Fiscal Office. I haven't taken attendance over there, but I think most of them are there. I would like you to stand and please acknowledge what they have done for us this session, certainly working through over 700 bills, certainly helping us in terms of trying to get a budget out. Thank you very much legislative office. I'd also like to thank Tom Bergquist and Mike Lovelace. Without their leadership and patience we could not get this budget out. I'm a little bit concerned about Tom with this cosmic orange color, but apparently it's selling like hot cakes. We got 13 of these left, so we may have to do a redo on these things. So thank you, Tom and Mike. Our committee clerk, I want to thank Brittany Bohlmeier. This is her maiden voyage. This was her first year as committee clerk. She was nervous, she was scared, she did a great job. Thank you, Brittany. And obviously, I do want to thank also the members of the Appropriations Committee for all their hard work, late nights. They were always ready to discuss issues. They asked great questions and I appreciate that and I'm proud to be a Chairman of that committee because of the great people that are assigned to that committee. I also want to thank all the agencies, the boards, the commissions that presented their budget to us. Obviously, they have to carry out what we give them, and what we have been giving them over the last four years is a pretty meager budget. And they have to carry out what that budget actually does, what we appropriate it, so they were very helpful. They were very kind and patient in the process. DHHS, I think we had them in front of us four or five times trying to figure out all the details of Medicaid expansion, and I certainly appreciate that as well. So with that, I will move on to LB295. It's the legislative salaries and it provides for \$12,000 for each of us, and by the constitution we have to break these out. We have to prove them every biennium. There are no bonuses in there and there are no raises in this. So with that, I'd ask for a green vote on LB295.

FOLEY: Thank you, Senator Stinner. Debate is now open on LB295. Senator Wishart. She waives the opportunity. Senator Chambers.

CHAMBERS: Mr. President, members of the Legislature, I've been a thorn in the side of some of you for much of this session and I came up with a plan that can end all of this for us, at least for today. I would like to make a motion, or offer a motion that every bill that qualifies as a budget bill be advanced on one vote with no debate, no discussion, no amendments, and no motions. Or would that motion be out of order, Mr. Chairperson?

FOLEY: I'm afraid that would be out of order, Senator Chambers.

CHAMBERS: Thank you. I accept your ruling.

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FOLEY: Seeing no further discussion, Senator Stinner, you're recognized to close on LB295. He waives closing. The question for the body is the advance of the bill. Those in favor of advance of LB295 vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 35 ayes, 2 nays on the advancement of LB295.

FOLEY: LB295 advances. Proceeding to LB296.

CLERK: LB296 is a bill introduced by the Speaker at the request of the Governor relating to Appropriations. (Read title.) Introduced on January 15, referred to Appropriations, advanced to General File. There are Appropriations Committee amendments pending.

FOLEY: Senator Stinner, you're recognized the open LB296.

STINNER: Thank you, Mr. President. Members of the Legislature, I found \$24,000 of cuts. I got two no votes on that so we'll process that on Select File. But LB296 introduced by the Speaker at the request of the Governor is part of the Governor's biennial budget recommendations. The bill provides for funding of salaries and benefits for certain state officers and as required by the state constitution and current laws of the state of Nebraska. This bill includes elected constitutional officers, the Parole Board, and the Tax Commissioner. Also please note, this bill includes judges current salary. Salary increases for the judges are included in LB300 introduced by Senator Lathrop at the request of the Governor. This bill does contain an emergency clause and becomes operative on July 1. With that, Mr. President, can I proceed to the AM1481?

FOLEY: Please proceed with the committee amendment.

STINNER: Thank you, Mr. President. The amendment becomes the bill. Most adjustments from the original bill amounts to differences due to calculation of benefits. Please refer to your orange budget book, page 6, line 20, for the dollar amount. This should be pretty close to \$29 million. And with that, I ask that you vote green on LB296 and AM1481. Thank you, Mr. President.

FOLEY: Thank you, Senator Stinner. Debate is now open on LB296 and the pending committee amendment. Senator Stinner, you're recognized to close on the committee amendment. He waives closing. The question for the body is the adoption of AM1481, committee amendment. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 37 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

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FOLEY: The committee amendment is adopted. Any discussion on LB296 as amended? Senator Stinner, you're recognized to close on the advance of the bill. He waives closing. The question for the body is the advance of LB296 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted? Record, please.

CLERK: 40 ayes, 0 nays on the advancement of LB296.

FOLEY: LB296 advances. Proceeding to LB297.

CLERK: LB297 was a bill introduced by the Speaker at the request of the Governor. (Read title.) Introduced on January 15, referred to the Appropriations Committee. The bill was advanced to General File. There are Appropriations Committee amendments pending.

FOLEY: Senator Stinner, you're recognized to open on LB297.

STINNER: Thank you, Mr. President. Members of the Legislature, wow, we're getting things done now. Get that green button working. LB297 introduced by the Speaker at the request of the Governor is part of the Governor's biennium budget. Recommendations to bill appropriates funds for reaffirmed and new construction projects recommended by the Governor for the next biennium. Reaffirmed projects include those projects currently underway that have already received approval and funding previously but were funded over several years. In addition to the new and reaffirmed appropriations set forth in the bill, language is included providing for reappropriations of unexpended June 30, 2019, appropriations balances for the fiscal year 2019 through-- 2019-20 to continue and complete projects. The bill contains an emergency clause and becomes operative on July 1. I would ask, Mr. President, that I can move on to AM1482.

FOLEY: Please do so.

STINNER: Thank you, Mr. President. The amendment becomes the bill. Please refer in your orange budget book on page 84 and it works on through page 84 a summary of the committee recommendations on capital construction. All amended reaffirmations and new construction can be found on page 85. On that, I would ask for your green vote, and thank you, Mr. President.

FOLEY: Thank you, Senator Stinner. Is there any discussion on LB297 and the pending committee amendment? Senator Lathrop.

LATHROP: Thank you, Mr. President, and colleagues. I support the amendment and the bill. I just want to make this comment because this is where we're appropriating money for the

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additional 384 beds. And on page 3 of the budget book, at the bottom it says, at the current population these projects would reduce the overcrowding from 163 percent of designed capacity to 135 percent. Unfortunately, the additional capacity will not be available for several years and the percentages are based on a static population. I just want people to know to the extent that we're talking about this issue of building more capacity that the idea that we are in a static population place at the Department of Corrections is not accurate. I understand the assumption for purposes of trying to give you some idea that this may create additional capacity, but our population is not static. It is, in fact, on the rise in the Department of Corrections. So when these beds come online, we will not be, by any realistic estimation, at 135 percent of capacity. This is not a solution to the overcrowding, in other words. Our inmate population is increasing by the day. And while 385 beds may help with that overcapacity issue, it will not get us in three years to a place where we're at 135 percent of capacity in my estimation. And I just wanted to share that with you so that-- to the extent you read the comments on page 3 of the budget book, you have a realistic expectation about what these additional beds will do and not do. And with that, I would encourage your support of the amendment and the bill. Thank you.

FOLEY: Thank you, Senator Lathrop. Senator Friesen.

FRIESEN: Thank you, Mr. President. Would Senator Stinner yield to a question?

FOLEY: Senator Stinner, would you yield, please?

STINNER: Yes, I would. Yes, I will.

FRIESEN: Senator, when you-- in the budget you put in for the new construction and stuff and I know it's going to take a couple years to get built, but what are the projected costs? Does anybody look at that or what the operating costs are going to be down the road and how this impacts our future budgets?

STINNER: There are some projections relative to putting a maximum security prison in. I did ask that during the hearing. It's about 10 percent of the 49 million, 50 million. So it will be a 5 to 10 million dollar operating cost associated with it.

FRIESEN: OK. Thank you. Well, I do support moving forward with adding those beds, but let's keep in mind that in future budgets that's another cost that's going to be something that keeps on giving. So let's keep that in mind with our revenue. Thank you, Mr. President.

FOLEY: Thank you, Senator Friesen. Senator Clements.

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CLEMENTS: Thank you, Mr. President. I stand in support of this bill and since the capital construction was on the prison as was brought up, I wanted to mention something that the Director of Corrections said in our hearing that these are maximum security beds to be placed in Lincoln and hoping to move some of the more violent people from Tecumseh to Lincoln where we have probably easier to get staff-- to be fully staffed and to lower Tecumseh to more of a medium security position where maybe we could retain staff there better and I liked that approach. He said Tecumseh, the technology, the way the set up is with opening and closing of doors is not as secure when you have maximum security inmates and that this will both protect other inmates and the staff better. And so, I was pleased for that comment from the director and I do support this expenditure and think it's not going to solve our overcrowding completely, but we have to do something and this was the plan they came up with that I support, and I ask for your green vote on this bill. Thank you, Mr. President.

FOLEY: Thank you, Senator Clements. Senator McCollister.

McCOLLISTER: Thank you, Mr. President. Good morning, colleagues. Criminal justice reform is occurring throughout the country, but not in Nebraska. And that is something we need to have happen in this state like so many others. We need to be-- take care of those people that we're afraid of. But those people that we're just angry at, we need to figure out something else we do with those people than throwing them in the penitentiary for an unlimited period of time. I support this bill and I support the new construction, but we need to take a longer look at this and come up with some better solutions than what we've come up with so far. Thank you, Mr. President.

FOLEY: Thank you, Senator McCollister. Senator Stinner, you're recognized to close on the committee amendment.

STINNER: Yeah, I do want to correct something for Senator Friesen and I caught it. After I said it I knew it was wrong, but on page 14 they actually do break out the staffing and operations. The Department of Corrections staffing and operations on the new facility is estimated to be 3,722,530. The number that I was using was out of a book that I had read that basically says 10 percent of the operating cost-- 10 percent of the construction cost is generally considered to be the operating cost, so I apologize for that. That is the number that is put in the book. And with that I'll waive further comments.

FOLEY: Thank you, Senator Stinner. The question for the body is the adoption of the committee amendment, AM1482. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

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CLERK: 43 ayes, 0 nays on adoption of committee amendments.

FOLEY: Committee amendment is adopted. Is there any further discussion on LB297 as amended? Senator Stinner, you're recognized to close on the advance of the bill. He waives closing. The question for the body is the advance of LB297 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 41 ayes, 0 nays, Mr. President, on the advancement of LB297.

FOLEY: LB297 advances. (Visitors introduced.) Proceeding to LB293. Mr. Clerk.

CLERK: LB293, Mr. President, is a bill by the Speaker at the request of the Governor. It relates to Appropriations. (Read title.) Introduced on January 15, referred to the Appropriations Committee, advanced to General File. There are committee amendments pending.

FOLEY: Thank you, Mr. Clerk. Senator Stinner, you're recognized to open on LB293.

STINNER: Thank you, Mr. President. Members of the Legislature, LB293 introduced by the Speaker at the request of the Governor is part of the Governor's biennium budget recommendation. The bill makes adjustments to appropriations and reappropriations for state operations, aid, and construction programs, and the current fiscal year ended June 30, 2019. The adjustments will be used in programs where the forecasted cost has risen or decreased due to circumstances that were unforeseen when the Appropriations bills were passed two years ago and subsequently amended by the Legislature last year. This bill contains an emergency clause and will require 30 votes. With that, I would ask, Mr. President, that I could proceed to AM1503.

FOLEY: Please proceed with the committee amendment.

STINNER: Thank you, Mr. President. The committee amendment becomes the bill. The amendment reflects the Appropriations Committee recommendation for funding adjustments in the current '18-19 year-- fiscal year. Please refer to your orange budget book beginning on page 94, adjustments to the current appropriations, for detail on the committee's recommendations. I'd like to highlight that the lapses equal \$27 million, and lapses are unused appropriations that many times are carried forward and there is no need for those so they're lapsed back into the General Fund. The General Fund deficits do net \$2.3 million also. As some of you may be aware, lapses and General Funds are included within this amendment. So with that, I would ask that you vote green on this amendment, AM1503.

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FOLEY: Thank you, Senator Stinner. Debate is now open on LB293 and the pending committee amendment. Senator Clements.

CLEMENTS: Thank you, Mr. President. This is a bill that I voted no on in committee. It has one item that was of some controversy, the Governor had not put it in the budget which was \$2.699 million for developmental disability payment error made by HHS in 2017. And it's-- the HHS had made a mistake in how things were being paid out on developmental disability. The state paid its-- about 50 percent share to those providers. And the federal government said, you did it wrong so we we're not paying the other 50 percent. In previous years, we did fund half of that federal shortfall and this is the other half to make those people whole, so they've received 75 percent of their-- from what they were promised. Again, they did provide services, but it was a matter of whether we have \$2.7 million to be able to spend right now or not. And it's up to you whether you think or don't think we have that money available. And so I just wanted to explain my no vote on that and what that issue was. It's about \$2.7 million and it's money that we expected the federal government to pay. They didn't because of Health and Human Services making an error and it's a difficult decision and I'll leave it up to you to decide how you want to do that if we pay that now or if we defer it to another year or don't pay it at all. Thank you, Mr. President.

FOLEY: Thank you, Senator Clements. Continuing discussion. Senator Bolz.

BOLZ: Thank you, Mr. President. And thank you, Senator Clements. I think you did a fine job of explaining the set of circumstances. I do want to rise, however, and say I think one of the responsibilities of the Appropriations Committee is to pay our bills. We need to be a good and faithful payee. And if this were roads or construction or any other service, I think paying our bills would be our responsibility. I don't know that it's a matter of whether or not we have the \$2.7 million in a \$8 billion budget. I think it's a matter of whether or not we are going to be faithful to the folks who partner with us to provide government funded services. And in this circumstance, provide government funded services to some of our most vulnerable folks. One of the things that happened in the circumstance is that these providers faithfully continued to provide service at a 50 percent discount. And I think we owe it back to them to provide the reimbursement that they deserve. I will say since I'm on the mike that I do have a conflict of interest filed for this piece. I do work in the developmental disability field and I did abstain on putting this piece in to the budget. It got put in anyway, but I would say that my intimate knowledge of developmental disabilities means that I can tell you what a sacrifice it was for those providers to continue providing services. And how they did it because they love their jobs, they love the people they serve, and they consider themselves to be a good partner with the state of Nebraska. It was Senator Wishart's bill, so I will yield the remainder of my time to Senator Wishart if she has any further comments on this issue.

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FOLEY: Thank you, Senator Bolz. Senator Wishart, 3:20.

WISHART: Thank you, Mr. President, and thank you, Senator Bolz and Senator Clements, for describing the situation. I brought this bill. I've been an advocate over the years for the disability community. I think we should be prioritizing supports for them in our budget. And again, these are dollars that were lost to disability providers for essential day service and weekend service programs for a disability community because of a mistake made by the Department of Health and Human Services. So I think it is fiscally responsible and ethically responsible for us to commit these funds to providers and make them whole again. Thank you.

FOLEY: Thank you, Senator Wishart. Senator Bostelman. Is Senator Bostelman--

BOSTELMAN: Thank you, Mr. President. Would Senator Stinner yield to a question?

FOLEY: Senator Stinner, would you yield, please?

STINNER: Yes, I will.

BOSTELMAN: On page 3, lines 19 and 20, we're talking about Veterans' Cemetery Program number 37, FY18-19, there's 102,000 there. We just talked about that basically. My understanding is from before that was some funds that were moved in to do some, I think it was fiber connectivity or something out there for the cemetery. Do you remember what's that for? Is that correct?

STINNER: You know, I'd like to check on it before I answer it so I can be accurate, so if we could do that off the mike. It's sitting in Appropriations level in the cash funds and I'm just a little bit vague, not 100 percent sure what that was about. But let me check on it and I'll get back to you.

BOSTELMAN: All right. Thank you. Thank you, Mr. President.

FOLEY: Thank you, Senator Bostelman. Senator Erdman.

ERDMAN: Thank you, Lieutenant Governor. Good morning. I listened to the conversation. I listened to what Senator Bolz said. Senator Bolz, I do agree that we need to pay our bills, but let's be clear about this. This was money that the federal government did not pay. We paid our share. So we were making up what the federal government was to pay, that didn't. So, I was the

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other no vote on this bill and that was one of the reasons. It was not money that we shorted them, the federal government didn't pay them. Just wanted to make that point clear. Thank you.

FOLEY: Thank you, Senator Erdman. Senator Hilkemann.

HILKEMANN: Thank you, Mr. Speaker. Let me just enter in this conversation as well. This is actually one of the proud parse of this budget that I-- that we-- a positive thing that we did by increasing those provider rates to people who serve people with disabilities. We proudly call ourselves a pro-life state, yet we have cut provider rates to those who provide services for people who live with disabilities. And I'm glad that we were able to increase that by 4 percent this year. During the course of the session, I was invited by one of the home healthcare services to come to the home of a family that's not far from my home, lives in my district. They have a young 8-year-old girl. She has an extremely rare disease. She's a sweet 8-year-old girl. She requires 24/7 nursing care because she has a trach and the nurse has to be responsible to help her with her breathing when she's there. Respiratory therapy has to come at least once, oftentimes two or three times a day, to do a special therapy for her so that they can keep her lungs clear enough so that she can continue to live in her home. She attends the local school. This, folks, is expensive, expensive, expensive therapy, but young Grace is priceless and I'm glad that we are helping to help those people who serve those people every day and have done so with just very marginal, if any, increases over the last number of years. Not just last year, a number of years. We have to take care of the least of these, our brethren, and I'm so grateful that we're advancing this and I would ask all of you to support LB293 as introduced. Thank you.

FOLEY: Thank you, Senator Hilkemann. Senator Moser.

MOSER: Good morning, Mr. President, and thank you. This discussion just prompted a few questions so I was circulating to see who was the best person to answer the question about how we got where we are here on these claims. And I-- from my inquiries it sounds like Senator Bolz might have the answer. So would I be able to answer-- ask her a question?

FOLEY: Senator Bolz, would you yield, please?

BOLZ: Sure.

MOSER: Good morning. So what did HHS do that created the problem where the state-- the federal government would not reimburse the payments?

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BOLZ: Sure. So the way our developmental disability services are funded, is basically a 50-50 match, those numbers vary a little bit, state and federal funds. We have something called a waiver which is basically our contract with the federal government that says, here's how we're going to provide those services and they're in compliance with your federal rules. The way that we had been implementing what's called day services in developmental disabilities services such as job training, job coaching, independent living skills, those kinds of things, the way that we provided that was incorrect and we were billing for more hours than the federal government said was OK. And so in October, I believe, of 2017, those practices were identified by the federal government and they said we could no longer get reimbursed for those services. The providers continued to provide those services in good faith to the people who counted on them until we could fix the waiver and fix our challenges and get the reimbursement we deserve. So as quickly as I can do it, that's what happened.

MOSER: So, is the contract between the state and the providers or the federal government and the providers?

BOLZ: It's both. So we have a waiver that is our agreement with the federal government, that's our contract with the federal government. And then the state contracts with nonprofit, for-profit, big, small, all kinds of different providers across the state to implement those services.

MOSER: So what would have happened if we had not paid these bills to these providers?

BOLZ: Well, what has happened is that the providers continued to provide those services at a loss and then they came back to the Appropriations Committee and said, hey, can you make us right? What they needed to do when they were implementing those services at a 50 percent discount was dip into their cash reserves, delay capital construction, delay salary increases. They had to squeeze their budget in order to make sure that they could continue to serve people. So we're making it right with those providers.

MOSER: So, it was the state's fault that these billings were incorrect?

BOLZ: It was an incorrect implementation according to the federal government. I will say I think director Miller does an incredible job and this was one of those things that came up in a transition from Director Fenner to Director Miller and it came up as we were renewing our waiver. So it was something that was identified that was not as it should be and I think we're all doing our best to make it right.

MOSER: And we're making efforts to not to have to have this happen again.

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BOLZ: Absolutely. We just submitted a new waiver to the federal government and it has been a heavy lift and I commend the Division of Developmental Disabilities for how hard they've worked on it.

MOSER: I just think that citizens out in greater Nebraska, or who are going to read the press reports of this, are going to have these same questions, and I think that we need to answer them so people know that we're being responsible with state funds and how we're spending them--

FOLEY: One minute.

MOSER: --and we're not spending them just to--

BOLZ: Sure. And if you don't mind, one other comment to make is that we have not, in previous budget cycles, we have paid back some of these dollars that are owed to those providers. This is not new precedent. This is actually the final payment in three payments to make them whole. We had to spread that out over time to be fiscally responsible.

MOSER: So there are no other pending payments that they're expecting?

BOLZ: I sure hope this gets the job done.

MOSER: OK. Thank you very much.

FOLEY: Thank you, Senators Moser and Bolz. Senator Albrecht.

ALBRECHT: Thank you, Lieutenant Governor Foley. You know, I also rise because I think everyone of us in this room would have someone who has used these services. I have a family that has not one but two children that need the 24-hour care. I've been working with them. I've had to pass them on to the Ombudsman because I think this is a situation that, if I'm right to understand Senator Bolz to say this is the last of three payments to become whole with what the federal government has not paid us, I'll ask her a few questions after I get through with my thoughts. But, you know, when we talk about Medicaid expansion and knowing that that's coming soon, and when we talk about the most vulnerable in our state, these are the people who need this service the most. And when I see that parts of this service are being cut because of exactly what we're talking about here today, I guess I would like an explanation as to how did it ever get to this point that we have lost federal funding. Is it because of our state and their billing? Is it the providers and their paperwork? What exactly happened when we have these type of figures coming at us that we have to cover because we lost funding. I'd like an explanation and I

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want-- first, I'd like to, I understand that Senator Bolz has a conflict of interest but she seems to be the one with the most answers because that is her area of expertise and I appreciate that, so would Senator Bolz yield to a couple of questions?

FOLEY: Senator Bolz, would you yield, please?

BOLZ: Sure.

ALBRECHT: Thank you. I do appreciate what Senator Moser just questioned as well, but is it true that we are increasing the provider funds by 4 percent?

BOLZ: In the mainline budget bill, we are increasing the developmental disability provider rates by 4 percent. It's actually under what the rate methodology said that we should be paying in terms of actual cost of care.

ALBRECHT: OK. What did we take away from them in the last biennium?

BOLZ: We held them flat in the last biennium.

ALBRECHT: Just held them flat, thank you. OK, so tell me a little bit more about, how did we lose this funding from the federal government? Was it our fault as a state that we did not comply with certain regulations, or was it a problem with paperwork? Tell me what happened.

BOLZ: It certainly was not a problem with paperwork. It wasn't the provider's fault. It was a misinterpretation of the way in which we were implementing day services. I don't want to point fingers or--

ALBRECHT: But this is a significant amount of money. I'd like to know where did the ball drop. What happened?

BOLZ: The ball dropped when the Division of Developmental Disabilities gave inappropriate guidance to the providers, allowed them to bill for day service hours inappropriately and the federal government caught that mistake. It was then later fixed, but not until after we reimbursed those providers for their work. It wasn't the providers mistake, it was a misinterpretation.

ALBRECHT: And how long did they let it go on to have it to this extent of a fund?

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BOLZ: It's a good question and it was actually Senator Wishart's bill, it was about a year and a half. Is that right, Senator Wishart? It was about a year and a half and the senator did an excellent job of representing the disability providers. She deserves a lot of credit for representing their point of view here.

ALBRECHT: And I guess my other concern would be, if this-- so this is the last payment of three and if this is the case, you know, it is something to reflect on whether-- you know, I guess-- we get to hear about this when it come to the final budget, and I don't want to ruffle any feathers, but I am so much concerned for the people who have and need this coverage. And for the year and a half that those folks got to bill the way they got to bill, you know, we don't get to go back and get any of that money back from them. So, but yet we have to cover it. So I have to really sit back and listen to the conversation and decide for myself, but I do want these folks covered. I do want them protected, but I also want not only our state but the federal government, if something is wrong they should be flagging us much sooner than a year and half later. Thank you.

FOLEY: Thank you, Senator Albrecht and Senator Bolz. Senator Kolterman.

KOLTERMAN: Thank you, Mr. President. I support LB293, as well as AM1503. I want to weigh in a little bit on what's happened here. As a state we contract with the providers. We pay all the providers 100 percent of what they bill us, or we negotiate that with the providers. The federal government doesn't write a check to the providers, they write a check to the state of Nebraska. So the contract is with us. Health and Human Services made a mistake here, folks. The mistake was made by them. They didn't have their contract set up right with the feds, where the feds came in and said, you aren't doing this right, you made a mistake. We as a state owe the providers what they billed us for simply because they did the work. In a private business, which I was in for many years, if you made a mistake you admitted your mistake and you ate it and it cut into your bottom line. There is no different than-- here as the state. We contract with these people. They aren't getting paid enough to begin with, so it behooves us to make sure that they become whole. They're willing to do this over a period of time and so we're now finalizing what we have owed them for several years. It just makes sense that we fulfill our commitments to the providers. For the last few years we have been cutting provider rates or leaving them stable, and they're still doing the work. So for us to increase them, the provider rates, make a 100 percent sense to me. And the idea that we made the mistake on the state of Nebraska's part through HHS, we have the obligation to pay that bill. So with that, I would hope that you would support AM1503 and LB293 and with that, I'll yield the rest of my time to Senator Wishart because she has some more things to add.

FOLEY: Thank you, Senator Kolterman. Senator Wishart, 3:00.

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WISHART: Thank you, Mr. President, and thank you for-- my colleagues who have stood up today in support of our disability community. I wish all of you could have been to the hearing on this bill. We actually had members with disabilities come and were able to testify in front of us. And the reason they were able to do that, is because they're in day programs with people that help them gain a level of independence in their lives. And it was really an incredible hearing to witness. I did want to turn your attention, there is-- I'm glad that we are sort of setting a record here. Justin Wayne, Senator Wayne. I'm glad we're putting this on record to show the mistakes that were made by the Department of Health and Human Services. And I would echo what Senator Bolz said, this was due to-- likely because there was transition in leadership, but I'm glad that we are acknowledging the fact that we made a mistake. Last budget cycle we were able to fulfill part of the funds that were lost for DD providers, and so this is the last portion of funds that are owed to them because of, again, of mistakes that were made on the part of the state. I would turn your attention to page 94, and if you do have more detailed questions, Sandy Sostad with the Fiscal Office, she is the one who wrote this summary for you that kind of shows the time line of how we got to the actual dollar amount of services that were provided, that continue to be provided by these providers that were only 50 percent reimbursed. And I do want to point out that the disability community providers, it's one of the toughest businesses to be working in because you don't have any private pay to supplement the work that you're doing. These are, again, some of the most vulnerable people in Nebraska and they rely exclusively on--

FOLEY: One minute.

WISHART: --public funding to support their needs. And so with that, again I would really encourage you to support AM1503 with LB293. Let's make sure that we make a statement today that our disability community is a priority of ours. Thank you.

FOLEY: Thank you, Senator Wishart. Senator Cavanaugh.

CAVANAUGH: Thank you, Mr. President. I rise in support of LB293, and I thank Senator Wishart for bringing this bill. I am also concerned about LB297, though I support it, the fact that we are OK with investing so much more in our Corrections system but we have a problem with paying providers that are giving these crucial services to those of our most vulnerable populations here in Nebraska. We should be investing more in developmental disabilities. We should be investing more in behavioral health and investing less in our Corrections system. I know that we need to make the investment in our Corrections system because of our capacity problems, but long-term, I agree with Senator McCollister, this is not what we should be doing as a state. We need to be thinking long-term. We need to be thinking strategically. We need to be thinking about how can we reduce our prison population, and we need to be doing that by investing services for people like SNAP benefits, childcare subsidies, education, behavioral

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health supports. And with that, I will yield the remainder of my time to Senator Wishart if she would like it.

FOLEY: Thank you, Senator Cavanaugh. Senator Wishart, 3:04 if you care to use it. She waives that off. Senator Clements, you're recognized.

CLEMENTS: Thank you, Mr. President. Would Senator Stinner yield to a question?

FOLEY: Senator Stinner, would you yield, please?

STINNER: Yes, I will.

CLEMENTS: This LB293 with the amendment, what is the net effect to the General Fund?

STINNER: Well, with the lapse in 27 million and taking out 2.3 million out of the General Fund, we completely cover this cost.

CLEMENTS: Yes. And when I voted on this in committee I wasn't sure how the net effect was to our budget and we had unused money from other agencies of-- in the \$27 million variety. And this 2.9 million is absorbed-- able to be covered by money that other agencies did not use. And so, now I'm wanting to let you know that I'm going to vote yes on this bill. I was concerned in committee that it was going to not have-- it was going to take money out of the current funds but that's not the case. There were other agencies that had excess funds and it will be covered. And I am glad to hear that Health and Human Services has fixed this problem. It was an error, but I think when we do make a contract with a provider and it was our mistake that they didn't get the government funding, that the state is really liable for that payment. We would have paid it earlier, but the last two year budgets had such a budget crunch we had no money to pay all of it and it looks like we do have the funds this time. So I am voting green on LB293, and thank you, Mr. President.

FOLEY: Thank you, Senator Clements. (Visitors introduced.) Senator Moser.

MOSER: Thank you, Mr. President. I'm-- I would support the deal that's already been agreed to. I'm not trying to renege on what promises have been made. But moving forward, I would think that HHS would be a little firmer about how they order services and make sure that the reimbursements are going to follow through. You know, we spend about 1.75 billion in HHS and this kind of a situation makes us look like we have sloppy bookkeeping or that we're not paying any attention to what we're doing. And when we're spending citizens' money, I think we owe it to

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them to prove to them that we're doing the very best job that we can in spending their funds. I'm not trying to say that the people who are developmentally disabled are not deserving of services, or anything like that, it's just the matter of the business part of it. You know, we need to operate the state as a business. We need to have a budget. We need to follow it and we shouldn't be making promises to pay money in the future for mistakes. We should minimize those to the most we can and-- so that the citizens have faith in us and our budget process. Thank you.

FOLEY: Thank you, Senator Moser. Seeing no other members wishing to speak, Senator Stinner, you're recognized to close on the committee amendment.

STINNER: Just like to comment a little bit as Senator Clements alluded to. We just ran out of money the last time, otherwise we would have paid that full amount. So with that, I would ask that you have a green vote on the amendment as well as the bill. Thank you.

FOLEY: Thank you, Senator Stinner. Members, you heard the discussion on AM1503. The question for the body is the adoption of the committee amendment. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 42 ayes, 0 nays on adoption of committee amendments.

FOLEY: Committee amendment is adopted. Is there further discussion to LB293 as amended? Senator Stinner. He waives closing. The question for the body is the advance of LB293 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 42 ayes, 0 nays on the advancement of LB293.

FOLEY: LB293 advances. Proceeding to LB298.

CLERK: Mr. President, LB298 was a bill introduced by the Speaker at the request of the Governor. (Read title.) Introduced on January 15, referred to the Appropriations Committee. The bill was advanced to General File. There are committee amendments, Mr. President.

FOLEY: Thank you, Mr. Clerk. Senator Stinner, you're recognized to open on LB298.

STINNER: Thank you, Mr. President. Members of the Legislature, LB298 introduced by the Speaker at the request of the Governor is part of the Governor's biennial budget

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recommendations. This bill provides for fund transfers, eliminates fund transfer provisions, and changes provisions governing the administration and use of funds. This bill contains emergency clause and becomes operative on July 1. I request the Speaker to move to the amendment, AM1498.

FOLEY: Please proceed to the amendment.

STINNER: Thank you, Mr. President. The committee amendment, AM1498, becomes the bill. The amendment contains the Appropriations Committee recommendation on funds transfers, creation of funds, and changes in the governing, administration, and use of funds in those instances where statutory changes are necessary or desirable. Please refer to the committee's orange budget book, page 22, is a list of transfers out of the General Fund. Page 24 are for transfers into the General Fund, including those transfers requiring statutory authorization in this bill. Section by section funds transfer, Section 1 and 2 are amended to reduce the General Funds transferred to the Property Tax Credit Fund to 247 million each year on or before December 15. Section 3, 4 transfers 25 million each year from the General Fund to the Cash Reserve Fund on or before June 30. Section 5 and 6 retains the 11 million transferred each year from the General Funds to Water Sustainability Fund on or before June 30. Section 7 and 8 retains 3.3 million transfer each year from the General Fund to the Water Resource Cash Fund on or before June 30. Section 9 retains the transfer from Accounting Divisions Cash Fund to the Election Administration Fund. The original Section 8 and 9 from the green copy of the bill are removed in the committee amendment. These provisions are being addressed with General Funds in the main line budget amendment to LB294. Section 10 and 11 are unchanged. Section 12, 13, transfer an amount not to exceed 500,000 from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31 each year. This transfer is pursuant to subsection (3) and (4) of Section 82-331. Section 14 adds language to 2-4018 stating repayments relating to the Grain Sorghum Development Utilization and Marketing Fund including licensing fees and royalties which shall be credited to the fund for uses and purposes of the Grain Sorghum Resource Act in its enforcement. This language is consistent with Cash Fund language established in law for other agricultural commodity boards. Section 15 requires a transfer of 100,000 from the Charitable Gaming Operations Funds to the Compulsive Gamblers Assistance Fund beginning July 1, 2019, on or before the last day of the last month of each calendar quarter. The result in net increase in the Compulsive Gamblers Assistance Fund is 300,000 each year. Section 16 in the green copy becomes Section 12. Section 17 is the green copy Section 13. Section 18 amends 66-1334 relating to Agricultural Alcohol Fuel Tax Fund. Amended language strikes verbiage regarding the lapse of federal funds or other funds solicited in conjunction with the research or demonstration programs. Additional language allowing for the transfer of the Ethanol Production Incentive Cash Fund is stricken. Section 19 contains the provisions in the green copy, Section 14, the dollar amounts for the transfer into the Healthcare Cash Fund are adjusted to provide for funding issues in the amended mainline budget. Section 20 amends

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81-1426.01 by striking language regarding legislative intent to appropriate 500,000 to the County Justice Reinvestment Grant Program. LB446 contained provisions for appropriating additional funds for the County Justice Reinvestment Grant Program, but the program was never expended the entire appropriation. In addition, language is added to allow the funds to be used to supplement existing programs, services, and approaches to reduce jail population and costs. Finally the language is added so that any aid not distributed to the county shall be retained by the Crime Commission to be distributed on a competitive basis to counties demonstrating additional need in the funding areas identified in this section. Section 21 is the green copy, Section 15, harmonizing language relating to additional three-year grant provisions for the Nebraska Environmental Trust Fund. Section 22 is green copy Section 16, additional language is included to allow for expenditures from the Records Management Cash Fund to the State Agency Services. Section 23 is Section 17 from the green copy. Section 24 creates the Volkswagen Settlement Cash Fund to be administered by the Department of the Environment and Energy. The department shall expend the fund in accordance with the department Use Plan. The creation of this fund is based on LB678, Section 1. Section 25 creates the Grain Sorghum Natural Checkoff Fund Program to be administered by the Grain Sorghum Development Utilization and Marketing Board and the board shall expend the funds to conduct state specific programs for research, information, promotion relating to grain sorghum. The fund has been administratively created. This action formalizes the fund in the statute. Section 26 through 28 are repealer sections and the same outright repeals as found in the green copy of the bill and the emergency clause. Thank you, Mr. President.

FOLEY: Thank you, Senator Stinner. Mr. Clerk.

CLERK: Mr. President, Senator Friesen would move to amend the committee amendments with AM1666.

FOLEY: Senator Friesen, you're recognized to open on AM1666.

FRIESEN: Thank you, Mr. President. So what this amendment does is originally there was supposed to be an increase in transfers to the Property Tax Credit Cash Fund of \$25 million, that was taken out of there and moved into the Cash Reserve. And so all this does is strikes the language transferring the money to the Cash Reserve and restores it back to the Property Tax Credit Relief Fund to make that whole as into a \$51 million increase into the Property Tax Cash Fund. So, it's a very simple amendment. We did have a little bit of an error in drafting and there's a floor amendment that's going to follow that corrects that. And so, again, if you have any other questions, I'd be more than happy to answer those. Thank you, Mr. President.

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FOLEY: Thank you, Senator Friesen. Debate is now open on LB298 and the pending amendment. Senator Bolz.

BOLZ: Thank you, Mr. President. I wanted to rise and talk a little bit about the importance of our Cash Reserve and put this budget in a little bit of historical context. It's nice that we've got our cosmic orange book, so if you want to pull out your cosmic orange book, page 16 is a really important chart. It shows the status of our Cash Reserve Fund and our historical balances. And you can see that in the fiscal year '21-22 estimated at 372 million were at 7 percent as a percent balance of our revenue. In the best of years, we should be at about 16 percent which is two months worth of cash flow and can help you through just about any economic downturn. But uniquely in Nebraska, we handle our Cash Reserve both to manage economic fluctuations and to fund capital construction, as we just did with the maximum security prison. And so, we need to be exceptionally cautious with the utilization of our Cash Reserve. Not only are we at a level that is lower than any level since-- looks like 2003-04, according to your charts. In addition to that, we should be in a rebuilding cycle. What our fantastic folks in the Fiscal Office say is that we have about four-year economic cycles and rather than seeing those numbers decrease right now, we should be seeing them increase. The other things that I wanted to add regarding the Cash Reserve are that the last biennium was pretty difficult; and with so many new members in the body, I want to talk about what that was like. Not only did we have to tap into cash funds and have across the board cuts and specific cuts, we also did something called changing our minimum reserve. And the way you can think about that is that we have our savings account and then we have the buffer in our checking account that we need to be able to continue to pay our bills. We decreased our buffer in our cash account to the tune of \$45 million. We had to do that in order to protect the major functions of the state. So our Cash Reserve serves a really important purpose. The other thing that I wanted to talk about in terms of the money that we put into the Cash Reserve is that part of the justification for the money that we put into the Cash Reserve is looking forward to an increase in our federal medical assistance program matching amount. We call it FMAP. It's part of what we get in partnership with implementing Medicaid from the federal government. When we look to the future, we can see that the feds are telling us that we're going to get a little boost there. And so putting those dollars into our rainy day fund is prudent, partly because we'll get those dollars and we see them. We think we can count on them, but it's important to have that proof. But also, because we don't know what will happen in our Medicaid program, and that's a pretty big bite out of the budget as a whole. So the things I hope you understand and take away from a little bit of historical context about the Cash Reserve is that in the past two years, we've had to use Cash Funds, we've had to use across the board cuts, we've had to use specific cuts, we've had to use Cash Reserve Funds. They are very important for sustaining our state. We are at a low point in our Cash Reserve when we should be in a point where we're building it back up. And in addition to having to use the Cash Reserve in the past, we've had to change our minimum reserve which is difficult fiscal territory. So I hope I have

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provided a little bit of color commentary, and I'll yield the remainder of my time, if I have any, to Senator Stinner if he has any further comments on the Cash Reserve.

FOLEY: Thank you, Senator Bolz. Senator Stinner, 1:00.

STINNER: Thank you, Senator Bolz. I guess just opening up, I'm opposed to this amendment. It's political expedience. It's the worst kind of politics. It's pandering to the taxpayer. And frankly, all I have to do is bring everybody back to Legislative Counsel in November. Did we not talk about the Cash Reserve? Did we not talk about the importance of a rainy day fund? Did we not talk about business cycles? Wasn't it the top of our list of things to do? You take the 50 million out from our budget proposal today, you're at 322. That's below 333. You showed no progress. I am more concerned about the fiscal posture of this state, the long-term sustainability and maintenance. I'm not interested in increasing expenses like a lot of people are talking about. Well, we're just putting this in there to increase-- no, this is to maintain critical functions within the state government.

FOLEY: That's time, Senator. That's time.

STINNER: And if you haven't looked out and you-- thank you.

FOLEY: Senator Friesen, when you opened on AM1666, you indicate there's a drafting error that-- so that we're all on the same page, it might be appropriate now to withdraw that so we can get on the proper amendment.

FRIESEN: Yes, I would withdraw my amendment and the correct one will--

FOLEY: Thank you, Senator Friesen. AM1666 is now withdrawn. Mr. Clerk.

CLERK: Mr. President, Senator Linehan would move to amend the committee amendments. It will be available to the membership shortly, it's floor amendment.

FOLEY: Senator Linehan, you're recognized to open on your amendment.

LINEHAN: Thank you, Mr. President. This is a simple amendment. It takes back the \$25 million that was in the Governor's budget to go to the Property Tax Credit Fund. So the Governor in his budget, he suggested \$51 million each year for the next two years to go into the Property Tax Credit Fund. The Appropriations Committee did that with 26 million each year, but then the

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other 25 million, the way I understand it, the way it's been described, goes to the Cash Reserve Fund. After spending three hours on the floor yesterday talking about how important property tax relief is, I don't think it's a wise decision for this Legislature to not put the \$51 million each year toward property tax relief. I have, along with the Revenue Committee and some on the Education Committee-- not some, all the Education Committee and the Retirement Committee, have worked very hard to try to address this problem in a very big way. And in part of LB289, we've actually taken the political stance, which is a hard stance, to increase revenue to relieve-- help relieve property tax burden across the state of Nebraska. So I am not comfortable supporting an Appropriations bill that doesn't leave that \$51 million each year in the Property Tax Credit Fund. We have talked all year about how important this is and this is a very important decision. I realize that having Cash Reserves are important, but we have spent other money in this bill. Why is it this 25 million had to be put in the Cash Reserve? Why is it less important than all the other increases in the bill? I don't understand that. And I have more to say on the next bill when it comes to where the TEEOSA funding went in the Appropriations Committee. If we're serious about property tax relief, which I think we all are, we need to make sure that the \$51 million goes each year, goes to the Property Tax Relief Fund. Thank you.

FOLEY: Thank you, Senator Linehan. (Visitors introduced.) Continuing discussion on the bill and the pending amendment, Senator Erdman.

ERDMAN: Thank you, Lieutenant Governor. This bill that was transferring the 25 million into the Cash Reserve was one that I voted against. The reason that we can't put any money in the Cash Reserve, we spend too much. And I'm a new member on the Appropriations Committee. I have never been there before, but on other committees that I served on and boards that I served on, when we were doing a budget, we would start with priorities. And we would designate what is the most important thing, then what's second, and then down the road. Then we would fund those things that were most important and if we had money left over, we would do other things. We don't do that in Appropriations. What we do is, how we feel that day, or who has the most convincing argument, or who needs it the most, that's what we fund. So the reason we had to take this 25 million is because we spent too much. And we hear all the time from the Governor, and from other people, the only way to lower property taxes is to cut spending. But when you bring a 3.1 percent increase in spending in your budget, I'm not sure how that's cutting spending. And so we as Appropriations have probably spent about 3.2 percent increase, and so that's why we had to take the 25 million. It's very peculiar-- it's a very peculiar way to appropriate money. And if Medicaid expansion, or taking care of the needy is most important, we should have had that priority number one, and then we should have moved from there to the number two Appropriations need, and down, so on. That's not how we do it. And so when we get to the end, we have to transfer money into the Cash Reserve from the Appropriations that would have went to property tax relief because we spent too much. And when we were first there, starting this year, and each agency comes in with their request, and then below the line they give you an

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opportunity, if you are going to cut our budget 5 percent, these are the things that we would do to reduce by 5 percent. So I suggested that we take those 5 percent cuts and at the end of the year, end of the session when we had totaled it all up, if the forecasting board said we were down on revenue, we wouldn't have to make any adjustments, we already made those. And if, in fact, the forecasting board said we're OK, we could use it for property tax relief and that would be just fine. So I made several motions to accept the 5 percent, and I think one; Senator Clements made a couple of motions, I think one was accepted. We cut about \$100,000. The point is, the reason we had to take the 25 million, we spend too much. And until we understand there's only one way to lower taxes and that's to cut spending. That's a foreign word in this body, and everyone after it, cutting spending is difficult. So I am in favor of transferring the 25 million back. It's something we should have never taken out. But we also have to understand that we spend way too much money and we're not able or willing to address that issue. That's a number one issue. Thank you.

FOLEY: Thank you, Senator Erdman. Senator Clements.

CLEMENTS: Thank you, Mr. President. Yes, I was another no vote on this bill because of the transfer, less than what I thought for the Property Tax Credit Fund, and I support putting back in the amount the Governor had suggested. The Cash Reserve is important and the Cash Reserve has been-- has come down some and I'd like to preserve it as much as we can but the-- this isn't the fault of the Nebraska taxpayers, it's because our budget-- other places this money was spent. Medicaid expansion is probably the number one reason. It's around \$43 million out of the budget that we've allowed for that we used up quite a bit of money that normally would haven't. [LOUD BACKGROUND CONSTRUCTION NOISE] Well, I'll use my mad banker voice then. {LAUGHTER} Just say, I accept this, just say yes. Usually it's just say no as a banker. But anyway, you might recall the Forecasting Board on April 25 met and they gave us-- they project an extra \$45 million in this year until June 30 of 2019 that's going into the Cash Reserve. And I think that covers most of what this amendment would do. Nebraska taxpayers are hurting. As a farm banker, I see farmers having trouble. And I also saw yesterday LB289 may not pass. It didn't have real strong support, in my opinion, and that was-- without that bill, this is the one other area that we can help property taxpayers. And so, I support the amendment and urge your green vote to restore this Property Tax Credit Fund. Thank you.

FOLEY: Thank you, Senator Clements. Senator Stinner.

STINNER: Thank you, Mr. President. I guess I'm-- I don't even know where to start on this. You know, maybe back to the Legislative Counsel meetings where we were talking about the rainy day fund, the importance of having a robust, or at least a minimum reserve of 500 million. We needed to start our way going forward in that, and so when we got the down forecast and we have to deal with about \$30 million down, 69 million was wiped out. A request of \$54 million

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was made out of the rainy day fund to build the prison, to help the vets hospital. Those expenditures, that 50 million basically pays for that. It pretty much reconciles back and forth, but the fact of the matter is we have to start growing that rainy day fund. The fact of the matter is we are in a down cycle right now. If you look at what 2.8 percent revenue increase over this biennium, 3.3, comparing contrast that to what our average has been 4.7. Think about the tariff situation and what it's doing to our farmers out there and our farm communities out there. We're in a down cycle. We're at the end of a business cycle. What do people do when they're at the end of a business cycle or they have a lot of uncertainty? What does business do? They build equity. They build working capital. They build cash. Isn't that our responsibility? Isn't that the prudent thing to do? But no, we're going to put politics in front of prudence. It's a bad trade-off, folks. That's what Washington, D.C. does. Bad trade-off. Let's talk about priorities, 11.6 percent increase, Property Tax Relief Fund. Highest increase of anything that we have in the budget. Let's talk about another priority that we have, TEEOSA, K-12: averages 3.6 and 3.6, one of the highest increases, actually the way it's distributed it's about 6.6 and then .6; it's 7.2, but divide by 2, and you get to 3.6, that's the average yearly increase in TEEOSA. Is that not a priority? Let's work through the rest of this. Provider rates at the front end, I said we have to reestablish some kind of funding to our providers across the board. Why? We cut them \$58 million this last biennium. When you look back over five years, what have we provided for provider rate increases over the five years before the next biennium? It varied from 1.75 to 2.25. We chose 2 percent because that was a predominant number. Two percent equals inflation. That means you can put groceries on the table and no, no extraordinary items. This budget, if you take out Medicaid expansion, which was another priority by the way, or I won't even say what I was going to say, but anyhow we had to accommodate Medicaid expansion about \$50 million. It's going to go up probably to 90 million in the biennium and then to 100 million and we got to figure out which way we want to go with a lot of different priorities. But that certainly is, was, and is a priority. The idea that we didn't prioritize anything, we had a flood. We actually provided \$7 million for flood relief. We took a look at Corrections. Corrections, when we came in here for the last five years I've looked at a Corrections problem and prison overcrowding, and actually it's going up instead of down. So we had joint sessions. We had joint sessions with Judiciary because they're policymakers and we are the appropriators. And we decided that specialty courts--

FOLEY: One minute.

STINNER: --were a way to go to close that-- the rapid increase of people going in. It might be a part of the solution. We're a long way from 140, folks. 140 is the number we have to get to by July 1 of 2020. Is that a priority? And we did approve a maximum security prison but we didn't do it willy-nilly. We had a heck of a conversation between Judiciary and ourselves. We tried to gather a heck of a lot of numbers and we also had joint sessions with HHS on Medicaid. We had hearings. We had briefings. We wanted to get the mix right. Now, you tell me where we willy-

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nilly spent money. 2.5 percent core increase. And now you telling me also that we can't grow the rainy day fund. What is wrong with you people? You should be long-term oriented, not short-term oriented. You should take care of the fiscal posture for the state of Nebraska. That's what our responsibility is.

FOLEY: That's time. That's time, Senator.

STINNER: Thank you.

FOLEY: Thank you, Senator Stinner. Senator Linehan.

LINEHAN: Thank you. So let's talk about TEEOSA. The Appropriations Committee asked the Education Committee to change the formula, which we do on a regular basis, because we didn't have money. At least that was my understanding. I think that's what the Education Committee thought, because we have a formula that is, I think, pretty well understood by the body at this point. And it works and it's supposed to help fund our schools. And in funding our schools, it's supposed to help keep property taxes down. So what we did this year and this-- and it's on page 120 if you have your books. I would suggest maybe you look at it. Halfway down the page on 120, it's TEEOSA aid. Adjust aid to provisions in LB588, program 158 education aid. LB588 changes the local effort rate and the TEEOSA formula. The local effort rate is what we assume or know a school can raise with a maximum levy. And we use a dollar, that's what was written in the formula, that's where we're supposed to go. But instead this year, we turned it up to \$1.02-03 in FY18-19, and then back to a dollar in '19-20. Of course next year, we may be told we need to change it again. This is why the Lincoln and Bellevue and Omaha schools are nervous about LB289 because every year we don't do what the formula says. So that saved the appropriations, or our state on appropriations, as you can see there, \$26,086,674. Then, not that we're done, if you go to the bottom of the page, it says TEEOSA aid again to adjust provisions in LB675. The bill adjusts allowable growth rate in the formula to 2 percent versus 2.5. Two percent is actually lower than LB289 which uses inflation. And that will save in the second year of the biennium almost \$13 million. So there is \$39 million. Now, do we take that \$39 million that we saved there and put it in the rainy day fund? No, we did not. The appropriators did not. We put-- and it's all listed here --\$300,000 for Nebraska Information Technology Initiative, and I'm not saying any of the programs aren't worthy. I doubt the appropriators are spending anything on programs that aren't worthy, but we didn't put the money in the rainy day fund. We're putting the money into other spending for education. We restored aid that we didn't-- everyone lived without last year, and it's all outlined here. And we increased funding for Vocational Rehabilitation Services by \$1.2 million. So, if we are serious about property taxes and we cut TEEOSA by 39 million, and then we took 25 million from the Governor's suggestion, or 51 if you use two years, that is \$90 million. I don't know why, if the rainy day fund was so important, we didn't use some of this--

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SCHEER: One minute.

LINEHAN: --39 million to put in the rainy day fund versus using funding that could and, in my opinion, should go to property tax relief. Thank you, Mr. President.

SCHEER: Thank you, Senator Linehan. Those waiting to speak: Senator Lathrop, Friesen, Murman, Briese, and others. Senator Lathrop, you're recognized.

LATHROP: Thank you, Mr. President, and colleagues, good morning. I am opposed to FA67. I appreciate Senator Linehan's concern and the concern of everybody here who has expressed an interest in property tax relief. It is a big deal to people in my district. I have to tell you when I left in 2014, when I was term limited in 2014, the rainy day fund had about \$720 million in it. It's been spent below 300. And I look at where we're at in this cycle, right? By the way, an observation, the only two people that have ever served in this place during a recession is Senator Chambers and me. I've been through a recession in this place. You don't want to be here when there is a recession because these discussions get a lot more pointed and they-- and the decisions become a lot more difficult. The rainy day fund serves a purpose. It has been depleted in the four years since I've been gone, not suggesting that I would have saved it had I not been term limited, but it is alarming to go from 720 million down to below 300. This is a conservative principle. This money isn't being put in the rainy day fund and spent. It's being saved. And it's being used or stored there for a purpose. If we don't need it, if this economic growth continues and the rainy day fund starts to expand, we'll put it into property tax relief. I'm fine with that, but this is a conservative principle. You don't run your checking account with nothing in there. You don't run your personal life with no savings account of some kind. This is our version of a saving account and we're going to need it. In the economic cycle that we are in, we've been on a long period of expansion and two things ought to cause us concern as we contemplate what's in the rainy day fund. One is, we're at the end of this cycle. It's just a matter of time before this country goes into another recession, and that's not a who's in charge in Washington thing, that's just a fact. And the other thing is, what effect are these tariffs going to have on the ability of the farming community, the ag producers to contribute to our tax base in the years ahead? You can get on the mike and I know there's farmers in here that could talk about whether you can make any money in the market with the tariffs and the difficulty exporting products to China. It's important. It is a conservative principle that we're talking about. And this isn't money that we're taking. It's going into the savings account and not being spent on a different program. That's the thing that's important. It's not property tax relief, or we're going to spend it on a new stadium somewhere. This is money that if we don't use, it will be available to us in the future to spend on property tax relief, but it is critical that this Legislature become disciplined and begin to save money and pad that rainy day fund so that we can withstand the next downturn in the economy when our receipts are lower and we need to turn to that in addition to whatever other cuts that may be necessary. And I will tell you just to say we've spent a lot of money or we spent too

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much money, isn't really constructive because it doesn't tell you what the alternative is, right? What do you want to cut? We can talk about that, I suppose.

FOLEY: One minute.

LATHROP: I suppose we can have that conversation, but I'm going to tell you, colleagues, it's really important that we have a healthy reserve. I think it ought to be somewhere between five and six hundred million dollars. And we're not going to get there if we make an exception every time we do a budget and say we're going to make an exception, let's go ahead and dip below 300, or not put the money in there to start restoring the rainy day fund. It's a conservative principle. You have a savings account because stuff is going to happen and when you are a state government, you can predict eventually there's going to be a downturn in the economy, the receipts will go down, and we're going to wish we had that or we're going to end up dipping into the Property Tax Relief Fund. I also am going to suggest that one of the problems with the revenue bill that we experienced yesterday was people who rely on state aid for the schools can't trust that the money will be there in the out-years.

SCHEER: Time, Senator.

LATHROP: Thank you.

SCHEER: Thank you, Senator Lathrop. Senator Friesen, you're recognized.

FRIESEN: Thank you, Mr. President. I will attempt to address some of those concerns, Senator Lathrop. Just with one tweet on Sunday night, soybean price went down 30 cents, corn was down 15 cents. That's how sensitive our markets are right now. We're already, I would say, below the cost of production. And so if trade talks fall apart, our surplus corn will be somewhere above two billion bushels again, which should translate into a price of \$3.00 or a little better. And our soybeans, oh, I think they were at a record carryover also, and so they should be dropping another dollar, dollar and a half, depending on the weather. So, yes, the number one industry in the state that is supposed to carry us out of this is going to be in trouble. And I've talked, too, before there is a prediction of a recession in 2020 when our Cash Reserve should be built up. But in the meantime, we're bankrupting our number one industry with high property taxes, and we can't seem to get off dead center to address how we going to do that. When I look at the spending, I mean, I don't think it's a horrible budget either. I've never said anything like that. I think we could hold our spending a little lower. I don't know what the consumer price index was, but I'm not going to use my dad voice so, Senator Stinner, would you yield to a question?

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SCHEER: Senator Stinner, would you please yield?

STINNER: Yes, I will.

FRIESEN: Thank you, Senator Stinner. So looking forward in your out-years, what is the projection of the Cash Reserve?

STINNER: The Cash Reserve Fund is, if we pass the current budget that's proposed, will be 372 million.

FRIESEN: And then looking in the out-years, what do you see as-- I think I've heard reports that there might be some strong revenue coming in in the next quarter or so. Is there any possible transfers coming in?

STINNER: You know, my crystal ball isn't quite clear yet, but I will say this, that just looking at the fiscal forecast that was presented to us, it varies between 1.5 percent GDP growth to 2.5, very, very substandard.

FRIESEN: And so what would that translate into any transfers to the Cash Reserve?

STINNER: Well, it would-- let me put it this way. If we're at 10 percent, we could cover three years of an 80 percent-- 80 percent of a business downturn for three years that would be normal with a \$500,000 reserve.

FRIESEN: So you really didn't answer my question. How much transfers into the Cash Reserve could happen?

STINNER: How many dollars?

FRIESEN: Dollars.

STINNER: Well, right now we have about 45 million that's supposed to go in there based on the current projections. That would bring us up to 322 and then the 50 brings you to 372.

FRIESEN: So it's currently right now at 372, right, if we pass this budget?

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STINNER: If we stay with the budget, I believe it's 372.

FRIESEN: But there-- you do forecast in the out years, don't you, on to what revenue might be coming in?

STINNER: Well, right now the revenue has exceeded, yes, you are correct in your assumption that May was a robust-- or April was a robust month. Hard to predict what the next two months are going to be. Certainly there is some big refunds out there that could upset those numbers, but right now, we're running over projections about \$95 million.

FRIESEN: So there's a possibility of about \$100 million transfer into the Cash Reserve?

STINNER: That's a possibility.

SCHEER: One minute.

FRIESEN: OK. Thank you. Senator Stinner, one more question. So in the budget, if you-- could you summarize what might be new spending outside of prisons and the court systems you created because both of those, I think, are very much needed, but is there new spending other than those two that you could-- ?

STINNER: The new spending, obviously, is Medicaid expansion.

FRIESEN: OK.

STINNER: Right now, we're projecting-- we're just putting in 50 million, but if it's a \$450 million program is what the projections are and it grows to 500 million, we have to pay 10 percent. So that would be 90 to 100 million additional dollars have got to be provided for Medicaid expansion.

FRIESEN: In the next few years.

STINNER: In the next biennium, yes.

FRIESEN: So, is there any other new spending?

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STINNER: It's hard to predict that. You know, when we were talking about--

FRIESEN: No, in the budget, not predicting. Is there new spending in the budget?

STINNER: You know, I'm going to say that we're going to try to keep it as close to 3 percent as we can.

SCHEER: Time, Senators.

FRIESEN: Thank you, Mr. President.

SCHEER: Thank you, Senator Friesen and Senator Stinner. Senator Murman, you are recognized.

MURMAN: Thank you, Mr. Speaker. I stand up in favor of FA67 and thank Senator Linehan for bringing that amendment. We need to restore the Property Tax Credit Fund. Senator Lathrop spoke about business cycles and I totally agree with him. There are business cycles that go up and down. And I found through the years that quite often agriculture-- the business cycle and agriculture kind of does the opposite of what the rest of the economy does. And a good example of that was back in-- during the Great Recession of 2009-10 and on, agriculture was doing very well in the state and carried the state at that time. Our state did well at that time, thanks to a large part of how well our agricultural economy was doing. Right now, agriculture is in a great recession. You probably could even say a depression. The commodities I'm most familiar with, the grains, dairy, cattle. The cattle are definitely very unprofitable right now. Even large losses are being made. Especially, you know, I'm an eternal optimist, I'm a farmer, so I think next year, this year, will be better. But the way things are looking and heading right now, we will definitely be in a depression very similar to the 1980s within a year. Prices, of course, are going down as was mentioned and our costs, you know, went up the last few years. Costs continue to go up, and definitely don't go down as prices go down. So right now, the rest of the economy in the nation and in Nebraska is doing very well. And agriculture is just asking for a little bit of a reprieve from the high property taxes that we saw in the last ten years. Referring back to a study from Ernie Goss from Creighton University, in the last ten years ending in 2016, which was the last year that we had the figures, farmers paid 37 percent of their income toward property taxes. I have the figures right in front of me here. Business in 2016 paid 4 percent, 4.2 percent property taxes. Household paid right around 3.8. I'm not sure exactly where the line is there, but the rest of the economy is in a position now that farmers were during the boom. You know, the rest of our economy is booming and I don't want to talk just about farmers because I think the rest of the economy is going to be in a very similar situation with rapidly increasing valuations, that's already happening. Property taxes on-- for all Nebraskans will be rapidly increasing in the next

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few years. So, we can't afford to do nothing about the property tax problem. Farmers right now are very uncompetitive--

SCHEER: One minute.

MURMAN: Thank you very much. --very uncompetitive with the rest of the country because of high property taxes in this state. And the remainder of our economy, as I mentioned, in the next few years will be less competitive with the rest of the country if we continue with high property taxes. So I think it's very important to have a Cash Reserve. I'm conservative, I want a good Cash Reserve. But right now property taxes are the number one priority in the state, reducing property taxes. Thank you very much.

SCHEER: Thank you, Senator Murman. Those waiting in the queue to speak: Senator Briese, Williams, Bolz, Groene, and others. Senator Briese, you're recognized.

BRIESE: Thank you, Mr. President. Good morning, colleagues. I rise in support of FA67 and this effort to restore the entire 51 million that was intended to be added to the Property Tax Credit Fund. And I don't do this lightly. I respect and admire the work of Senator Stinner and the members of the Appropriation Committee. And I appreciate Senator Stinner and Senator Lathrop's comments and concerns about maintaining the rainy day fund and the sustainability of the fund. But with that said, in the Revenue Committee we discussed three bills relative to on-line sales tax collection. We moved out Senator McCollister's bill, I believe it was LB284, which eventually was passed, and I appreciate the work of the Revenue Committee and Senator McCollister on that issue. But what we didn't move out was a bill that would have required the revenue gathered by on-line sales-- remote sales tax collection to be directed to the Property Tax Fund, and that was my LB18. And I have always argued that additional revenue from the enforcement of on-line sales tax collection ought to be directed towards property tax relief, and that bill would have directed it to the Property Tax Credit Fund. But I was tempted to dig in my heels at that time and insist on the bill I had there that would have directed the dollars to the fund, or I considered also dropping an amendment to Senator McCollister's bill to have done the same. But in the background at that time we had the Governor's proposal to add 51 million to the Property Tax Credit Fund, and it was my understanding that those dollars were to approximate the additional revenue coming in from on-line sales tax collection. So I, and others, really relented on insisting that we snare those dollars with an on-line sales tax bill, and we passed a bill, Senator McCollister's, that didn't direct those dollars to property tax relief. So in the meantime, we have an effort to strip roughly half of those dollars from the Property Tax Credit Fund. So I guess for me it's time to dig in and ensure those dollars do go to property tax relief. We have to remember, we have a property tax crisis in this state. We spoke at length about that yesterday, probably don't need to add to that discussion here today, but we do have a crisis in this

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state. And I think that property tax relief is the number one issue on the minds of most Nebraskans. And to tap a new revenue source with enforcement of on-line sales tax collection and not direct those dollars to property tax relief is really thumbing our noses at hardworking Nebraskans demanding that relief. And this isn't about doing what's politically expedient and this isn't about pandering to the taxpayers, just doing about what we've been arguing about for years-- or a couple of years, especially last summer when on-line sales tax came to the forefront. This is about doing what taxpayers deserve and that's directing these dollars to property tax relief. So I do support FA67. Thank you, Mr. President.

SCHEER: Thank you, Senator Briese. Senator Williams, you're recognized.

WILLIAMS: Thank you, Mr. President, and good morning, colleagues. First of all, I'd like to say a special thank-you to Senator Stinner and the Appropriations Committee for doing the hard work that they have. It is crunch time for those of us sitting in these seats and it's priorities, priorities, priorities. And it's not your priority bill, it's your priorities for the growth of the state, for the safety of the state, for the issues that you and I believe are the most important in the state. I'd like to, first of all, quickly thank the Appropriations Committee for recognizing the need for the expansion in the problem solving court area. I think beyond a doubt that is an investment that makes incredible sense, the ability to expand courts in Wilber, Papillion, York, Norfolk, and veterans courts in Grand Island and Omaha. It makes great sense. And also, I would be remiss if I did not mention provider rates. In particular, we've talked at some length in here about the long-term care industry in our state and the problems that are having in that area and the 2 percent increase generally across the board is important. I have the opportunity to serve on the Planning Committee under "Professor" Schumacher's leadership over the last two years before this session started. That committee met regularly and isolated on one important issue that we believed as a committee was the number one issue that we could affect and make a difference in the state, and that was the replenishment of the Cash Reserve Fund. That is, as you have heard this morning, when my group of senators started in this body was about \$700 million and dipped below 300 million because of issues that we had. Cash Reserves are important. I come from an industry that deals with loan loss reserves and recognizes how important those are and how you have to build those, those have to be a priority because in our case here, that fund can be used for capital projects that are necessary but it also is our cushion. It is our safety net for times of fluctuation. And we are seeing and you have heard a great many comments about the state of agriculture, and as a banker that is certainly the case. We have issues there. That does not diminish our priority of filling that reserve when we have that opportunity. And those are tough decisions and we will each make them to the best of our ability in here. I'm certainly going to stand towards building those reserves at this time. I would kindly yield the balance of my time to Senator Stinner.

SCHEER: Senator Stinner, 2:05.

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STINNER: Thank you, Senator Williams. Just wanted to stand up and-- some people are talking about cuts. There is no cut. We're moving it over, \$50 million, to the rainy day fund as opposed to keeping it in property tax relief. We are still providing \$26 million per year, 52 million in total, to property tax relief. Let's get proportional on this. Let's look at what 25 million equals. Now, I'll just ask you to look at page 88-- or excuse me, 66 and it runs through the Property Tax Relief Fund and how it works and the like of that. Well, \$25 million for a million dollar farm is \$120 of tax relief, \$120 of tax relief, a \$120 of tax relief. Let's get proportional here. The other thing I wanted to say is, I probably have more of a vested interest than anybody sitting in this room. I have over \$200 million out in agriculture as it relates to ag credits. I'm abundantly aware of what's happening on cash flows. I'm abundantly aware that now property tax, instead of a footnote on the cash flow, is the second, maybe third biggest item on that cash flow. And yes, I'm deeply concerned about it. But I'm also deeply concerned about this direction of the state, the fiscal posture of the state. And if you want to look at Moody's ratings and what their concerns are about the University of Nebraska AA rated bonds, the report card that we get, look at it. They are concerned about the state of Nebraska stability, their ability to continue to fund the University of Nebraska, the depletion of our reserves over this period of time. Also put into context 2.8 percent annual-- or two-year increase. That's really low. You have to continually try to cut down and cut down.

SCHEER: Time, Senator.

STINNER: Thank you.

SCHEER: Thank you, Senator Williams and Senator Stinner. Senator Bolz, you're recognized.

BOLZ: Thank you, Mr. President. I wanted to rise and just address a few points that I've heard on the microphone this morning. The budget is multifaceted and it reflects the morals and values of the state and reflects challenges and priorities across the state, urban and rural, agriculture and industry, all kinds of priorities and needs. And when we came in to developing our final budget, we did have a conversation about priorities. Some of the priorities that we talked about included paying our bills and being responsible payees for the state; funding a response to the flooding and the emergencies. We talked about protecting higher education and provider rates, especially in the context of the past. And even though it was a much smaller item in the budget, one of the things that we have always taken pride in as an Appropriations Committee is that we've retained our commitment to adequately funding our retirement programs. We haven't made the mistakes of not contributing to those programs as other states have, and I think we should be really proud of those things. So, I guess I want to start by saying that there was a context of prioritization and certainly the property tax credit program was a part of that context of priorities and was articulated loud and clear, but one of the interesting and challenging things about the budget is

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that it's all a calibration, it's not binary. So, some of the things I wanted to put on the record are some of the contexts we worked in, some of the things that we're locked into, some of the choices that we made, and several of the things that we declined to fund. So first in terms of context, I do think it's important in your General Fund financial status you can see that the '19-20 revenue growth is projected at 2.4 percent and the '20-21 is at 3.2 percent, and that's significantly below the revenue growth average of 4.9 percent. So we have to be careful and cautious here. It's one of the reasons that the Cash Reserve is so important. As Senator Stinner said, our spending growth is at 3 percent. It would be at 2.5 percent without the expenditure of Medicaid expansion. Senator Clements referenced the 45 million that we received after the most recent fiscal forecast that went into the Cash Reserve. That was a very positive thing that helps us shore up our Cash Reserve, but it is an opportunity to provide a distinction between one-time funds and ongoing funds. Because those funds came in above our forecast, they get put into our Cash Reserve and we're not necessarily considering them ongoing funds. So we need to be careful and cautious when we've got sort of that one-time Christmas bonus versus what we're expecting on the economy to do into the future. And when we think about the economy's performance into the future, we look back at that 2.4 and 3.2 percent growth number. I also think it's important when we talk about spending and priorities and how we're being responsible that we remember the things that we're locked into. We really don't have a choice in terms of funding the negotiated salaries that are done between the workers and the administration or paying for health insurance. Health insurance ranged from 3 percent to 5 percent and salaries ranged from 2 to 2.5 percent. So those were locked in. Senator Clements made the point that we are trying to consider the interest of the taxpayers and provide some relief and I think that's fair and right, but I would also observe that the taxpayers, the voters, are the ones who made the choice to invest in Medicaid expansion. So I don't think that we can say that we're not responding to the taxpayers or not responding to the voters by putting this budget forward when we are responding directly to a vote of the people.

SCHEER: One minute.

BOLZ: I want to mention that we made some things right. And one very important thing that hasn't been brought up that's specifically in the funds transfer bill is that we made right the Water Sustainability Fund. We moved that from the \$6 million that we had knocked it down to to 11. We also put 6 million in for homestead and property tax relief. And we funded the election technology needs for the Secretary of State. The last thing I want to bring up is the things that we didn't do. We didn't fully fund the rate methodology for developmental disabilities or behavioral health. We only did a part. We didn't fund the Cancer Research Center which was so compelling and such an incredible opportunity. We didn't fully fund higher education's request in spite of the fact that in the last budget cycle, over three years we decreased higher education for the universities by 8.5 percent and other higher educations similarly. And we modestly increased provider rates in spite of the fact that we had a negative 3 percent--

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SCHEER: Time, Senator.

BOLZ: --and flat funding--

SCHEER: Time, Senator.

BOLZ: Thank you, Mr. President.

SCHEER: Thank you, Senator Bolz. Senator Groene, you're recognized.

GROENE: Thank you, Mr. President. One of the things that has always bothered me about the mentality of this body, and that of the Governor also, is that somehow state government should operate with a singular corporate thinking that somehow we compete with local governments and citizens. As a state senator, I disagree with that thought process. I came here as a citizen worried about my property taxes. Now I'm supposed to switch my mentality, I worry about the Cash Fund of the state and the tax revenues and what the state spends on them. Nebraska citizens, one has to look at Nebraska as the whole. That brings me to FA67. Their biggest concern is not how we fund the university, how much money we gave to community college, but property taxes. Property taxes, that's all I heard. That's all you heard when you knocked on doors. We're not competing with them. We serve them. I handed out two-- well, first, a little frustrated as the Chairman of Education, I told the committee-- got them all to go along with cutting 25 million from the state funding. My assumption was it was going to be doing what we did two years ago, cut funding spending across the board. But now today, I find out we used it to increase spending. Another shift to property tax because who is going to make that up with that state aid cut to education? It's going to be the property taxpayer. And then I find out if we would have done what they wanted us to do and take 50 or 60 million, we might have saved all of the Property Tax Credit Fund. Coincidence? We got 25 million, we cut 25 million from education. If we would have cut 50, would we have kept 50? I handed out two handouts which concerns the whole budget. Spending on higher education by the state higher education-- operators management association. We're a member of that. We're third highest in the nation per capita spending on higher education. We keep getting told we're going to grow the economy because we throw money at higher education. Well, explain to me how Colorado was fourth in their booming growth, how Nevada is ninth worst-- Florida is ninth worse and they have-- did booming with growth. Nevada is sixth, they're booming with growth. Michigan rated one of the highest public education institutions in the nation, I think we're 168, it's 14th from the bottom. But yet, we can't cut that. We can't tell people making six-figure incomes that they're going to have to wait for a couple of years. No, we give them 3.4 percent increase. Another chart I handed out is property taxes by local subdivisions. ESU's have gone up 60 percent in the last ten years, community colleges 112 percent, but yet we're giving them a 2 percent increase and ESU's 2 percent. Page

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26, as I said the other day, the budget book is the most important page of the book. You want to know an indicator of the problem we have? The highest increase is, guess what? Homestead exemption. Why? People can't pay their property taxes. The elderly in our state are begging for property tax relief and they're applying for homestead exemption, 4.6 percent. Don't tell me you can't-- if you really care about --if you really care about the Cash Reserve and property taxes, tell the university to take a hike. One of the lowest tuition is in the Big Ten, the lowest. I think Iowa State might be lower than us.

SCHEER: One minute.

GROENE: Corrections, 3.7. There's a crisis. Why isn't that 6 or 7 and the university 1 or 2. I know why, we all know why. They got a lot of power in fund-raising and politics. But don't tell me all about the Cash Reserve, how critical it is and then I look at these numbers and say, the number one concern in the state of Nebraska is property tax. They own this state, they own us, the citizens do and that's what they want and that's what we cut. Explain it to me. I don't blame anybody on the Appropriations Committee, but you got to look at the whole-- you got to have the ability to look at the whole budget, not each person who comes in and asks for more money. You start with zero and you tell people, no. And you start with property tax relief as number one. LB289--

SCHEER: That's time, Senator.

GROENE: --will pass.

SCHEER: Thank you, Senator Groene. Senator Moser, Hilkemann, Slama, and Wishart and others waiting in the queue. Senator Moser, you're recognized.

MOSER: Thank you, Mr. Speaker. Well, first of all, my district is primarily ag-based. We have the city of Columbus which constitutes about 66 or 70 percent of the population in my district, and there are some people there that are not necessarily supported by agriculture, but primarily agriculture is the thing that drives my district. Having said that, I mean, I support agriculture. My dad ran a feed store when I was a wee little boy and my wife's family and her cousins have farmed in Colfax and Platte County for pretty close to 100 years. They're still working at it. But I wanted to put this in a little different context. Property tax relief benefits all. One of the other senators the other day told me while we were talking about this, that some of their friends rented an apartment and they didn't see how property tax relief was going to help their friends, or the people in their district. But a 2 percent property tax rate is really too high for anybody, not just farmers. Businesses pay property tax on their buildings. Homeowners pay property tax on their homes. If they're renting, their landlord pays the property tax. On a really inexpensive home, say

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a \$50,000 home or maybe it's the value of your unit in your apartment building is 50,000, at 2 percent, that's \$83 a month that your landlord or you are paying in property tax. If your home is \$150,000 at 2 percent, it's \$250 a month in property tax. If you have a \$300,000 home, your tax is 6,000 a year, it's 500 a month. And if you have a \$250,000 mortgage for 30 years, your payment is about \$1,250, but to just retire the mortgage part of it, but the property tax portion is another 500 and then you add another \$100 for the insurance. So 35 percent or so of your payment is property tax and even though you may be fortunate enough to live 30 years and pay that mortgage off, you'll never get away from paying that \$500 a month property tax. When you retire, you'll still be paying that \$500 a month property tax. Property tax is one of the worst taxes and it affects everybody. It's not just the farmers, although, you know, we're involved in farming, I support it, but this benefits everybody. So don't lose your thinking in that this is only for farmers. It's for everybody. Everybody pays property tax. Property taxes are too high for everyone. Thank you.

SCHEER: Thank you, Senator Moser. Senator Hilkemann, you are recognized.

HILKEMANN: Thank you, Mr. Speaker. Yesterday, I began to share some of my thoughts about the Property Tax Relief Fund, as you may well know, how it was created and how it is a growing line item within our budget. It constitutes 5 percent of our total budget this year. When I was a freshman senator, the Relief Fund stood at \$140 million. You can go to page 2 of the budget book, the bottom of the page, it was \$140 million. Each of the years that I have been here, we have increased the amount budgeted to this fund. In the first year I was here, we put 46 percent increase into it, 62.5 million to a 204 million. Then the next year, we added another 20 million to make it 224 million. During my third and fourth years we kept it flat because we didn't have any money, we were cutting it. We cut every agency. We made cut, cut, cut, but we didn't take one cent from the top Property Tax Relief Fund. This year, the Governor came with the request to put another \$51 million, or 22 percent increase into that fund again this year. When I saw that, that was one of the biggest concerns I had. This is becoming an albatross around our whole budget process and I'm going to-- let me --and before you say the guy is nuts, let me finish some of my thoughts here. I understand people want property tax relief. I want property tax relief. It has gotten-- it has gotten out of Kimball where some people are paying more property tax than others, and I have been trying to get the number, but I haven't been able to get it. I'm guessing-- just a guess of mine, that probably only about 50 percent of Nebraskans actually pay property tax as owning property. But those who do, I understand the plight and I do feel the responsibility. But I am very grateful that our committee this year decided to use not all of that request, but put just half of it in and then use the other half to help fund the new prison and then also to try to improve our rainy day fund. I maintain in the five years that I've been here-- we have gone from around 725 million down to the 300 million --I maintain that over 200 million of that down pull is because of the money we have been putting into the Property Tax Relief Fund. A concern I have is that if we're going to continue to put 250, and the Governor wanted more, and I know

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that he's got-- he even had a bill where he wanted to keep it at --freeze it at 295 million so we would have to deal with that every year. This keeps us-- this whole thing of having the reserve became because we have collected more revenues in our sales and income and corporate income taxes that we had this excess amount of money. We have not been able-- we're not spending this money willy-nilly. This money goes back into the Property Tax Relief Fund but it's keeping us--

SCHEER: One minute.

HILKEMANN: I was thinking just yesterday, if we were not having to put \$250 million into property-- maybe instead of talking about half a percent increase in sales tax, we could have been talking about a half a cent decrease in sales tax. Maybe we could be talking about a decrease in income taxes, but we have to put in 5 percent of our budget into the Property Tax Relief Fund. And the most discouraging thing that I hear about this, that I have experienced over the five years of being here, is that it's never enough. In fact, I had one of our senators who is not here anymore this year, say to me last year-- I said my goal is we not grow this thing anymore and he said we ought to be growing it to a billion dollars a year. I know it's not popular to talk against this because we all are concerned about-- and honestly, I own farm property--

SCHEER: Time, Senator.

HILKEMANN: --in northeast Nebraska, I get some advantage.

SCHEER: Time, Senator. Thank you, Senator Hilkemann. Senator Slama, you are recognized.

SLAMA: Thank you, Mr. President, and good morning, colleagues. I rise in absolute support of Senator Linehan's floor amendment. How many of us in this body have made promises or platitudes to constituents about the importance of property tax relief. Think about that for a second. How many of you? We had a request at the beginning of this session for a \$51 million addition to the Property Tax Credit Fund. It's not much, but you know what? It's a start, it's better than nothing. So I rise today not only in support of Senator Linehan's amendment, but to take issue with the fact that when we decided replenishing the rainy day fund was a priority, which it should be, we did it at the expense of relief for our farmers and our other property taxpayers. Instead of asking ourselves the hard questions of where we as a body could cut our wasteful spending as Senators Linehan, Erdman, Groene, and Clements alluded to already, we decided to cut property tax relief. We could not find \$25 million anywhere else in a multibillion dollar budget so we went after property tax relief. \$25 million is not much in the grand scheme of things in the Nebraska state budget. We have heard references to down cycles in revenue. You know who is in a down cycle right now? Agriculture, the driver of our state. Not only are commodity prices in the tank, we've got farmers, including in my district, who still have

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thousands of acres under water or under a foot of silt from the flood. I'm not here to criticize the work that the Appropriations Committee has done with this budget. However, I take issue that we chose to prioritize spending over providing very, very reasonable property tax relief to folks that are suffering right now. Make no mistake about it, folks, family farms are folding and farmer suicide rates are spiking and property taxes are a part of that. So, colleagues, if you have any interest in providing property tax relief, join me by voting in favor of Senator Linehan's very reasonable amendment and providing the first steps of this session of relief for our property taxpayers. Thank you, Mr. President, and I'd like to yield the rest of my time to Senator Groene if he'd like it.

SCHEER: Senator Groene, 2:30.

GROENE: Thank you. Well, I used my angry taxpayer voice before, so I think Senator Stinner has got his angry linebacker voice down and we also heard from an angry banker, but it's about property taxes. And to take off on what Senator Hilkemann said, if we would have fully funded education in the past and not allowed the shift to property taxes, that \$250 million of income and sales taxes would have went to a state purpose. But we do this with a back door mechanism through the Property Tax Credit Fund. LB289 would fix it and some of us are brave enough to keep our heads out of the sand and say we'll pay for it. We'll pay for it with sales tax increases. Past Governors and legislators have used money-- excess money coming in to cut income tax rates for the wealthy to create incentive programs. That line isn't on here because that should be a budget item, how much we give away for corporate welfare. Yeah, I'm a fiscal conservative. I'm a free market guy and free markets don't agree with good ol' boy deals. But that's not on here. But when we talk about property tax relief or an incentive for the largest industry and the people of rural Nebraska and the people in the cities because 52 percent or more of it does go to urban areas of the Property Tax Relief Fund. Those are the drivers of our economy, the average person making their home payments, running their small businesses. If you want to give economic development, you give them property tax relief. Giving it to the high-waged individuals at the University of Nebraska and higher education does not do that. It doesn't do it at all. The proof is in the pudding. How many years we have been third, fourth. I've studied this-- followed this study by the higher education group. We're always in the top five and we always get-- every time I come here, we're told that by doing that, we're going to grow Nebraska. Where's the results? Where's the results? We homestead exemption, 4.6 percent increase annually.

SCHEER: Time, Senator. Thank you, Senator Slama and Senator Groene. Senator Wishart, you are recognized.

WISHART: Thank you, Mr. President. Colleagues, good discussion today on the budget. I did want to put some things in context. First, I wanted to say that if you took out Medicaid expansion

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additions from our budget that were requested by the Department of Health and Human Services, post-preliminary hearing, our budget is actually growing at a lower rate than the Governor's proposal. So I wanted to put that in perspective in terms of how fiscally conservative we've been as an Appropriations Committee this year. Traditionally, you know, one of the concerns we have and one of the reasons why we prioritize the Cash Reserve, among many, is that we are banking on potential savings from FMAP to the tune of about \$34 million. We anticipate we'll see those savings, but we wanted to be really careful that we had enough of a Cash Reserve built up that if we didn't see those savings, we were still-- we weren't in the red. So that's another reason why we made what I consider the more fiscally responsible decision in terms of what we're doing with our Cash Reserve. With that, I wanted to yield the rest of my time to Senator Stinner.

SCHEER: Senator Stinner, 3:35.

STINNER: Thank you, Mr. President. I think we've had a really good robust discussion. I think you all know where I come out on this, but I don't have to run for reelection. I know it's a political issue. I know it's an important issue. I am for property tax relief. But I think we ought to vote this up. Just vote the amendment up and put it in the budget and we'll see how it goes from here. That's my recommendation. Thank you.

SCHEER: Thank you, Senator Wishart and Senator Stinner. Senator Morfeld, you are recognized.

MORFELD: Thank you, Mr. President. I'm still deciding where I'm at with the floor amendment. My initial reaction is to be opposed, but I respect Senator Stinner's statement and some other people. You know I haven't actually made any promises in my district to deliver property tax relief and you want to know why? It's because rarely did anybody bring up in the 15,000 doors I knocked my first election, and a few thousand my second, rarely did anyone bring up property tax relief being the number one issue, or even the number two issue, or even the number three issue. And that's what makes us a diverse state that has diverse interests. But you know what I did hear when I was going door-to-door? I heard people are struggling with healthcare. I heard people that are struggling with stagnant wages. Factory workers are losing their jobs. Home builders prices are going up, not because of regulation but because of tariffs. People's cost of education is going up. People are concerned about the quality of their public schools. Those are all things that I heard going door-to-door. And sure, you know, what? Property tax relief probably does help everyone indirectly in many cases. But you know what helps people more directly? Affordable healthcare. Making sure that we have good infrastructure. Making sure that our families are taken care of when they hit tough times. Those are all things that also directly help people that this budget does. So, no, property tax relief is not the only priority in this state and I would bet that for a lot of Nebraskans, maybe a majority of Nebraskans, it isn't the number

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one priority. Now, if you go up to somebody and say, hey, which tax don't you like the most? Yeah, probably a lot of people would say property tax. There's plenty of taxes that people in my district if I came up and said, which tax do you like the least, it wouldn't be property tax it would be the wheel tax. But, you know what, the wheel tax pays for a lot of important things. They also talk about in their same breath how crappy the road is over on North 33rd. Colleagues, this budget still prioritizes property tax relief. In fact, it prioritizes property tax to the tune of hundreds of millions of dollars, that as I discussed yesterday, most Nebraskans have no clue they're even getting. We might as well be throwing the money into the Platte River for most people, because they don't even know that they're getting it, or appreciate that we do prioritize hundreds of millions of dollars each year in property tax relief. So, yes, I do listen to my district. I do listen to their priorities. My first year here, my district told me that roads were a priority and so what did I do? I voted to increase the gas tax which led to a lot of roads being reconstructed in my district and was very controversial, but we took the tough vote. Unlike some people, like Senator Groene and the Governor who voted against it, or vetoed it and then voted against it, and then ran around the state at ribbon cuttings funded by what? The gas tax. The hypocrisy is astounding. It was so astounding, it wasn't only just astounding to me, it was astounding to members of the community who remembered that and wrote op-eds in Senator Groene's newspaper and several others saying, well, this seems a little hypocritical. They opposed the gas tax and now they're at a ribbon cutting doing what? Celebrating a road funded by the gas tax.

SCHEER: One minute.

MORFELD: Colleagues, we have to make investments. Yes, we make investments in property tax relief. We do. We do it to the tune of hundreds of millions of dollars, but there's other investments that have to be made too. There's other priorities in the state. This is not wasteful spending, the things that the Appropriations Committee has prioritized. These are critical things that should have been paid for a long time ago. And in fact, they cost more now because we didn't make the investment a long time ago. Thank you, Mr. President.

SCHEER: Thank you, Senator Morfeld. Senator McDonnell, you're recognized.

McDONNELL: Thank you, Mr. President. I don't want anybody to get confused that what we did in Appropriations, we said we're going to spend 26 more million dollars on property tax relief. We're going to increase it by 11.6 percent, up to \$250 million. Then we said, we're going to put more money in the rainy day fund. Because it's not if we're going to have another recession, it's when. So we're preparing for that. Our strength in Appropriations, and on this floor, is we don't agree. That is our strength. We do not agree on a number of things. I can go through 268 pages of this book and tell you how much I don't agree with. But that strength only becomes a weakness if we're not willing to compromise. I understand what Senator Linehan is

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trying to do here. I disagree. I think we should follow the leadership of Senator Stinner and the committee, not because we're perfect, not because we have a crystal ball, but because we sat in there for four months, went through different part's of the budget, looked at different things and also tried to look at the future. These decisions aren't easy. And this isn't going to be easy today. But, again, our strength is that we do disagree. Now it's time to find a compromise and I appreciate and I think everyone should take the time to thank the Fiscal staff. The amount of work they do for us and for our state, I can't say thank you enough. So thank you to the Fiscal staff. I'll yield the remainder of my time to Senator Hilkemann. [APPLAUSE]

SCHEER: Senator Hilkemann, 2:50.

HILKEMANN: Thank you, Senator McDonnell. Just to follow up on some of my thoughts on the Property Tax Relief Fund. You know, one of the things-- if we continue to keep this line item, and again just as Senator McConnell said, it's not that we didn't give some money to it, we just didn't give the full amount that the Governor had recommended. We still gave the largest increase was to that area. You know, several years ago we cut a lot of the agencies. I was just at a Lifesavers Conference in-- I spoke at and one of the authorities there said, you know, most law enforcement agencies during the downtime were cut 25 percent and they've never recovered. In Nebraska, our highway patrol is down 10 to 15 percent over its peak levels. What is better in public safety than to have a patrolman on the road to protect us and ensure that the laws are being upheld. These are the sort of cuts that we've made that we've not restored. And if we continue to put all of our extra dollars that we have, or even dollars that we don't have, we continue to take it from the rainy day fund, I don't know where this 25 million is going to come from, folks, it will probably come from the rainy day fund. Folks, I just-- I just-- I would hope -- it's not that this isn't an important thing, it's not important that we have a concern about our property-- but we don't collect the property tax. It's a local issue that needs to be dealt with. And what I'm afraid of is we're going to make policy that it's going to keep on going--

SCHEER: One minute.

HILKEMANN: --and if things change down the line, we're not going to be able to address it. So I was so pleased with Senator Linehan and with Senator Groene working hard to come up with the bill that they did yesterday, probably isn't going to make it through, but we need to find a better way. We're Nebraskans. Let's do things-- we could do things better. And I think that we can find a solution. And we can continue to fund those areas that need to be funded. And thank you, Senator McDonnell, again, and thank you, Mr. Speaker.

SCHEER: Thank you, Senator McDonnell and Senator Hilkemann. (Visitors introduced.)
Returning to discussion. Senator Cavanaugh, you're recognized.

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CAVANAUGH: Thank you, Mr. Speaker. I would like to echo Senator Hilkemann's comments. Property taxes are a local issue, and the Property Tax Relief Fund is not a sustainable way to solve property taxes. We need to be looking seriously at how we are funding government and how we are funding government services so that we can give local governments relief in their-- in how they're funding their government. This is not a sustainable way of moving our state forward. And I think that we should really be taking heed of what the Appropriations Committee has done, the work that they have done, the work that the Fiscal Office has done, and I agree, where is this \$25 million coming from? I mean, we're just on the floor deciding to reallocate \$25 million after months of work from the Fiscal Office and the Appropriations Committee? I disagree with that. And with that, I will yield my time to Senator Wishart if she would like it.

SCHEER: Senator Wishart, 3:40.

WISHART: Thank you, Mr. President. It looks like we're winding down the debate. I did want to once more caution the members of this body about the importance of having a Cash Reserve. What we experience in terms of the flooding this year, we can anticipate it's going to happen more frequently, and so we need to have a strong Cash Reserve to be able to support the communities that are affected by future natural disasters. And so, again, I want to caution those members that while FA67 to me is something where I wish we could do that in a better budget cycle, it seems more politically expedient and less fiscally responsible than AM1498. It's fitting that our budget comes on the heels of a revenue debate yesterday. I listened carefully to the discussion on the floor and I commend my colleagues, especially Chairwoman Linehan for the courage she had to try to do something to impact property taxes. The way I see it, there are three ways in which we can attempt to address our high property taxes. We can cut spending and reduce services, which we've done over past two years with our revenue shortfalls. We can shift the tax burden, which we discussed yesterday with LB289, or we can expand our tax base by growing our economy. To me the third option is not only the best solution because there are no losers, but it's also the only solution that will bring long-term sustainable tax relief to our state. We will never have true property tax relief unless we attract and retain talent, diversify the portfolio of businesses we have in our state, especially in our rural communities, and fill our work force shortages. Our budget this year reflects public investments in the infrastructure necessary to grow this economy. We have prioritized investments in education to grow and cultivate our future work force. Roads funding to ensure the efficiency of the flow of commerce. Disaster relief to help rebuild communities devastated by flooding. Healthcare to ensure our businesses have a healthy work force. Business incentive funds to start up businesses to strengthen entrepreneurship in our state. Problem solving courts to divert people from our Correctional institutions so they can do the tough work of getting their lives back on track while remaining in the community working. And vocational training supports for people with disabilities so that they, too, can participate in our work force and achieve independence. In preparation for our budget debate today and to further drill down on the importance of growing

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our economy and filling our work force gap as the only sustainable way for us to address tax relief, I requested the University of Nebraska prepare an analysis that I put in front of you on the economic impact--

SCHEER: One minute.

WISHART: -- of the unfilled jobs in Nebraska. So quickly to summarize, if we were able to fill the 32,666 unemployed workers in our state, we would see millions every year of additional revenue coming into our state. Colleagues, that's what we should be focusing our energy on for the rest of the session is, how do we grow our economy? And by voting for LB298 we're starting off in the right direction. Thank you.

SCHEER: Thank you, Senator Wishart. Seeing no one in the queue, Senator Linehan, you're welcome to close on FA67.

LINEHAN: Thank you. I feel the need to say that our discussion yesterday, I thought was very hopeful, and the Revenue Committee is not done working on LB289 and we will be back. And I expect to bring that back to the floor. So, I'm concerned when people say it didn't go well. To my recollection is, we only had two senators stood up and said they were against it out of 49. So I think that's a pretty good day. On this, I also want to talk-- just thank other staff. Talk about working for months on Appropriations, I understand that, and I understand it's very difficult. It's hard to get through the book. But we had Revenue Committee staff, Education Committee staff and Retirement Committee staff working hard for a year on trying to address property taxes. So I don't-- I don't think this is a perfect solution, but it definitely is something we need to do. We need to address property taxes. Everybody, I think almost everybody except maybe Senator Chambers, has addressed that this year. So I'd appreciate your green vote on LB67-- excuse me, FA67.

SCHEER: Thank you, Senator Linehan. The question before us is the adoption of FA67. All those in favor, please-- there's been a request to place the house under call. The question is, shall the house go under call? All those in favor please vote aye; all those opposed vote nay. Please record.

CLERK: 27 ayes, 0 nays to place the house under call.

SCHEER: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Morfeld, would

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you check in, please? Senator Lowe, Senator Erdman, Senator Wayne, the house is under call. Please return to the floor. Senator Linehan, we're missing Senator Wayne. Could we proceed or do you want to wait?

LINEHAN: Yes. Roll call in regular order, please.

SCHEER: Request for roll call in regular order. Mr. Clerk.

CLERK: (Roll call vote taken.) 28 ayes, 8 nays on the amendment to the committee amendments.

SCHEER: FA67 is adopted. Seeing no one in the queue, Senator Stinner, you're welcome to close on AM1498. He's waiving closing. The question before us the adoption of AM1498. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

CLERK: 39 ayes, 0 nays on the adoption of committee amendments.

SCHEER: AM1498 is adopted. Senator Cavanaugh, you're recognized.

CAVANAUGH: Thank you, Mr. Speaker. Would Senator Stinner yield to a question?

SCHEER: Senator Stinner, will you please yield?

STINNER: Yes.

CAVANAUGH: So Senator Stinner, since we just passed that amendment on to the amendment, what does that mean-- where is that money going to come from?

STINNER: Actually the trust-- the transfer of bill will be amended according to Senator Linehan's amendment, so instead of going to the Cash Reserve Fund, it is amended back to go into the Tax Relief Fund.

CAVANAUGH: So, we're going to have less money in our Cash Reserve Fund?

STINNER: Yes, we are.

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CAVANAUGH: And our Cash Reserve Fund is currently underfunded?

STINNER: I would say currently underfunded. It's just the eye of the beholder, I guess.

CAVANAUGH: Well, yesterday morning when we had the briefing for the budget, you talked about what percentage the Cash Reserve Fund should be at to have a healthy reserve. What percentage was that again?

STINNER: Well, the minimum healthy reserve would be 10 percent or 500 million.

CAVANAUGH: And how much do we have currently?

STINNER: Well, it will be like 322 million if everything works out the way the budget shows.

CAVANAUGH: And what percentage would that be?

STINNER: It will be right at 7 percent.

CAVANAUGH: OK. So we're taking 25 million out of that projection today?

STINNER: Yes.

CAVANAUGH: So it will be less than 7 percent?

STINNER: No, it will be-- it's 7.6 percent at 372 million. It will bring it down, I'm guessing, closer to 7 percent. And I didn't do the calculation, just off the top of my head.

CAVANAUGH: So what are some of the things that we use the Cash Reserve Fund for?

STINNER: Well, the state of Nebraska cannot borrow money, so they use it for one-time spends, like prisons, veterans hospitals, those types of things. And also as an economic stabilizer, we used 273 million last biennium for the business downturn that we had.

CAVANAUGH: What about when we had the flooding?

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STINNER: Flood we have not used that. We were able to put that in the General Fund. A lot of the flood is going to be covered by FEMA and, you know, obviously, USDA and a few other places, insurance, those types of things. I don't think we have a number yet finalized on that.

CAVANAUGH: Right. OK. I just thought it was worth before we voted on this final bill that everybody understood what we just did. So, thank you very much. I yield the remainder of my time to the Chair.

SCHEER: Thank you, Senator Cavanaugh and Senator Stinner. Senator Chambers, you're recognized.

CHAMBERS: Thank you, Mr. President. One thing about that vote, it makes it less urgent that LB289 pass. I don't even see the need for LB289 now, you got what you wanted. Senator Briese can go back and tell his people I got you some property tax relief. But I'd like to ask Senator Briese a question or two.

SCHEER: Senator Briese, would you please yield?

BRIESE: Yes.

CHAMBERS: Senator Briese, there are people from outside of Nebraska who buy large amounts of land in western Nebraska, isn't that true?

BRIESE: I've heard that to be true, yes.

CHAMBERS: Have you heard the name Ted Turner?

BRIESE: Yes.

CHAMBERS: Has he bought such land?

BRIESE: Yes.

CHAMBERS: In order to have a real estate transaction there has to be a willing buyer and a willing seller, isn't that true?

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BRIESE: Yes.

CHAMBERS: Have you heard people grumble about the fact that when these outsiders buy this land they raise the value of the land and by so doing increase the property taxes that people who are already living in that area have to pay?

BRIESE: I haven't heard that specific complaint, but I'll take your word for it.

CHAMBERS: OK. Does Ted Turner pay tax-- property tax?

BRIESE: Yes. I assume he does, yes.

CHAMBERS: Doesn't everybody who owns property have to pay property tax?

BRIESE: For the most part.

CHAMBERS: Who doesn't? Who owns property and doesn't have to pay property tax?

BRIESE: Folks that are exempted, nonprofits. Folks that are exempted.

CHAMBERS: And churches, too, aren't they?

BRIESE: I believe so.

CHAMBERS: That's all I'll ask you at this point. Thank you. But when LB289 comes up, I'm going to have some questions. I didn't say much on this bill because there was plenty of discussion all around and it was participated in by many different senators. And I noticed that the chairs were not all empty as they generally are. And I'm eager to see when we get to LB289 again, whether the chairs are going to be empty and I wonder if we'll get to LB289 again. All those who are going to promise to bring LB289 back, will you raise your hands? I'd like to ask Senator Briese a question-- another one. [LAUGHTER]

SCHEER: Senator Briese, would you yield, please?

BRIESE: Yes.

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CHAMBERS: Senator Briese, are you familiar with the bill number, LB289?

BRIESE: Yes, we talked about it yesterday.

CHAMBERS: And what does that bill deal with?

BRIESE: Well, you were here, you heard the discussion, didn't you?

CHAMBERS: Well, I know what it dealt with, but I'm trying to find out if you know.

BRIESE: Well--

CHAMBERS: See, I know what goes on in my mind, I don't know what goes on in yours.

BRIESE: It generates new revenue to be directed towards K-12 funding to provide property tax relief.

CHAMBERS: So, it says a property tax-- well, we don't need it now, do we, 'cause you got all the money on that last vote?

BRIESE: Well, as I said yesterday, 51 million is 1.2 percent of the total property taxes collected in this state. If you don't think--

CHAMBERS: Well, I don't care what you said yesterday, I want to know-- this is today. You got a smashing victory already so there's less need for LB289 now, isn't that true?

BRIESE: Smashing victory are your words, Senator.

CHAMBERS: Did you get a victory today?

BRIESE: Got back to where I thought we were a couple months ago.

CHAMBERS: Who won the vote that was taken that I'm referring to?

BRIESE: Nebraska taxpayers.

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CHAMBERS: The taxpayers, but the ones on the floor who are constantly talking about property tax relief are the ones who prevailed, aren't they?

BRIESE: Yes.

CHAMBERS: So that was a victory, wasn't it?

BRIESE: A small one.

CHAMBERS: OK. Are you greedy?

SCHEER: One minute.

BRIESE: Am I greedy? No, I haven't been accused of that.

CHAMBERS: That's all I'll ask you at this point, Senator Briese. Mr. President, I'm just wondering how much time I ought to go and take now since I didn't say anything prior to this. But I see the noon hour is here and stomachs are probably growling, some have luncheon dates with the lobbyists and other things, and I don't want to interfere with anybody's life, so that's all I have to say at this point. Thank you.

SCHEER: Thank you, Senator Chambers and Senator Briese. Seeing no one wishing to speak, Senator Stinner, you're welcome to close on LB298. He waives closing. The question before us is adoption, advancement to E&R Initial of LB298. All those in favor please vote aye; all those opposed vote nay. Have all voted who wish to? Please record.

CLERK: 44 ayes, 0 nays on the advancement of the bill.

SCHEER: LB298 is advanced. Mr. Clerk.

CLERK: Mr. President, LB209 is reported to Select File with amendments. Senator Lathrop, an amendment to be printed to LB427. And I have three study resolutions: LR115, Senator Williams; Senator Cavanaugh, LR116, LR117. Those will be referred to the Executive Board.

SCHEER: Raise the call.

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CLERK: Senator McCollister would like to add his name to LB690.

And Senator McDonnell would move to recess the body until 1:30 p.m.

SCHEER: Colleagues, you're heard the motion. All those in favor please say aye. We are in recess.

RECESS

FOLEY: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

FOLEY: Thank you, Mr. Clerk. Do you have any items for the record?

CLERK: Just one. A hearing notice from the General Affairs Committee. That's all that I have, Mr. President.

FOLEY: Thank you, Mr. Clerk. Now proceed to the next item on the agenda, LB294. Mr. Clerk.

CLERK: Mr. President, LB294 is a bill introduced by the Speaker at the request of the Governor. (Read title.) Introduced on January 15, referred to Appropriations, advanced to General File. There are Appropriations Committee amendments pending.

FOLEY: Thank you, Mr. Clerk. Senator Stinner, you're recognized to open on LB294.

STINNER: Thank you, Mr. President. Members of the Legislature, LB294 was introduced by the Speaker at the request of the Governor. It's part of the Governor's biennium budget recommendation. The bill is-- the mainline Appropriations bill for the biennium that begins July 1, 2019 and ends June 30, 2021. The measure includes budget recommendations for all state operations and aid programs. The bill includes the appropriate transfers from cash funds to General Fund, as well as between specific cash funds. Finally, it provides the necessary definitions for the proper administration of appropriations and personnel service limitations. This bill contains emergency clause and becomes operative July 1, 2019. I do want to take time to, again, thank the Fiscal Office and the Appropriations Committee for their hard work in preparing

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the mainline budget. Just probably starting from the beginning, this process, and this is a process, and we're in the middle of this process, really kind of starts July 15. DAS and the Budget Office send out budget requests to the different agencies, to the different commissions, and different boards to fill out a budget and prepare it and submit it by September 15. September 15, then the Fiscal Office, along with the Budget Office, start to analyze those requests. And, of course, then you have a fiscal or a forecasting board that meets in November. That fiscal-- forecast then gets incorporated into the Governor's budget and obviously then the Budget Office for the Governor prepares that budget which then the Governor submits to us January 15 for-- and then about two to three days later after that, after the Fiscal Office has a chance to put that together in a budget book for us, we start to analyze with the fiscal analyst just exactly what we are going to have to make decisions on, whether to be increases or decreases. We make notes. We ask questions, and try to get those questions. We come up with a preliminary budget at that particular point in time so that all the agencies are aware of what we are recommending. Now, if you looked at the preliminary budget we came out with a preliminary budget predominantly in line with the Governor's request. We did request 26 million out of TEEOSA. We did request-- excuse me, we did have the other budget items that were increased were provider rates and salaries were increased by \$14.8 million at that particular time. We went through a hearing process. We listened to about 44 different bills that were submitted to the Appropriations Committee. We also started to hear from the various agencies, answered our questions. We had more and more questions certainly with Medicaid expansion. We got together at special hearings, special briefings with the Medicaid people. We did meet in joint session, too, with Judiciary as I commented before. And then we just finally come up with this final recommendations, and this is what we see in this budget book and obviously now we go General File, Select File, Final to the Governor for either his line-item veto and/or just signing the budget. So that's kind of the process. And you know, to me, this budget is all about-- is all about priorities. What is our priority? What's it say? It's a numerical presentation of what we think is important. And what we think is important, there's about three things within the budget. It's not only what this Legislature thinks important, what past Legislatures thought was important. Certainly about 45 percent of it is devoted to education. Education not only from K-12, now we have early education, early childhood education, but we also have a higher education. A large portion of our budget is about the future of Nebraska, about educating, about investing in education. Then I call the second part of the budget really the "have tos", that's aid to individuals, most of that is Medicaid, but it certainly is child welfare, behavioral health, those types of the things. Those are the things we have to do. The [INAUDIBLE] taken by the federal government, over saw by CMS. And certainly those are things that we have to take care of within our budget. The third theme in that budget is really about safety: it's about the courts, it's about Corrections, it's about the safety patrol-- about the Sate Patrol. So those elements comprise about 92 percent of the entire budget. Those elements really are about what we're about here, and certainly when we took a look at, and what our challenges were as we entered this session, we took a look at first of all challenges within the budget was a 2.8 percent increase. Now, we went through two forecasting boards too.

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I will add that, which is unusual. Usually we deliver the budget to the floor and then we get a forecasting board. We had the luxury this time because of the way the calendar is set up that we had two budget-- or two forecasting boards. So we were able to adjust the budget accordingly. I think if you paid attention to what was happening there, we lost \$40 million of revenue in the first budget-- or forecasting budget cycle. We've gained 10 back, so we're about net 30. But as we start to compare and contrast revenue, we're at 2.8 percent in this biennium. That's really a low number when you compare and contrast that to the average and historical rate of 4.7. When you look at the last five years, it's 3.3 percent, still well below. So we're in a real substandard type of environment. Obviously, we talk about ag, but there's other things that play into it. Certainly tax legislation that we passed may play into it as well. So the committee had to deal with this lower, squeezed-down substandard revenue flow, and we did look at-- first we had to go from a 2.5 percent minimum reserve up to a 3 percent reserve. That was 45 million. Then we had to deal with the forecasting board that had changed our numbers down \$30 million, so \$75 million of what was-- that actually what we started out with we actually had to react to during this budget process. Certainly Medicaid expansion was another item within the budget. It initially was about a \$62 million request. I think we all remember the Medicaid expansion was put off into the future, and we actually were able to cut it back to, I think, 49.6 million, just right under \$50 million. We took long, hard look at Medicaid expansion. We had hearings. We met-- we had a hearing. We also had briefings. We also met in joint session with Health and Human Services to determine that, do we really understand Medicaid expansion? What are some of the pitfalls? We left the contingency fund within the aid side of things in order to buffer. But again, if we start in October, we come back in session in January where we can take a hard look at exactly where we're at, and if we need a deficit spend, then we'll do that. Corrections was another one that we met in joint session with, and, obviously, we're trying to gauge what dollars should we put into Corrections, and obviously we took a look at the 49 million maximum security prison. We were a little bit reluctant, I can tell you that, at least I was initially, but the more and more we worked through it, the more talks we had with Director Frakes, the more talks we had with the Judiciary Committee, the more I was convinced this was the right mix. Interestingly during that conversation, it's something to put in the back of your head about future spends is \$90 million of deferred maintenance within our prison system. We're going to have to confront that at some point in time. That came out in the conversation. Obviously we're trying to get in front of and trying to get to the 140 percent specialty courts. We met with Corey Steel and specialty courts are working. He was able to put something together and thinks he can put it together within a six-month period of time, and we'll have five specialty courts. Hopefully, then--

FOLEY: One minute.

STINNER: --starting to stem some of that inflow.

FOLEY: That was one minute, Senator.

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STINNER: One minute. Provider rates, obviously, was something that when going into the session was something important. We took \$58 million out of provider rates in order to balance our budget this last time around. Some areas got cut 3 percent. Some areas were held level. The \$58 million was taken out of provider rates. So we felt that was important to take a look back over the five years, and we saw where increases were between one and three quarters percent and two and a quarter percent. We settled on two percent because that is the number that it has averaged on provider rates. And so we did that across the board, and we've restored some of the funding. Now, 2 percent equals inflation. That just puts bread on the table. There's no luxuries relative to that, but we thought that was an important step in the right direction to try to reestablish that.

FOLEY: Senator Stinner, you're recognized for ten additional minutes for the committee amendment.

STINNER: Thank you, Mr. President, and I'll continue on. The second thing under the providers rates side of things, we had two cost studies, and I think Senator Bolz has elaborated on that. I've talked a little bit about that. Those two cost studies were actually done late in the game. They were supposed to do a cost study every five years to make sure that we're reimbursing our providers up to a level that they need to be reimbursed, at least be neutral on cost. We did find out on-- especially on behavioral health, as well as DD, we were under. DD was under about 9 percent. So we actually increased it, the rate to a 4 percent first year, and then leveled it off so it ended up being an average of two and two. The other cost study that we have was behavioral health, and that varied between 5 percent, 35 percent short. We, again, upped it by 4 percent. We're covering about 50, 56 percent of the total shortfall, so we're only halfway to the wall as it relates to those two studies. Then we had, obviously, we had a flood, and we had to replenish and actually try to get it back up to a \$5 million number. That's what we try to keep in the Governor's emergency fund. It's actually depleted probably to two, three hundred thousand at this point. We put \$7 million into the Appropriations for the flood to replenish the Governor's emergency fund. Salaries were about \$18.6 million over the Governor's budget. That was due to the Governor using 2 percent. They actually settled on 2.3 percent. Then, obviously, the prison and the prison guards did a settlement that added to that, and that, obviously, had to be funded through our Appropriations process. TEEOSA, again, was an area that we took a look at. We, obviously,-- the Governor was fully funded. We did ask for 26 million. We got \$24.7 million to help us balance our budget, and the rainy day fund was the other thing that we tried to emphasize. We talked about that before this. And, obviously, the 50 million now goes into the property tax relief. The property tax relief was a priority for us. It was a priority with 11.6. It's the highest increase of any place in the budget. We put emphasis in that. We thought that we had that covered. Obviously, that does change a little bit, but it's a conclusion of all of this. We ended up with an average increase of 3 percent in our budget. Obviously, the Governor was at 3.1, we're right on top of where the Governor got there. It's a straightforward budget. It addresses certain key areas.

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Obviously, providers; obviously, cost studies are one part of it. We tried to address Corrections, and try to do something in a positive fashion there; and then trying to fit in Medicaid expansion into a reduced revenue flow. So, and still kept a very robust 6.6 percent and .6 percent TEEOSA increase. So that's one of the bigger ones over the last ten years. On that, I will ask you for a green vote, and I will sit and listen to the commentary. Thank you, Mr. President.

FOLEY: Thank you, Senator Stinner. Mr. Clerk.

CLERK: Mr. President, Senator Friesen would move to amend the committee amendments with AM1667.

FOLEY: Senator Friesen, you're recognized to open on your amendment.

FRIESEN: Thank you, Mr. President. This is just the continuation, the second part of what we did this morning and the transfer, and so it has to be done on this mainline budget bill, too, to authorize, I guess, the expenditure of it. So it's just the second half of what we voted on this morning, and I ask for a green light on AM1667. Thank you, Mr. President.

FOLEY: Thank you, Senator Friesen. Debate is now open on LB294, the committee amendment, and the Friesen amendment to the committee amendment. Senator Clements.

CLEMENTS: Thank you, Mr. President. I support this amendment, it is necessary. It's a two-step process to restore the proper tax credit fund. And I'll talk more about the budget later. Please vote green on this amendment.

FOLEY: Thank you, Senator Clements. Senator Erdman.

ERDMAN: Thank you, Lieutenant Governor. I appreciate what Senator Friesen is trying to do. I want to talk about the budget a little bit. We had done some things in Appropriations that I think needs to be brought to the floor for your attention. And one of those things was the Secretary of State approached us about an additional \$5 million that he needed on top of the over 6 million he has now, to buy new voting machines and counting machines and ADA voting machines, as well as keep our elections safe from cyberattacks. We could not find the \$5 million to contribute to the Secretary of State to complete the project. The voting machines and the counters that he uses now are going to be in need of repair before we vote in 2020, and his estimate is they're going to spend a million dollars on repairs to get those voting machines in shape to do the 2020 election. So if we would give him-- allow the appropriations the extra \$5 million, he would buy new voting machines and he would not have the million dollars worth of repairs. So it made a lot of

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sense to do that. I made a motion in Appropriations to return the 5 million or add it back in. That motion failed. I will attempt to do that on Select File to make sure that we fund our elections appropriately. I want to bring your attention to another item in the bill, in the budget, that I think needs to be addressed, and that is spending for the University of Nebraska. We gave the University of Nebraska another increase for salaries, and we also gave them an increase for utilities. We can find it within ourselves to fund the University of Nebraska above and beyond what the Governor wanted to fund them, and my opinion was from the Governor that they were fine with what he had appropriated, but we can do that, but we can't find 5 million to keep our votes and our elections safe. I passed out a document that you should have on your desk. It talks about the growth in state tuition versus state appropriations. And as you will notice, since '97, in the ten years since '97, state appropriations to the University of Nebraska has risen 175 percent. At that same period of time, tuition, in-state tuition, has grown 317 percent. We have a problem. And Senator Halloran alluded to this yesterday. We have four campuses and we have four administrations, we need to do some consolidation. We need to understand how to spend the dollars we give them wisely, and it doesn't appear it happens that way. So I bring that to your attention so you understand we are funding this university to a large degree, maybe greater than we should. So I'm not at all pleased that we've given additional utilities, and whatever else, raise to the university. And I'm very disappointed that we didn't fund the Secretary of State adequately. Thank you.

FOLEY: Thank you, Senator Erdman. Before proceeding, items for the record.

CLERK: Mr. President, first of all, Government Committee will meet under the south balcony at 2:00; Government, 2:00. Enrollment and Review reports LB295, LB296, LB297 and LB293 to Select File. That's all that I have, Mr. President. Thank you.

FOLEY: Thank you, Mr. Clerk. (Visitors introduced.) Continuing discussion on the bill. Senator Bolz.

BOLZ: Thank you, Mr. President. I do want to address some of the expenditure items that have been brought up on the floor today, and I'll try to work through them in quick order here. The first is, I actually appreciate very much what Senator Erdman is bringing up regarding the ADA compliant election technology. It was a pretty difficult choice for the committee as a whole. I understood the situation a little bit differently from Senator Erdman, and he's welcome to share his perspective as well. But we have about \$6 million that we're putting in that was actually cost savings from a failed technology program in the Department of Health and Human Services. So in terms of finding the dollars, it was actually cost savings from another project that didn't work out quite as it should. So it's a little bit different than finding General Fund dollars to spend on this program. The other way I think about it a little bit differently is that the million dollars that

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he referenced for replacement equipment, technology, the way I heard the Secretary of State discussing that was it was funds from the federal government under something called our HAVA grant, our Help America Vote Act grant, and those were considered, at least as I heard it, contingency funds, meaning that if there was equipment that broke down, or wasn't working as it should be, or how to challenge or a problem, those contingency funds could be used to replace it. So I do think that while it is a difficult decision, and I would prefer to be able to fully fund their requests, where we're at right now is effectively using existing dollars for a new purpose. We do have contingency funds, and I do think that there is time in next year's budget cycle to discuss whether or not a new investment should be made in preparation for the 2020 elections. In reference to the university's appropriation, I wanted to say a couple of things. One is that I think it's useful to look back to history here. When you look at the percent change of where we're at right now, not this budget, but today, the percent change versus 2016-17 over the '17-18 and '18-19 budget, we've actually decreased their overall appropriation by negative 8.5 percent, which is a pretty significant impact to the university system. And I think it's important that the state-aided budget is more restrained than the overall budget as a whole. So the university's budget has research dollars and it has fee dollars that can only go to housing, those kinds of things. We use our state-aided budget for compensation, utilities, 87 percent of it goes to compensation and utilities. So I think we are keeping a close eye on the university's budget and it is well spent. I think it's also worth noting that the university tuition and fees are significantly below our peer institutions. Our university tuition and fees are at \$8,978 while our peer institution average is \$11,177. One more item to note is that one of the things that we need to think about for our university system, just like we do with our state budget and the cash reserve, is how many days of cash do they have on hand? They have 173 days of cash on hand. That gives them a Aa1 bond rating, but that is 100 days less than their peer institutions. And so we have to be careful to protect their financial stability into the long term as well. So I wanted to address that. The other item that came up on the debate this morning that I think is worth mentioning in terms of explanation was a question about additional funds for vocational rehabilitation. There's a 2,633-person waiting list for Nebraska vocational rehabilitation that hasn't been in place in previous years. For those of you who are unfamiliar, vocational rehabilitation--

FOLEY: One minute.

BOLZ: --helps with job training for folks with different kinds of disabilities. One of the reasons we have that waiting list is that there was a change in the rules about the federal-fund expenditures, so additional state dollars were requested to draw down that waiting list in response to the way that federal government has tied our hands. So I think we all would prefer to see individuals with disabilities in the work force contributing to the economy and contributing to their own financial self-sufficiency rather than relying on the government and Nebraska vocational rehabilitation helps us do that. So overall, I think the mainline budget hits all the boxes. We've been very judicious in terms of funding, increases in provider rates, salary and

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health insurance and utilities for higher education, strategic investments like the specialty courts, which have been discussed, new vehicles for the state patrol who, of course, responded in such an incredible way to our emergency issues; and a number of other items I think we can stand behind this budget. And I appreciate your green vote on LB294. Thank you, Mr. President.

FOLEY: Thank you, Senator Bolz. Senator Hilkemann.

HILKEMANN: Thank you, Mr. President. Colleagues, this has been by fifth year on the Appropriations Committee, and I would like to commend our Chairman, Senator Stinner, for his hard work and total understanding of this budgeting process, rest of the committee for the hard work that they've done to put forth what I think is a judicious and a balanced budget. My first two years serving, we had enough revenue that we could actually meet all the needs that these agencies came forth with. And not only did we meet their basic needs, but sometimes they had some requests that they needed to make, such as Senator Erdman talked about the Secretary of State having a request for additional new ballot machines. The first year I was here, we had actually had some resources we could talk about that sort of thing. And we ran into that budget shortfall three years ago. We started into a major cutting mode, taking money away from all of the agencies and university and of at least 3 percent. I am pleased that our revenues now have improved to the level that this budget actually shows a 3 percent growth for the two years. Many times we have to go back and forth and cut the budget trying to bring everything into alignment, particularly to meet those shortfalls. Every cut that we do has permanent setbacks to many programs and the agencies. And we, sometimes, see those long-term effects. Believe me, having served those first two years and the last three years it's a whole lot more fun to be Santa Claus than it is to Grinch. One of the areas that we-- that got cut was that of our nursing homes. Our nursing homes service our most vulnerable senior citizens. And many of our care centers have seen their populations, once they've used up their personal resources, they become completely dependent upon Medicaid for support. And our Medicaid rates to the nursing homes are so low that frequently these nursing homes are ending up losing 30, 40, 50 dollars per day per every Medicaid patient that they have. What's been the result of that? I think we've had 16 nursing homes close, particularly in our small, rural areas, where there's not enough what we call private pay patients to offset the Medicaid-type pay. So I'm pleased that we were able to start working to bring more money back into that Medicaid-type program because we need to think about these priorities for our seniors and for our disabled and those loved ones. You know, one of the things that was talked about here is-- and my point earlier this morning was because we put so much emphasis on our Property Tax Relief Fund, and obviously that's an important thing, I'm not saying it isn't. But what I appears that we're missing also some opportunities for growth in our state to think creatively and courageously about what we could do to be reinvesting and growing the future of our state. For example, this year we had a bill to apply \$30 million--

FOLEY: One minute.

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HILKEMANN: --to develop a pancreatic cancer research center at the University of Nebraska Med Center, at the Buffett Center. Can you imagine what that investment would have meant if we were able to do that to our community, for our economy, and to the lives of so many people who are faced with pancreatic cancer, and Nebraska being one of those states that has a high degree of pancreatic cancer. With the foundation of that Buffett Institute Cancer Center, one day, and hopefully it will still happen even though we're not going to be putting the base money, we can become the best in the world in the treatment of pancreatic cancer. Folks, we need to start thinking of where we can grow our state, and I think about-- that's just one. There are many ideas that others of you have--

FOLEY: That's time, Senator. Thank you, Senator Hilkemann. Senator Wishart.

WISHART: Thank you, Mr. President. I wanted to-- first of all, I rise in strong support of LB294, and I did want to alert the body since we made the decision in the previous bill, I do rise also in support of AM1667, just a necessary step, in order to make sure our budget works. I did want to circle back around, though, to the broader discussion. Again, as we've been talking about revenue issues, pointing out that one of the ways that we can address what has become a tax and revenue problem is by growing the base and growing our economy. And I didn't have time in my last conversation to drill down a little bit more on the economic study that was done by Dr. Eric Thompson. He's the director of the UNL Bureau of Business. So I had asked him to give me an idea, if we were to fill the current positions that are open in our work force now, what would that mean in terms of revenue? And so I want to thank him again for quickly turning around this information. So to summarize, from the research that he's looked at, as of March 2019 there were 66,037 job openings, and 33,371 unemployed workers in Nebraska during that month, which means there are currently about 32,666 more job openings than unemployed workers. So Dr. Eric Thompson, through his research, he indicated that the addition of 32,666 workers to the Nebraska economy would generate an estimated 1.8 billion in employee compensation annually, 82.7 million in state income and sales tax revenue, and 53.5 million in local sales tax and property tax revenue each year. So now think about if we were able to grow and recruit additional businesses and work force in our state and continue to expand our economy, the investments we are making in this budget, including supporting education funding, infrastructure, healthcare, they are critical to the current and future vitality of our state into our economic growth. So, again, I encourage you to vote in support of LB294. Thank you.

FOLEY: Thank you, Senator Wishart. Senator Friesen, you're recognized to close on AM1667. He waives closing. The question for the body is the adoption of AM1667. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 42 ayes, 0 nays on adoption of the amendment to the committee amendments.

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FOLEY: AM1667 is adopted. Further discussion on LB294 and the pending Judiciary Committee amendment. Senator Arch.

ARCH: Thank you, Mr. President. I'd like to ask Senator Stinner a question if he would.

FOLEY: Senator Stinner, would you yield, please?

STINNER: Yes, I will.

ARCH: On page 145 of our budget book, it talks about the implementation of Medicaid expansion, and I remember that in our joint briefing where we talked about Medicaid expansion, there was some dialogue, if there's a delay, do you need all these dollars? How did you resolve that with the committee?

STINNER: Well, what we did was we had another briefing, two briefings actually with the Medicaid folks, and we brought their accountants over. What I wanted to try to do is break out on the operating side just exactly and compare and contrast that to the current percentage of operation compared to what we're doing right now. So it can do-- I can draw some parallels there. We then looked at what the one-time expenditures were which was computers and upside. Then on the aid side, we took a look at the deferral, and so we just subtracted out, actually divided by 12 and took it times nine months, and that was the \$12 million reduction, but we left about \$12 million in contingencies into the aid side just in case as a cushion.

ARCH: So will you have some type of tracking mechanism, whether those dollars were actually expended for Medicaid expansion? How will you know if those contingency dollars are applied?

STINNER: Yeah, now several things that we're going to try to do, and I think it's in either LB403 or LB404. We're actually breaking out Medicaid expansion as a line item within the Medicaid one. That's called general ledger control so that we can control that, plus we're asking them for a monthly update on progress being made toward Medicaid expansion so we can review that quarterly. We'll probably have a briefing with the Medicaid folks to just see how that is going, if the appropriations is proper and follow it through until they actually do expand Medicaid.

ARCH: I appreciate that. As we know, there's a lot of unknowns with Medicaid expansion, and there's a lot of variables in Medicaid expansion as to whether or not the estimate is correct as to how much this is going to cost, and I think having that separate accounting is going to be very important so we can report that back to the full Legislature as well as the committees. The only other comment that I would like to make, and I don't mean this to sound dramatic at all, but this

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being my first budget as a freshman senator going through here, this is a tremendous amount of money, And no matter how you count it and whether it's 25 million here or 25 million there, this is a very large budget, and a lot of money, and I think, for me, I know it's just been-- I have reflected on the fact that we don't have this money unless the citizens of the state of Nebraska, or the citizens of the United States through the federal government, provide that money to us. And I appreciate the diligence that needs to be applied to the expending of this money, the decisions that have to be made as we prioritize, is that really worth it? I mean, we are taking money from somebody to spend it on something else. And so appreciate the questions and I know personally I'm learning a great deal about our state budget. Thank you.

FOLEY: Thank you, Senator Arch. Senator Clements.

CLEMENTS: Thank you, Mr. President. I neglected to thank Senator Stinner earlier. I wanted to thank Senator Stinner for his tireless, hard work and his excellent work at being Chairman of the Appropriations Committee. I appreciate the time he spends. And also the Fiscal Office, all the Fiscal Office staff have been very helpful. It's amazing how well they know each of these agencies when we ask them a question, a very detailed question about an agency's operations. Nine out of ten times they know it immediately. And they get it the next day if they didn't know it right now. And the budget was due the 70th day and I think the Appropriations met 69 days to try to get to where we are and was a lot of good work and a lot of detail that we've gone over. There are a lot of positives in this budget. I want to also-- Senator Stinner mentioned, Corrections was a priority, making sure we have funds for salaries, for staff so they can retain staff, and a new construction facilities to try to help the overcrowding problem. Then Medicaid expansion was voted by the people, so we are funding that in the budget, and provider rates, specifically nursing homes that I think has been a concern for all of us as we've seen so many closures. And Senator Stinner, one of the bills that you say have-- you might see of bills in there, I believe it was LB403, Senator Stinner, put in a bill to adjust the formula that HHS uses for nursing homes. They've been not paying out all of the money that we've appropriated, and it's going to be over the two-year budget another \$7 million that we're directing them to pay out to nursing homes. And I was pleased that we were able-- he was able to find a gap in a place where we had been given the money to spend but they hadn't got it out to the nursing homes and that will be a help. And a third priority was education. We know that education funding is important. If we don't fund education, it's a direct affect on property taxes, and we try to keep them whole. Majority of this budget, I believe, does follow what the Governor's proposals were. Didn't vary, very often. I do have some concerns about it where we've exceeded the Governor's proposal and what I think was reasonable. The Medicaid provider rates probably the biggest difference and the Governor gave, I believe, 1 percent increase to some parts of the Medicaid providers and 2 percent to others, whereas the budget, as it sits, has 2 percent for all providers. And then, next item was the University of Nebraska had testified that they could live on what the budget was of proposed was a 2 percent increase for them. President Bounds said--

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FOLEY: One minute.

CLEMENTS: --that they could live with that and then we gave them some extra salary and some extra utilities. And my no vote on this bill was mainly because of an extra \$7.3 million that is going to the university above what had been originally proposed for utilities and additional salary increases. And the other-- another item in there that I did support was new specialty courts. There's \$4.9 million for four new specialty courts. Not sure we need four, if we can get four going, but that was another Corrections priority that we put in. And so, as I said in the committee, 95 percent of this is agreeable to me. There's a few items I have concern over. And I do, again, thank all of the committee for being cordial.

FOLEY: That's time, Senator.

CLEMENTS: We all can get along. And thank you.

FOLEY: Thank you, Senator Clements. Senator Erdman.

ERDMAN: Thank you, Lieutenant Governor. Thank you, Senator Clements for your comments. I am not in support of the budget. It's too much. Back in '17 when we had a budget discussion, I had made a recommendation that we would adopt the budget we had the prior two years would have been about right. When the forecasting board meets in October, they always do every year, I will look for the revenue to be what they think it's going to be. Until we solve the problem in agriculture, we're going to continue to see the reduction in revenues. And I echo the comments that Senator Clements made about Senator Stinner knowing the budget, but with that said I'd like to ask Senator Stinner a question if he would yield.

FOLEY: Senator Stinner, would you yield, please?

STINNER: Yes, I will.

ERDMAN: Senator Stinner, can you turn to page 87 in your budget book, if you would.

STINNER: Yes.

ERDMAN: OK. On page 87, it talks about the university repairing existing buildings and renovation and renewal. And down towards the bottom of that page just before you get to the fiscal year '19 and '20, the sentence says the cost of continuing annual General Fund

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Appropriations through 2050 after the terms of the long-term financing contracts with three projects have been met, is an estimated 124,830,000. Can you explain what that means?

STINNER: That means as you-- if you recall from --and this happened in the state colleges as well. What we have allocated was we gave appropriations to both the University of Nebraska and state colleges a certain amount for debt service on bonds, and a certain amount that they could go out and actually encumber some of their assets, build buildings, those types of things. The University of Nebraska is right now well behind on deferred maintenance. They came to us and said, we've got three of these bond issues coming due, can we use that appropriations to extend out on a bond and use those monies for deferred maintenance? And, of course, we granted that-- both cases we granted that. That is the combination of payments on a bond out into the future.

ERDMAN: So then those will be General Fund obligations that we're going to have as--

STINNER: No, sir. No.

ERDMAN: That's not what it is?

STINNER: The University of Nebraska and state colleges stand on their own. They are not General Funds at all.

ERDMAN: Why does it say annual General Fund Appropriations?

STINNER: Oh, general funds to them, yes. It will be an ask out of theirs, but not out of ours.

ERDMAN: OK. That was my question. Thank you.

FOLEY: Thank you, Senators Erdman and Stinner. Senator Linehan.

LINEHAN: Thank you, Mr. President. I had spoke to Senator Bolz and asked her if we could go over some of the information on behavioral health on page 148 to-- well, it's like 151. So I'd ask if Senator Bolz would yield for some questions.

FOLEY: Senator Bolz, would you yield, please?

BOLZ: Sure, I'd be happy to.

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LINEHAN: Thank you. So I didn't really-- I didn't point this-- I think I said 149, but if you flip back to page 148 and the top it says, \$1.1 million to increase aid for housing assistance, housing assistance for very low-income adults with serious mental illness is provided with Cash Funds from the Behavioral Health Service Fund. The source of the funds is primarily a documentary stamp tax in the amount of 30-cents on home deeds. So is that revenue always been, whatever we call that, earmarked for that?

BOLZ: It has been distributed in multiple ways for as long as I recall serving as a senator. So that's as far my history goes back, but the documentary stamp tax goes to multiple purposes including affordable housing and homelessness assistance.

LINEHAN: OK. So this is a new way to use the money then?

BOLZ: This is an existing way of using the money, but we are allocating additional dollars for two purposes. One is because the Cash Funds are available, and the other is because there is a demand for this service. The last time I checked, and I think this number is probably at least a year and a half old, there were 347 people on the waiting list for these behavioral health housing assistance services.

LINEHAN: So then on page-- thank you very much, Senator Bolz. On page 149 it-- I understand the need's here, and I applaud the Appropriations Committee for this, but I'm questioning the amount of money. It says General Funds 658,000, and the next year 1.6 million. And it says, the increase aid, in second paragraph, in 2021 will be used for short-term residential services for persons with substance abuse disorders and secure residential services for persons with severe mental illness. And then it goes into the wait times. That doesn't seem like very much funding if we're going to help very many people with severe or mental illness, residential because I would assume that's three or four or five hundred dollars a day, isn't it?

BOLZ: Yeah, I guess the color commentary I can provide, if that's what you're asking, is that this specific request was a agency request. So it wasn't a request from providers or advocates. It was a request from the agency to help them balance the demands that they see specifically related to moving people out of the Lincoln Regional Center and into other transitional housing. When they testified in front of the Appropriations Committee my memory is that they had about a 49-person waiting list at the Lincoln Regional Center, so it was not just about substance use, housing, and in-patient treatment, it was about how the system worked as a whole, if that answers some of your question.

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LINEHAN: Well, it just-- it concerns me, especially if you just said they have 40 people on a waiting list, how that's-- so this isn't --this is where they would go after they're released from the hospital, is what you're saying.

BOLZ: It would one of the places that someone could go after they leave the Regional Center.

LINEHAN: OK.

BOLZ: And the 49-person waiting list is for the Regional Center so it's that highest-need individual who is both dangerous and in need of hospitalization, mental healthcare. So it's a community-based services that is on the back end of the Lincoln Regional Center and will help us process people through the court system, the Lincoln Regional Center, and back into the community.

FOLEY: One minute.

LINEHAN: OK. Thank you. Just one more question then, and hope you have hands. And then the next one down where it says Medicaid expansion offsets behavioral health services. So have the regents, the mental health regents, six of them I think there is, have they agreed that they're going to save this kind of money?

BOLZ: Actually no, and if you look at the last item on page 149, it says restore Medicaid expansion offsets due to the delay and implementation. It was a shared concern between the committee and the providers that we couldn't take the offset before we actually started implementing the aid, so we need to be very cautious and watch that carefully, and so we actually restored those cuts after we heard the plan from the department.

LINEHAN: So, but, I think my-- maybe I didn't ask it right. Have the behavioral health regents agreed that when we expand Medicaid, we'll save this kind of money?

BOLZ: The behavioral health regents believe that there will be some sort of cost savings, but in their testimony to the committee--

FOLEY: That's time, Senators.

BOLZ: --articulated concerns about taking the cuts now.

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LINEHAN: Thank you.

FOLEY: That's time. Thank you, Senator Linehan and Senator Bolz. Senator Arch.

ARCH: Thank you, Mr. President. I have another question for Senator Stinner if he would yield.

FOLEY: [RECORDER MALFUNCTION]

STINNER: Yes, yes, testing.

ARCH: Thank you. On page 151 at the top of the page there, it talks about a health insurance provider fee. I've got a couple questions about this, but the first one is, could you help us understand what this is?

STINNER: Well, I will guide everybody to page 39 and it's health insurance provider fees and I can read to you the committee proposed a budget includes 15.5 million General Funds and 18.8 million federal funds for health insurance provider fee costs. Now this was from the Affordable Care Act mandated that health insurance provider fees be paid as a tax to the IRS for companies that provide government-sponsored healthcare. Centers for Medicaid and Medicare services require state's operating managed care programs to include this tax liability amount as part of the prospective estimated cap rates which are then retro-settled for the final actual tax liability.

ARCH: So it was part of the Affordable Care Act requirement, and so you prudently budgeted it, but presently there's a moratorium on it, correct?

STINNER: Well, we're-- actually it's just the moratorium is over, and I think federal government is expecting to appeal, and that's why we put it into the budget.

ARCH: So my second question then is, in cases like this, and there's probably other cases in this large book, but in cases like this, if that expenditure does not occur in 2021 as you've budgeted here, so you're not going to get the federal match, but then you don't have your General Funds. What happens to those General Fund dollars? How is that accounted for at the end of the year, actual versus budget?

STINNER: Well, if it's in the Medicaid program, which it would stay in the Medicaid program as a buildup in cash, we would take a look at how much carryover Medicaid has and possibly lapse some of those back into the General Funds.

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ARCH: So you could-- you could pull those back in--

STINNER: Pull it back in, yes.

ARCH: --in to the General Funds for the next biennium budget, correct?

STINNER: Yes, or even if we find out it's short--

ARCH: If you find it's short--

STINNER: --we could do a deficit, yeah.

ARCH: OK. All right. Thank you very much.

FOLEY: Thank you, Senator Arch and Senator Stinner. (Visitors introduced.) Continuing discussion. Senator Wishart.

WISHART: Thank you, Mr. President. I wanted to talk just about a few issues that were brought up today. First on-- in terms of the conversation around the university, the research that I've done around the university is that state-aided spending per student has been flat after adjusting for inflation. The graph that my colleague, Senator Erdman, handed out, I believe it does not normalize for enrollment. So that may be one of the reasons why my data and his are conflicting. My understanding is data appropriations for student adjusted for inflation has for students, for the university, and adjusting for inflation has decreased. The university has managed that shortfall by making spending cuts 22 million in administration cuts last year alone, and then, obviously raising tuition. Senator Clements, he had said that during the committee hearing on the university that President Bounds had said he was OK with the Governor's recommendation. My understanding, and my notes say that he had said it was a good start, but, obviously, we're not making decisions as Appropriations Committee members on alone on what senator-- what President Bounds thinks. My decisions in terms of the university are thinking about the students, and recognizing that I will not support a budget that balances our revenue shortfall off of increasing tuition rates for the future of our state. In terms of Medicaid, I wanted to make sure to get on the record that one of the issues that we've had as an Appropriations Committee is we appropriate money with the intent that dollars go out to support providers, and what we're seeing is potentially a disconnect with what we appropriate and what is actually funded for providers. We've seen this with nursing homes, for example. So because the budget we're considering includes additional funding to increase Medicaid rate for all Medicaid providers, it's important that we discuss and make clear that it is this Legislature's intent that all providers receive the

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dollars that we invest in them from our budget. Again, I think we need to really be very clear and insist that the division of Medicaid carry out the will of the Legislature in directing provider rate increases to all providers, even if it is provided in the budget, and even if it is-- excuse me, in the division may-- yeah, exactly. So, again, I just want to be really clear that the decisions we're making with this budget we want to ensure that when we invest and when we prioritize and the dollars that go to support different businesses, different providers, different people in the state, I want to ensure that those dollars actually reach them. Thank you.

FOLEY: Thank you, Senator Wishart. Senator Groene.

GROENE: Thank you, Mr. President. I was looking at my favorite page again. Page 26, it say's CHIPs, Children's Health Insurance has gone up 103 percent annually is what the increase is going to be, 8 million the first year and 11 million the second year. And I understand that's about 3.5 million more than the Governor asked for. I thought one of the big promises of Obamacare or Affordable Healthcare was that programs like CHIPs would disappear because children would now have health insurance. Senator-- and by the way, Senator Stinner, I think you do a good job, but I'm only comparing you to your predecessor, so-- but could you take a question?

FOLEY: Senator Stinner, would you yield, please?

STINNER: Yes, I can.

GROENE: Could you explain that huge increase in Children's Health Insurance Plan?

STINNER: Yeah, under the Obamacare ACA Act, we had an enhanced reimbursement rate of about 23 percent, might be 23.5. This is just recalling off the top of my head. Then the rate went down to 11.5 and now it's back to whatever we get reimbursed at.

GROENE: So what you're saying--

STINNER: So this was an enhanced reimbursement to get into the CHIPs program to expand the CHIPs program, got us in and then stepped out.

GROENE: Did the feds not keep their promise again? Or was it a--

STINNER: I think it might have been actually disclosed and we actually-- the 11.5 step-down actually was passed afterwards to make it easier for states to step down.

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GROENE: So do you know, has the number of children in the program increased since the Affordable Care Act over the years?

STINNER: I can get you those numbers--

GROENE: Would you?

STINNER: --but I don't have them at the total recall.

GROENE: I just wondered another promise not kept by the federal government, but I just was curious about the number in the big picture of 11 billion or whatever it is. It's not the largest part of the budget. I also was concerned about that, but you explained it to Senator Erdman about page 87 and 124 million to the university. I do have a question on that. You said that continued maintenance or renewable energy or whatever updates to their buildings and whatever else they're doing, that's in their General Fund request?

STINNER: Yes.

GROENE: So it would be in the--

STINNER: It's not an obligation-- the bonds are not an obligation of the state, but it is in the General Fund request.

GROENE: When they come in with their request it's included in that.

STINNER: Yes.

GROENE: Do you know why our prison systems don't have such a program in place, too, for having money set aside in their budget, long-range, to do facilities?

STINNER: We actually do. It's called the rainy day fund. It's a dual-purpose fund for capital improvements along with our economic stabilizer.

GROENE: But the university somehow--

STINNER: It seems that way anyhow from past history.

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GROENE: Well, that's what scares me about a big rainy day fund is because I've been here long enough when it was big, it wasn't big very long because here come a lot of hands into it for special projects. So I'm to the point anymore, I don't like money-- tax dollars get moldy in a savings account, I'd rather have it in the hands of the taxpayers, probably taxpayers, but-- because it doesn't seem to be there as I keep getting told about rainy day funds for that economic turn-down. Seems to get raided an awful lot for special projects. But overall, I'll vote for the budget. Couple of clarifications. Senator Stinner, why I--

FOLEY: One minute.

GROENE: --voted for-- I voted against the pay for the Legislature. I ran on it. We need better quality people, including me in this Legislature. We need people worth more than \$12,000 a year, and the citizens who think they punish us by \$12,000, are getting what they pay for. So I support Senator Vargas's LR12CA, and where I wish the Exec Committee would bring that out so it could be on the ballot, because I will vote for it. I ran on it, both times I ran. And also Senator-- the reason Senator Linehan and I fought so much for the Property Tax Credit Fund is because that's how we help pay for LB289. It's in LB289. So you senators, you heard Senator Chambers claim we got what we wanted. No, we didn't get what we want. We want LB289 and that was part of the pay for when we do pass LB289. So, thank you.

FOLEY: Thank you, Senator Groene. Senator Erdman.

ERDMAN: Thank you, Lieutenant Governor. Senator Wishart, I listened to your comments on the university. I understand that we can have a disagreement on that. One of the things that I see over there is they continue to grow and they continue to spend more money, and their per hour cost went from \$75 per hour to \$238 an hour and that's just straight up. There's no hanky-panky there. That's how it works. One of the things that I didn't hear, and this is for Senator Stinner, one of the things that I didn't hear today that I heard in '17, numerous times, was structural balance. Senator Stinner, I'm surprised you hadn't used that word, but structural balance, here's my definition. Senator Stinner probably has one that he likes, but what structural balance is, is the forecasting board guesses, estimates, how much revenue we're going to have, and then we, the Appropriations Committee, we appropriate every dollar of that, and when those two numbers are equal, that's structural balance. So we're balancing it on a guess. So what structural balance means in that regard is it looks good on paper. I'm not in favor of a 3.1 or a 3.2 increase. We have got to get to a point in our decision making process that we spend less. That's how you lower taxes, you spend less. You can't continue to spend more year after year after year and expect to lower taxes. So I won't be voting for LB294 because it is an increase, and I'm not for an increase in taxes. Thank you.

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FOLEY: Thank you, Senator Erdman. Senator Stinner, you're recognized to close on the committee amendment, AM1329.

STINNER: Thank you, Mr. President. I can't let this occasion go by without making some comments. I've spent a ton of time on the University of Nebraska's budget. I've read their audited financial statement. I've looked at their strategic plan. I've taken everything apart that I could possibly take apart, and I get the fact that there's some people in this body that like to bash the university. It's out of control, apparently, according to some people. But I did do a little bit of a deep dive with Kathy Tenopir providing me a little bit of the numbers, but I first want to say this. We cut higher education, cut. That's real cuts, 8.5 percent. That's both the University of Nebraska, state colleges, and community colleges. Restoring back 3 percent or 3.1 percent, or whatever that number is, is marginal. We gave them a salary increase of 2.2 percent plus benefits, and the 2 percent for utility cost. If that's too much, I'm sorry. I got a problem with that, with that analysis. I also will refer you to historical General Funds appropriation, and this is one I look at from a 20-year perspective. That 20-year perspective shows 2.4 percent increase in the University of Nebraska and colleges. Folks, sustainability is anything below what we normally, historically average as increases in revenue, which is about 4.5, 4.7 percent. They're well below that. I think higher education is a jewel for our state. We can go through the whole economic analysis of the benefits of the University of Nebraska. I don't want to do that. But I do want to pull your attention to the Integrative Postsecondary Education Data System. The administrative cost at peer group institutions are significantly greater than the university campuses. And I'm sorry this is a little bit dated, fiscal year 2016-17. The UNL peer group rate cost, 134 percent below their peer group. UNO peer group costs 81 percent below peer group. UNK peer group cost 107 percent below peer group. The idea that they have four or five separate campuses, whatever it is, I will tell you with the budget cuts that we made, and I followed them, due to the budget cuts, the university has reduced its administrative budget by \$30 million including the loss of at least 100 professionals and positions. This reduction occurred over a three-year period of time, 2018-2020; consolidation of information technology across campuses that consolidated; consolidation of facilities and energy management function, university wide, consolidated. Not four towers, consolidated; consolidation of procurement services university wide; centralization of the university vehicle purchases, maintenance; consolidation of human resource functions across campus; change in the university's healthcare insurance carrier, which ended up saving them considerable amount of money. They have made changes, folks. It's not just for separate campuses. They do work together. There is a consolidation. And currently, we have one chancellor at UNO and UNMC. The idea that we have Program 906 is a program for deferred maintenance. They do make requests for maintenance out of the building maintenance fund. Their requests out of the 309 have been 45 million, 462 million, or 54 million, 59 million. They received \$6 million.

FOLEY: One minute.

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STINNER: Five million dollars, \$9 million, \$5 million. That's why they have to do the bond issue. They have buildings that are aging. They need to renovate. They need to make sure that they run efficiently to save money. So, on that, I would recommend a positive vote. A green vote on, I believe it's AM1329 and LB294, if I can see that far. Thank you, Mr. President.

FOLEY: Thank you, Senator Stinner. Members, you heard the discussion on the committee amendment, AM1329. The question for the body is the adoption of the amendment. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 41 ayes, 1 nay, Mr. President, on the adoption of the committee amendments.

FOLEY: AM1329, a committee amendment, has been adopted. Is there any further discussion on LB294 as amended? Senator Bostelman.

BOSTELMAN: Thank you, Mr. President. I serve on the Building and Maintenance Committee, and Senator Stinner and I talked off the mike a little bit about LB309 and some of the things that is in the budget now for some upkeep and things need on the building. Last year we were out at North Platte to the campus, and their funding that they requested, they were granted was for some sheds, some old wooden sheds. They had wooden windows that needed repainted. But what the building maintenance was, the fund was, was to replace the windows for a shed that had no heat, was a storage facility, that's where that money went to. So part of what we do is ensure, and we had a discussion on that within the committee, is to how, if that's appropriate or not in the future, for funds to be spent that way. Another thing I'll say is that our son went to University of Nebraska as a freshman to the engineering college. His instate tuition was paid. He transferred to South Dakota State University. His out-of-state tuition was less than the instate tuition, full room and board, was less at South Dakota State in their engineering than it was at the University of Nebraska. And they graduate more and place more engineers than the University of Nebraska does per capita. So I do think there's room for all of us to work together better. The university work together a little bit better, on looking at the real needs, what they do need and where costs can be saved and how we can make things a little bit better for our students. I think another concern with our students at the universities is that males up to age 25, you know, there's some challenges that they have, and our universities don't really pay attention to those. It's a numbers game; it's not a persons game. And when we went to South Dakota State it was a persons. When he went to class, he went to class with a professor or with a dean. That's who taught that class, not a graduate assistant, not somebody else, it was that individual. So I rise today just to speak a little bit about that. And I think that these are things that are being worked on and can be worked on, but I don't-- I also take a little bit exception to having a rose-colored glasses looking at when we look at our university system, state university system, the University of Nebraska. When we look at our private colleges, the FTE there and what their cost is and those students who stay in

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the state is pretty high, better than universities. So as we move forward with this budget and other things I just-- I encourage the university to continue to work in those areas, continue to pay attention. I think there's more counseling, there's more things that we need to do, provide for our young students, especially once they come out on their first couple years, freshman/sophomore years at the university, to pay attention to that. And there needs to be a way that we can lower-- they need to lower costs for instate tuition, and work within the opportunities they have, I guess, to lower those and to lower their cost across the board. I always find it interesting when I drive in early in the session, and it's dark out and I drive by Memorial Stadium and all the lights are on. Why? Seven o'clock, six-thirty in the morning, why are all the lights on? I don't know and that's not to pick on anything, there's probably a reason for it; or the mega screen is showing videos, maybe someone's working on it. I don't know. So I just bring that to speak a little bit about how all of us, in every agency, in every department, need to take a look again at how we're spending our money and we're doing it in the right way and doing it in the most effective way. Thank you, Mr. President.

FOLEY: Thank you, Senator Bostelman, Senator Groene.

GROENE: I don't got much to say here. I'm not filibustering, Senator Stinner, but a comment, you made the comments about versus peer institution spending. I'll remind you of the handout I had about what a third of the nation per capita, 1.9 million people, maybe we're running with the wrong crowd. Maybe we ought to be running with South Dakota and North Dakota and Wyoming and Nevada, Montana, instead of the Michigans and the Ohios who have 10, 20 times our population. I know individuals who went to University of South Dakota got very good education, Wyoming also. Maybe we're trying to keep up with the Jones's and we can't do it. And it's breaking our state with the cost to try to be something we aren't or shouldn't try to be. Let's take pride in being a small state with 1.9 million people, and quit trying to keep up with the Michigans and the Ohios, because what I've seen on the studies of educational opportunities, we don't rate real well against public institutions. When you're rating in the 160s and you're competing with 50 states, that means there's four, five, six, seven, eight, ten university within each-- some of them states that rate higher than we do. But we're not-- we're very generous as the taxpayers to be third in the nation per capita of state supportive of our higher education. Now granted, that also the community colleges and the state colleges. But, again, people in Nebraska don't have to apologize to anybody how we support education. And nobody that works for us knows institutions ought to berate us ever that we don't support them. Thank you.

FOLEY: Thank you, Senator Groene. Senator Stinner, you're recognized to close on the advance of the bill. He waives closing. The question for the body is the advance of LB294 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

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CLERK: 42 ayes, 4 nays, Mr. President, on the advancement of LB294.

FOLEY: LB294 advances. Proceeding to next bill, LB299. Mr. Clerk.

CLERK: LB299 was introduced by the Speaker at the request for the Governor. (Read title.) Introduced on January 15, referred to Appropriations, advanced to General File. I have no amendments to the bill at this time, Mr. President.

FOLEY: Senator Stinner, you're recognized to open on LB299.

STINNER: Thank you, Mr. President. Members of the Legislature, I don't know about you, I'm a little tired of talking about the budget, but this is the last one. LB299 introduced by the Speaker at the request of the Governor is part of the Governor's biennium budget recommendation. This bill primary purpose is to amend Nebraska Revised Statutes, Section 84-612 to provide for transfers to and from the Cash Reserve Fund. This bill contains an emergency clause and becomes operative on June 1, 2019. The only transfer contained in this bill is a transfer of 54.7 million from the Cash Reserve to Nebraska Capital Construction Fund. Please refer to your orange budget booklets beginning on page 15 for details, discussion of the committee's recommendation regarding the Cash Reserve Fund. With that, I would ask a green vote.

FOLEY: Thank you, Senator Stinner. (Visitors introduced.) Is there any discussion on LB299? I see none. Senator Stinner, you're recognized to close on the advance of the bill. He waives closing. The question for the body is the advance of LB299 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 47 ayes, 0 nays, Mr. President, on the advancement of LB299.

FOLEY: LB299 advances. Proceeding to General File, state claims bill, LB464. Mr. Clerk.

CLERK: Mr. President, LB464 is a bill introduced by Senator Matt Hansen. (Read title.) Introduced on January 18. At that time referred to the Business and Labor Committee, advanced to General File. There are committee amendments pending, Mr. President.

FOLEY: Thank you, Mr. Clerk. Senator Hansen, LB464. You're welcome to open.

M. HANSEN: Thank you, Mr. President, and good afternoon, colleagues. The Business and Labor Committee is resigned their responsibility of handling the state claims bill. I will provide

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background on the process for these claims and then go through each claim in the bill. As you know, the State of Nebraska employs thousands of people and sometimes their actions cause injury or problems to others that results in the lawsuits against the state. The state is subject to liability under the State Tort Claims Act or the Miscellaneous Claims Act. Claims against the state pass through the State Risk Manager's Office. These claims can either be settlements or court judgments. Also included are workers' compensation claims when an employee of the state is injured on the job. All of these claims go through the Risk Manager's Office and any claim exceeding \$50,000 has to go through the Legislature for approval. The Risk Manager pays claims below 50,000 and the first \$50,000 of claims above that, that means the claims in this bill are the amounts above \$50,000 that the Risk Manager has already paid. Just for your understanding, the amounts in this bill have all been agreed to settlements or court judgments reviewed and litigated by the Attorney General's Office, or relevant state agency, so the numbers in this bill come from those decisions, not on anything decided by myself or the Business and Labor Committee. Also included in the state's claims are the agency write-offs. These are any uncollectible debts that agencies have that they've not been able to collect. As such we are asked to write them off in order to keep the books balanced. I will now go through the claims briefly to provide you with a brief explanation of each of them. The committee amendment becomes the bill. So if you're following along, I will be going through the claims in the order they are listed in the committee amendment. Section 1 is the miscellaneous claims section of which there are two claims. The first claim is for \$61,179.11 payable to Lyle Hunter. Mr. Hunter was an employee of the Nebraska Department of Corrections. He suffered a work-related injury and was unable to perform the essential functions of his job. He was then terminated after he could not qualify for any other position of the department. He filed suit and won in Lancaster District Court and the jury awarding past wages and attorneys fees. The second claim is for \$72,133.49 payable to the Nebraska Press Advertising Service. The claim is for the cost of the publication of legal notice measures that were voted upon in the November 2018 General Election. These notices are required by the Nebraska Constitution, Article 16, Section 1, and by Nebraska statutes 32-1416 and 49-202. The amount is the cost of putting notices in the newspapers across the state and has traditionally been done through the state claims bill. Section 2 is for Tort Claims. There are two Tort Claims. The first claim is for \$35,000.00 payable to Donald Johnson. Donald Johnson was at the Community Corrections Center, Omaha, and slipped on a wet floor and injured his right shoulder. The second Tort Claim is for 10,000.00, payable to Gerard Burkinshaw who slipped and fell on a wet floor in the State Office Building caused by snow and ice that had been tracked in the building. Mr. Burkinshaw sustained a wrist fracture. Section 3 of the amendment contains an indemnification claim of \$65,000.00 payable to Aron Lee Boyd-Nicholson against the Department of Correctional Services. Mr. Boyd-Nicholson was an inmate of Lincoln Correctional Center who suffered one or more heart attacks and sought assistance from staff, but alleged the staff did not respond and help in a timely manner. Section 4 of the bill, committee amendment contains Workers' Compensation claims of which there are eight. The first claim is 100,000.00 to Jeffrey Forsen who is an employee of the Nebraska Department of Transportation

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who fell off a trailer and injured his back. The second claim is 25,000.00 to Kim Lowe, a former employee of the Wayne State College who injured her back while shoveling snow. The third claim is \$149,000.00 to Jeffrey Evans, a former employee of the Nebraska Department of Transportation who was injured while cleaning an auger with a shovel and the shovel got stuck and caused to strike him in the back and fall and injure his back. The fourth claim is \$175,000.00 to Jessica Lang, a former nurse at the Lincoln Regional Center. She was assaulted by a patient causing her to suffer injuries to her back and her shoulder. The fifth claim is \$12,487.00 to John Overstreet, a former forester who injured his back as a result of shoveling and chipping ice trying to free a truck stuck in snow. The sixth claim is \$80,000.00 to William Lichtenwaladt, a former Correctional Corporal who was at the Work Ethic Camp who was injured in a fall, causing him to break several ribs, injure his wrist, ankle, and low back. The seventh claim arises out of the same facts and is an additional 165,803.00 paid to a fund for a professional administered-- professionally administered Medicaid set aside account for Mr. Lichtenwaladt. The eighth claim is \$75,000.00 payable to Jonathan Reisdorff, a former employee of Department of Health and Human Services who injured his back at work. Section 5 of the amendment are the Tort Claims that settled by the state of which there are three. The first claim is \$225,000.00 to Josephus Pickett who was injured by a motor vehicle accident with a state driver. The second claim is \$350,000.00 to Gil Winkleman who was injured in a motorcycle accident with a state driver. The third claim arises out of the same facts and is to \$25,000.00 to extinguish Blue Cross Blue Shield's subrogation claim. Section 6 is the section that authorizes the above claims. And then Section 7, they're agency write-offs. We have write-offs from six different agencies. First is \$119,318.25 from the Nebraska-- from the Department of Veterans Affairs. This is a write-off from the Eastern Nebraska Veteran's Home. A resident's power of attorney did not pay the monthly charges for member care, and in spite of numerous attempts to collect, this efforts were not success. This amount is balance due that was not able to be collected. Second is \$140,183.33 from the Department of Transportation of uncollectible debts relating to damaged state property. These damages are typically damaged signs, guard rails, and such caused by motorists. Letters from the agency, phone calls, and agency legal counsel have all gone unanswered for a variety of reasons, including the debtor cannot be located, bankruptcy of the debtor, or the debtor was deceased with no assets. Third is \$7,731.36 from the Nebraska Game and Parks Commission; \$3,616.00 of this is uncollectible and is insufficient fund checks received at various parks throughout the state, \$244.00 of that is uncollected fees from two different events. There was also an incident of theft at Lake Ogallala that resulted in the loss of \$24.75. Finally, three external permit vendors closed up shop owing a total of \$3,846.44 in sold permit fees. Fourth is \$831,376.21 from the Department of Health and Human Services; \$829,571.00 of this amount being because the debtor has passed away and the debt has been discharged in bankruptcy or because the applicable statute of limitations has passed. Most of the debt is persons who are needs-based assistance at the time and an overpayments made to their aid or dependent children account. There were 420 different accounts with an average account owing \$664.37. The remaining total involves 44 accounts of less than \$100 where attempts to collect were

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unsuccessful. Fifth is \$147.25 in the Nebraska Supreme Court of unpaid debts that was attempts to collect were unsuccessful. And then finally, the largest is from the Department of Labor. The Department of Labor seeks to write off a total of \$4,980,784.21. These are all \$8,295.00 separate overpayments in the unemployment insurance benefits. The reason that this is so many and such a high number is that the department is moving to a new payment system and in that process wanted to clean up their database. The Department of Labor has never written off an unemployment insurance benefit since the program was enacted in 1937. So this amount represents the overpayments that have occurred over 81 years. This averages out to just \$61,000.00 a year and about \$600.00 per person. There's no statute of limitation on collections of unemployment debt which is why this has never been written off before, but most of the overpayments now involve people who are now deceased, have their debts written off in bankruptcy, or simply cannot be found. The department's new system allows them to certify with the United States Treasury for offset against any federal income tax refund which has helped increase collection of this debt going forward. Thank you, Mr. President, and that concludes my opening on LB464 and the Business and Labor Committee amendment.

FOLEY: Thank you, Senator Hansen. (Visitors introduced.) Mr. Clerk.

CLERK: Mr. President, Senator Hansen would move to amend the committee amendments with AM1440.

FOLEY: Senator Matt Hansen, you are welcome to open on AM1440.

M. HANSEN: Thank you, Mr. President. AM1440 simply updates the second tort claim in Section 2 of the committee amendment. That was the tort claim payable to Gerald Burkinshaw. It did not originally have interest calculated in the amount included in the committee amendment. This adds an additional statutory interest in the amount of \$1,560.30 for a new total of \$11,560.30 and updates the totals for that section. With that, I would urge your adoption of the two amendments and the state claims bill. Thank you, Mr. President.

FOLEY: Thank you, Senator Hansen. Is there any discussion of the state claims bill or amendments thereto? Senator Matt Hansen, you're recognized to close on AM1440. He waives closing. The question for the body is the adoption of AM1440 to the state claims bill. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 44 ayes, 0 nays on adoption of the amendment to the committee amendments.

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FOLEY: AM1440 has been adopted. Further discussion of LB464 and the committee amendment as adopted. I see none. Senator Matt Hansen you're recognized to close on the committee amendment. He waives closing. The question for the body is the adoption of AM895, Business and Labor Committee amendment. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record please.

CLERK: 42 ayes, 0 nays on adoption of committee amendments.

FOLEY: AM895, committee amendment, has been adopted. Any further discussion on LB464 as amended? I see none. Senator Matt Hansen, you're recognized to close.

M. HANSEN: Thank you, Mr. President. Just real briefly, I would like to thank the State Claims Board, the State Risk Manager, and the Department of Administrative Services for their work on this bill behind the scenes. They do the lions share of the work and we just present their end product then as a result of this bill. And I believe this is my last Business and Labor Committee bill of the year, so I would just like to thank the Business and Labor Committee members as well as committee staff for all of their hard work this year. And with that, I would like a green vote to advance the State Claims bill, LB464.

FOLEY: Thank you, Senator Matt Hansen. The question for the body is the advance of LB464 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 41 ayes, 0 nays, Mr. President, on the advancement of LB464.

FOLEY: LB464 advances. Per the agenda, General File, 2019 Speaker priority bills, LB300. Mr. Clerk.

CLERK: Mr. President, if I might, just an acknowledgment of a conflict of interest statement filed by Senator Cavanaugh. Mr. President, with respect to LB300, it's a bill offered by Senator Lathrop at the request of the Governor. (Read title.) The bill was introduced on January 15 of this year, referred to the Judiciary Committee, advanced to General File. No committee amendments. I do have an amendment to the bill from Senator Lathrop.

FOLEY: Thank you, Mr. Clerk. Senator Lathrop, you are recognized to open on LB300.

LATHROP: Thank you, Mr. President, and colleagues, good afternoon. LB300, which I brought on behalf of Governor Ricketts, sets the salary of our judges for the next two years. This is

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essentially a budget bill but it's not included in the Appropriations Committee's biennial budget package because the salaries are all based on those of the Supreme Court which are set by statute. As introduced, LB300 increases the salaries of the Chief Justice and other Supreme Court judges each year for the biennium. Other judges' salaries are set as a percentage of the Supreme Court salaries, so the bill also effectively raises the pay of judges of the court of appeals, the district courts, the separate juvenile courts, the county courts, and the Workers' Compensation Court. The original bill is a placeholder and will be and has been or will be replaced with an amendment that resulted from negotiations between the Governor's Office, the Legislature, and the Judiciary Committee. It is absolutely essential that we pay our judges sufficiently to ensure a well-functioning judiciary. It is vital that we retain experienced judges on the bench. As you know, the judiciary is a nonpolitical, coequal branch of government that necessarily relies on the political branches to ensure that they are properly compensated and have sufficient resources available to administer that coequal branch of government. I want to thank everyone who worked behind the scenes on these negotiations, specifically Chairman Stinner, the judicial branch including Chief Justice Heavican, and the Governor's Office. And with that, I would be happy to answer any questions you might have.

FOLEY: Thank you, Senator Lathrop. Mr. Clerk.

CLERK: Senator Lathrop would move to amend with AM1500.

FOLEY: Senator Lathrop, you are recognized to open an AM1500.

LATHROP: Thank you once again, Mr. President. Colleagues, AM1500 is very simple. It sets the increase for the judges at 3 percent in each of the next two years. And with that, I would appreciate your approval of AM1500 as well as LB300. I'm happy to answer questions. I will say this, I think we're getting to a vote sometime today. So don't run off thinking that this is just going to go the end of the day and you can see me tomorrow and vote on it because we're going to get to it tonight, I'm told. With that, thank you.

FOLEY: Thank you, Senator Lathrop. Debate is now open on LB300 and AM1500. Senator Chambers.

CHAMBERS: Thank you. Mr. President, members of the Legislature, this is Ernie time. If I could sing, if I thought I could sing, or if I had a lot of courage knowing I cannot sing, I would get on top of this table and do a version of James Brown singing "I feel good." I do. This is going to be a legal clinic, but before I launch this ship, I want to make it clear that Senator Lathrop is correct. We will get to a vote on this bill before nine o'clock. I didn't say nine o'clock, I said before nine o'clock. We'll get a vote before six o'clock, but it will be somewhere near six. And if

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you look on your agenda, you will see the bill following this one is LB300A. Since this is going to be a legal clinic, there might be a lot of terminology which partakes of the law or the judiciary. After you have a trial, whichever way it comes out, somebody is going to be upset. So the next step is known as an appeal. So the main action will be on LB300, then LB300A will be in the nature of an appeal. This is going to give me the opportunity to say some things on the record and frankly, I don't care if nobody is in this Chamber to listen. A lot of you will have no interest in anything that I'm going to say. I have no interest in being concerned about how many are here, how many are not here, or where they are, or where they are not. But I will assure you of this, the ones to whom my words will be directed will either be paying close attention or will have somebody else doing it for them. When I say that I'm going to do something, I will do it. Before I start my clinic, I want to say that in a democracy, although you have in America, and I mention this one because it's not the only country that calls itself a democracy, and from the standpoint of black people, it's a mockery of democracy. But essential to the proper functioning, even more so, in my opinion, than the Legislature or the executive is a strong, intelligent, well-informed, and most of all, independent judiciary. No society can function successfully without some form of judicial action presided over by some type of judge. The person who makes decisions, because when you have a group of people trying to live together more or less in harmony, there are going to be disputes, some petty, some very serious, but some are not going to be resolved by the parties involved. Somebody, or if you're developed enough, a group of people, whichever case exists, will have to make a decision, is going to have to decide aye or nay, will have to decide A wins or B wins, but sometimes it's difficult to make that decision. There were two women and there was nothing unusual about this, they slept in the same bed, each had a child. In the night one of the children--

FOLEY: One minute.

CHAMBERS: -- was suffocated. In the morning, each woman claimed that the living baby was hers, that the dead baby was the other woman's. All that was wanted was a living child, so a decision had to be made as to which person was telling the truth. There was a King named David who had a son named Solomon. Some people say that he was the wisest man who ever lived, but if you become aware of how many women he had in his court that he used for sexual purposes if he chose, I don't see how they could say that he was wise. But at any rate, he had to make a decision. So the women came before him.

FOLEY: Time.

CHAMBERS: Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Senator Kolterman.

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KOLTERMAN: Thank you, Mr. President. And you can rest assured, Senator Chambers, I'm not going to take a lot of your time here. I just wanted to get a few comments as Chairman of the Retirement Committee, almost said Revenue Committee there, as Senator Lathrop has noted, judges' salaries are in statute, they're set in statute. So, as you know, the judges have their own separate retirement system plan. The Retirement Committee makes a point of monitoring the salary increases because in each increase in salary impacts the amount of the judge's retirement benefit simply because there's not that many in the plan. Salary amounts are used in preparation of the annual valuation report on the judges retirement system. The compensation increases are also factored in to actuarial experience study which is conducted every four years. So it is important to communicate the salary increased percentage to NPERS and the actuary for preparation of these reports. We on the committee, and I have no objection to the increase, I just wanted to make sure you were aware that we do monitor these changes and that's why-- that's the way these changes factor in. I will note that the current judge's retirement plan is funded at 96 percent. It's the best funded, defined benefit plan that we have that's administered by the state of Nebraska. This year the actuarially required contribution is \$443,000. It's about a quarter of a million dollars less than we originally projected, and that's because the employer contribution comes from fees assessed on various court costs and generated approximately \$4 million a year. So the plan pays for itself, but we have to stay on top of it. I rise in support of this bill and the amendments, but just wanted to make you aware of the fact that what we do here does impact retirement and hope that you will vote green on AM1500 and LB300. Thank you very much.

FOLEY: Thank you, Senator Kolterman. Senator Clements.

CLEMENTS: Thank you, Mr. President. Would Senator Lathrop yield to a question?

FOLEY: Senator Lathrop, would you yield, please?

LATHROP: Yes, I will.

CLEMENTS: Thank you. I was looking at this, the-- was the original bill a 2 percent increase in wages?

LATHROP: Yes, that was put in there as a placeholder, the 2 percent.

CLEMENTS: OK. And then the amendment is a 3 percent?

LATHROP: Takes it up to 3, yes, in each of the two years.

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CLEMENTS: Could you explain the reasoning for the 3 percent?

LATHROP: It was agreed to. That's the first thing I'd tell you. The other thing is that the judges, I think, received a 1 and 1.5 percent increase in the last three years. So it's to take into account the fact that their previous raises for the last three years have been nominal.

CLEMENTS: Thank you. I was thinking that was probably the reason, I hadn't remembered. I was going to ask you if you knew those percentages. Thank you. And so I do believe the 3 percent is above what other state employees were getting, but is trying to catch up from the lower increases of the previous two years. Thank you, Senator Lathrop. And would Senator Stinner yield to a question?

FOLEY: Senator Stinner, would you yield, please?

STINNER: Yes, I will.

CLEMENTS: Thank you, Senator Stinner. I believe this 3 percent increase is going to be about \$2.4 million and I see that our page 6, the amount over the minimum reserve is \$2 million. How will we fund the extra?

STINNER: We have some adjustments to make on Select that will make room for it.

CLEMENTS: Thank you. So there will be room for the 2.4 million?

STINNER: Yes, there will be.

CLEMENTS: Thank you. Just wanted to point out that-- thank you, Senator Stinner. Just wanted to point out that we have accounted for that and also the \$2 million you see extra on page 6 is now being spent when we pass this bill. And I do support the bill and thank you, Senator Stinner and Senator Lathrop. Thank you, Mr. President.

FOLEY: Thank you, Senator Clements. Senator Chambers.

CHAMBERS: Thank you. Mr. President, members of the Legislature, I had mentioned that these two women had been in bed, each had a child, in the morning one of the babies was dead. Each woman claimed the living child to be hers. So they were standing before Solomon in his court and Solomon listened to each of them and then he said, I'll tell you what I'm going to do. This is

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a difficult decision that has to be made. So I want my swordsman with the sharpest, tempered, steel sword to come stand by my side. And so a person so described wound up there and Solomon said, give me your sword. The sword was given to Solomon. Solomon raised the sword and he said, I'm going to divide this child in half and each woman will get a half of the child. And one woman said that's the best way to do it. That's the only fair way to do it. And the other one said, no, let her have the child. The child should live. And Solomon-- and you all, some of you have heard the story, Solomon lowered the sword and said the child belongs to the woman who said, let the child live. Only the true mother would love a child so much that in order to save the child's life, she would turn that child over to a woman who is going to tell a lie and deprive her of her child. And as for you, he banished her and her name became a byword. That's what they said in biblical times. Well, the thing that would have been interesting is if both of the women had said, so let it be done. What would smart alecky Solomon have done? Think it over. And I'll tell you what Solomon would have done. Solomon would have said, neither of you is worthy of having this child. This child would have no chance in life because each of you is willing to see this child die, a child who had nothing to do with the dispute you two former friends had. And nothing is as bitter as a falling out between two former friends except a fight among family members. So Solomon would say, what I'm going to do since I am the King, every person in this kingdom is under me. This child now becomes my child. Neither of you has claim, neither of you is worthy. Being wise, I am making the decision in the best interest of the one who is most intimately involved. And he'd tell one of those hundreds of women, take this child and rear him as though he were mine. That's what Solomon would have done, I imagine, if neither woman had given him a way out. That is to get across the idea that even the most difficult disputes will have to be resolved by whoever is the judge or whoever comprises the court. It is very easy for a Legislature to say that because the Supreme Court is the highest court, whether it's at the state level or in the United States, the Chief Justice--

FOLEY: One minute.

CHAMBERS: --and the judges who comprise that court should make the most money, and the others, lower courts in a descending order, will have their salary set. But the only level at which a decision must be made-- must be made, is at the trial level. That judge cannot buck it to anybody else; b-u-c-k, buck it up. That judge has to decide. Then every other court operates on the basis of what that judge determined. So perhaps we have the salary system upside down. Instead of having the pyramid start with the base at the top where the big shot judges are and it comes down and narrows to a point at the bottom, flip it over like a pyramid should be and have it broad at the bottom and get narrower as it reaches the top.

FOLEY: That's time, Senator.

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CHAMBERS: Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Mr. Clerk.

ASSISTANT CLERK: Mr. President, Senator Chambers would move to amend AM1500 with FA68.

FOLEY: Senator Chambers, you're recognized to open on FA68.

CHAMBERS: Thank you, Mr. President. Members of the Legislature, this is a simple amendment and a simpleminded amendment, but it shows how generous I'm feeling toward the judges today. Senator Lathrop's bill is amended by the amendment that he has up there. It says in line 15, the Chief Justice and the judges of the Supreme Court shall be-- this is their salary, \$187,036.01. I would strike one cent and substitute two cents. I'm giving the judges more than Senator Lathrop thought they should get, more than what those behind the scenes thought they should get, and I'm the biggest critic, but I want to give them two cents where originally it would have been one cent. I need to be able to make amendments to this bill, so I'll be able to say as much that I want to say. I had a very interesting note and it may be true and it may not be, but it will be known only between me and the writer of the note. The reason I'm saying this about the courts is because when I think judges have done wrong, nobody can be harsher toward them than I, but I never confuse the judge with the judiciary. A judge is a member of the judiciary, but a bad judge can contaminate, taint, and cause the public to lose confidence in the judiciary, in the judicial system and, in fact, in the very so-called rule of law. And the rule of law declares that no person is above the law, no person, not even Donald Trump, but right now he is showing that he has contempt for the law. He's going to show contempt for the courts. He has shown contempt for the judicial process by telling all of these people over whom he has some measure of control to ignore legally-prepared, legally-served subpoenas from Congress. Just ignore them. And maybe what his idea is this. If they ignore that subpoena and there is some punishment meted out to them by the court, he will say, well, I'm the President, I'm going to pardon them. Do anything you want to, court, I will pardon them. If one of these people who works for me murders somebody, take him to trial, convict him, and I will pardon him. And what can you all do about it? Nothing. What will your Congress do about it? Nothing. The only alternative they will have is to impeach him. Congress is too supine and cowardly to do that. Legislative branches are not willing, usually, to stand up to the Chief Executive Officer. At the state level it happens to be the Governor. If you have a corrupt court, then your whole system of democracy is at risk. A statement famous declares the power to tax is the power to destroy. But a Supreme Court Justice, Oliver Wendell Holmes, Jr. said, the power to tax is not the power to destroy as long as this court sits, meaning that the court will intervene even where taxes are involved to see that justice is done. There was a man who wrote humorous comments. He went by the name of Mr. Dooley. He

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said, he doesn't know whether the constitution-- whether the flag-- whether the constitution follows the flag, meaning that whatever you conquer, the constitution follows. He says, I cannot say whether the constitution follows the flag, but I can say that the Supreme Court follows the election returns. And you're seeing that right now with the U.S. Supreme Court following the will of Donald Trump. He put two guys on there and one's last name is Gorsuch, the other Kavanaugh, and that gave these so-called conservatives the permanent majority that they will need. Five of the nine judges comprise a majority. That is enough to give a decision. The court declares the law. The Legislature writes the law, the court declares the law. That means the court says what it is. You can take a provision in the constitution and read it, but before you can adequately declare what the legal significance of that provision is, you've got to read any judicial decisions that were handed down interpreting and construing it. How many commandments were given to those of you all who believe in the "Bible"? Ten. But how many laws and subdivisions of laws sprang from those ten? The constitution itself comprises a few pages, but go into any good law library and look at all those volumes and you'll see what has been spawned by that constitution. Men, and to a later-- a smaller degree in later times, women who served as judges expanded on, elaborated on, observed, then others observed again. They overturn, they reinstate, how ever five of them feel at the time is what the law is. But there was one judge in the Supreme Court, his name was John Marshall. If there were any lawyers in the house, I would ask one of them, what law school did John Marshall attend and graduate from? John Marshall didn't go to law school. John Marshall did not graduate from law school. But John Marshall was a Supreme Court Justice-- and you all don't know whether I'm telling the truth or not-- who put in place the notion of judicial review meaning that the Supreme Court could declare an Act of Congress unconstitutional, meaning it went contrary to what the constitution states, therefore, Congress is wrong in what it said that so-called law is nugatory. It is void. It has no validity. Thus, the Supreme Court arrogated to itself the power to declare Acts of Congress to be in violation of the constitution. But the power to do that is not found written in the constitution. So these so-called conservative judges on the Supreme Court-- and I'm going to get around to the picayunes judges on the Nebraska Supreme Court. We have almost three hours to be together. That's plenty of time to get to all of these other things. But some ground work is necessary. These judges say that they are literalists. That's what some people call them. Some of them say they read the text of the constitution and will take it literally. Others say, well, we want to get into the minds of the ones who--

FOLEY: One minute.

CHAMBERS: --drafted the constitution and have those original intentions carried out today. Men who lived hundreds of years ago had ideas that did not include of any of the things that are going on today, are presumed by these so-called originalists to have had a concept of airplanes, trains, boats, and planes, wars, bombs, jet propelled, jet propulsion, so they say when we have a case before us, what would those people back there have meant when we interpret this part of the

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constitution and apply it. That's insane. But when they've got the numbers, they can do things their way. I'm saying these things to indicate--

FOLEY: That's time, Senator Chambers, but you're next in the queue, you may continue.

CHAMBERS: Thank you, Mr. President. The court is the most powerful of the three branches. The Legislature has paramouncy though because the Legislature cannot overturn a Supreme Court decision that's based on an interpretation of the constitution. If it's based on how the court interprets a law of Congress and need not reach a constitutional issue, then Congress can overturn that decision by simply amending the law or repealing it. Congress has paramouncy, this Legislature has paramouncy because it controls the purse strings. It determines how much money any agency is going to get. But the reason I mention John Marshall, kind of touches on what I'm beginning to get to. There was a president, and I'm not going to give you his name, but there was an issue about whether there should be such a thing as a national bank. And a decision was made by the court. And this particular president said, blank has made his decision, let him carry it out. Similar to what one of the people during the war said, how many divisions does the Pope have? In other words, he can say all he wants to, but when there is a war, the outcome is going to be determined by who's got the most divisions or the most military might. Black people do not have much hope in this country of ever obtaining justice, fairness, equality. But the only hope we had and it's not much, rests with the courts. We can try to embarrass, to shame, and provoke the court into taking seriously what is found in the constitution and the laws of this country and argue that there's no place in the U.S. Constitution that describes or mentions second-class citizenship. So there are no second-class citizens under the constitution, but there are people who are treated that way. And courts, under regime like Trumps, will give decisions that indicate that people born in this country, if they're my complexion, are not citizens of any class of any kind. And yet we're the only people who were brought here against our will and not allowed to leave. Do you hear me? Not only were we compelled, were we forced to come here, but we were not allowed to leave. That does not apply to anybody, any group on this soil. So the courts ain't much, but they're all that we've got. So what I have to try to do to the extent that one man in a backward, parochial legislature, in a racist, backward, high-bound state is to try to get the court, at least, to function the way a court is supposed to. Obviously, I've not been able to do that--

FOLEY: One minute.

CHAMBERS: --but I'm going to keep trying. Now, I'm going to get into some of the things that will show why I call this a legal clinic. I'm going to give you all some concrete examples of things that happen, correspondence I had with the Chief Justice, with the court system, the impact, in some instances, I've been able to have. But we still, as black people, all people of

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color, do not have justice in this state and we never will have. When a white person can feel ill at ease when a black person or other person of color comes into their midst, then something is wrong. When there are certain subjects that cannot be discussed without people becoming nervous, something is wrong. If you have ten white people, they don't feel uncomfortable if an eleventh white person comes there just because the person is white.

FOLEY: That's time, Senator.

CHAMBERS: Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Senator Lathrop.

LATHROP: Thank you, Mr. President, and colleagues that remain here tonight. I have to tell you, I'm standing in opposition to FA68. It raises the judge's salary by a penny over the amendment. I'd like to tell you it's because I made a deal and a deal is a deal and I'm going to stand with it. A penny is a nominal sum of money, but it will effect my A bill and so that I don't have to amend my A bill again, I'm going to respectfully request that this and the other bills that affect the judges pay raise by a nominal amount be voted red. And with that, and in the interest of collegiality, I'll give the balance of my time to Senator Chambers.

FOLEY: Thank you, Senator Lathrop. Senator Chambers, 4:10.

CHAMBERS: Thank you, Mr. President. Thank you, Senator Lathrop. And do you see how two people trained in the law, who respect the law, can respectfully disagree? And the one who has to disagree is disagreeing with something that his opponent has offered that would give more than what he is intending to give, and form must be elevated above substance. The difficulty of amending the A bill, the appeal bill, makes it impossible for him to accept my offer, though it be nominal as he said, of a penny increase. Would you rather if you are being considered for a salary to get a certain amount, or a certain amount plus something else? Whatever that something else is. But Senator Lathrop is absolutely correct and I anticipated what he would say. But I need to find a way to take my time and I can do it by offering amendments or I can offer motions, but I will find a way to take us to six-- 5:45. What I am going to do here is show you something that happened between me and the Nebraska Supreme Court. The issue that has consumed me ever since I've been in this Legislature, and before I got here, was the idea of a state killing its residents. That anybody could kill another person is incomprehensible to me unless the one who does the killing is under such stress or such fear or something that temporarily at least unbalances that person, destabilizes that person's mind and a killing occurs. That might be in a separate category. There is what is called self-defense that might be in a separate category. But when a state which is supposed to be composed of rational, reasonable, moral people, can in a

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ceremonial manner, ritualistically kill another person is what I cannot comprehend and it's why I think white society is savage, brutal, irredeemable, and I've tried to the extent that I could as a member of this Legislature to bring the people who make these laws to the point where they accept and act on the so-called religion that they profess or pretend to believe.

FOLEY: One minute.

CHAMBERS: So this material that is going to be involved in what I say will swirl around the death penalty, the killing, the deliberate, intentional killing of a human being by people, who if there is a god with laws and they're just, would deserve death more than the one they kill. They will quote the Bible. They like to say the Bible says, he that sheddeth blood shall have his blood shed by another man's hand. Only the Bible says it in its quaint way. There was a point when there was a family of four: Adam and Eve, Cain and Abel. Cain killed Abel and God was very upset and asked Cain, where's your brother? Cain asked, am I my brother's keeper?

FOLEY: That's time, Senator Chambers, but you are recognized for your third opportunity.

CHAMBERS: Thank you, Mr. President. God would know what had happened, so God told him, you killed him, so get out of the garden. And here's where something comes into play that shows you that whole story is a myth. Cain said, what you are putting on me is a punishment that no man can bear. Wherever I go on this earth, every man's hand will be raised against me. My life is not secure. Every man's hand will be raised against me. Where would these men come from? The only two people other than Adam and Eve were Cain and Abel and Abel was dead, the only other person who was a man, Cane. Your God didn't deny that there were other men, so here's what he did. He put a mark on Cain. He said that so that no man will raise his hand against you. And if he should raise his hand against you, what a terrible thing would befall that man. That whole story is shot full of holes. But the ones who are religious and want to kill, want to justify it by what's in the Bible. But the Bible does not support them. God's the daddy. When there was the first murderer, God made sure that he wouldn't die at anybody's hand. Then when his son, Jesus, came here, Jesus was presented with a woman who had committed a capital offense under the law. These people brought these men, brought the woman to Jesus, said she was caught in the very act of adultery. Well, adultery is not something a person does alone. If a person does something like that alone, self-stimulation, it's called masturbation. Masturbation was not a stoning offense, so it means that there was another person involved. If they caught her in the very act, where was the other actor that makes it possible for adultery to occur? I cannot clap with one hand. It takes two. So where was the man? But men were the ones making the accusation and they wanted to trick Jesus. So Jesus let them do what they wanted to do. He didn't deny that stoning was the punishment for adultery. He didn't even question whether or not they caught her in the very act or whether she had committed the act at all. But he stooped down and he wrote

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something on the ground. And I wish that whoever was writing that yarn had told us what Jesus wrote. Maybe what Jesus wrote was Hi Diddle Diddle, The Cat and the Fiddle, The Cow Jumped Over the Moon. We don't know. Just as I'm offended that when Jesus was talking to Pilate, and Pilate asked Jesus, what is truth? And instead of waiting for an answer, Pilate walked out. I wish he had stayed and gotten that answer. But anyway to make a long story short, Jesus said, let he that is without stone-- sin among you, cast the first stone and wrote some more. People speculate about what he wrote. Some say he wrote the wrong that these other people did that were accusing her and on and on. But Jesus had come to bring a new testament, a new agreement. That's why you are not speaking accurately when somebody has done something and you say that is a testament--

FOLEY: One minute.

CHAMBERS: --to his or her courage. What you mean is a testimonial. A testament is not a testimonial. But at any rate, they had heard Jesus speak, and they heard him say he was without sin. So Jesus had said, let him without sin cast the first stone. They say, you say you didn't commit sin, is that true? Like he always answered the question. Thou hast said. Well, you said he that is without sin should cast the first stone. And Jesus said, uh-huh, and the one who is without sin will not cast the stone. So he told you there is to be no capital punishment. But the Christians don't read the book that way, do they? They justify the killing. So when I became aware that courts and judges were the ones responsible for people being killed by the state, I determined that I would do--

SCHEER: Time, Senator.

CHAMBERS: --what I could to stop that.

SCHEER: Thank you, Senator Chambers. Seeing no one in the queue, you're welcome to close on FA68.

CHAMBERS: Thank you, Mr. President. So here is a letter that was written to me June 13, 2018. Dear Senator Chambers: The office of Chief Justice Heavican forwarded to me a copy of your letter dated June 11, 2018. Neither the Chief Justice nor the court has reviewed or considered your correspondence. For the reasons stated below, the Chief Justice requested that I respond to your letter since his involvement in this matter is proscribed, or forbidden, by rules of judicial ethics. The Nebraska Revised Code of Judicial Conduct, Section 5-302.9, generally prohibits a Nebraska judge from initiating, permitting, or considering ex parte communications or considering other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending matter. Therefore, neither the Chief Justice nor the

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court may consider this communication in the absence of it's being brought before them by a party in the pending case. A copy of your letter will be retained in correspondence files in the Clerk's Office and a copy along with a copy of this letter will be provided to counsel of record in S-95-0485, State vs. Cary Dean Moore. Future ex parte communications will be handled in a similar manner. Very truly yours, and then the clerk signed it. And a copy was sent to Jeffrey Pickens, Commission on Public Advocacy, who is Cary Dean Moore's lawyer of record, and James Smith, Attorney General's Office who was handling the case for the Attorney General. And for the sake of the record-- and by the way, I know at least one judge is probably watching. Her name is Liz Crnkovich because I have a copy of a complaint here that I wrote against her. She's a juvenile court judge in Douglas County. This is the letter that the judge and the other judges supposedly did not read. Dear Chief Justice Heavican: While preparing a somewhat lengthy detailed letter to the court querying whether certain actions by Nebraska Attorney General Douglas J. Peterson warrants sanctions, I encountered what appears to be a fatal defect in his May 25, 2018, motion to expedite consideration of motion for execution warrant, which says the state's motion for execution warrant has been pending with this court for over seven weeks since April 3, 2018. The appellants' death sentences, which means Cary Dean Moore, have been final for 21 years. There have been four previous execution warrants issued by this court, all of which were later stayed or withdrawn for various reasons. All subsequent collateral attacks and other various postponements have been exhausted. No stays of executions have been issued by any federal court, unquote. The sole document relied on by the Attorney General is his April 3 motion for execution warrant. The motion is fatally defective for the reason that it fails to disclose that on that date there was pending before the Board of Pardons, of which he is a member, an application for clemency filed several months previously by Moore. Whereas, the motion said at page two of the Attorney General's motion, there are no stays of execution in effect by any federal court concerning--

SCHEER: One minute.

CHAMBERS: --the enforcement of Moore's death sentence. No cases are pending in these courts to seek a stay. The Attorney General neglected to disclose the pendency of Moore's clemency application which triggered a statutory stay. And this is what the statute says: Whenever an application for exercise of the pardon authority is filed with the Secretary of the Board of Pardons by a committed offender who is under a sentence of death, the sentence shall not be carried out until the board rules upon the application. That Section 83-1132 of the Nebraska statutes. So there was a stay of execution in place pursuant to the statute when the Attorney General asked the court to issue a death warrant. That was unethical on the part of the Attorney General. I believe that the court read this letter.

SCHEER: Time, Senator.

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CHAMBERS: You said time?

SCHEER: Yes, Senator.

CHAMBERS: Thank you.

SCHEER: Yes, Senator?

CHAMBERS: I'm not going to ask for a call of the house, but I want a roll call vote.

SCHEER: Thank you, Senator Chambers. You have heard the closing. The question before us is adoption of FA68. All those in favor please vote aye; all those opposed vote nay. I'm sorry, you did ask for a roll call, excuse me, Senator Chambers. Mr. Clerk.

CLERK: (Roll call vote taken.) 7 ayes, 24 nays, Mr. President.

SCHEER: FA68 is not adopted. Mr. Clerk.

CLERK: Mr. President, Senator Chambers would move to reconsider that vote.

SCHEER: Senator Chambers, you're welcome to open on your reconsideration motion. Excuse me, one moment. Please continue, Senator Chambers.

CHAMBERS: Thank you, Mr. President. And since I've made it clear nobody has to be here. If you all are going to be here, just keep it down if you will. [LAUGHTER] And I know that there are people watching this particular presentation because there was a call put out that I was going to do this and that the Chamber would be virtually empty, so I do have an audience watching and listening. Continuing this letter to the Chief Justice. At the time the Attorney General filed his April 3 motion for execution warrant, a statutory stay was in effect. Had this court relied on the averments in that motion and issued a death warrant, it would have run afoul of its own application of a similar situation, explication of a similar situation given in *State v. Joubert*, 246 Neb. 287, pages 303 and 04. This is what the court said in that decision. While we agree-- tap, tap. That's call self-help. You all can whisper. While we agree that the purpose of a stay is to prevent a state from doing an act which is challenged and may be declared unlawful in a pending proceeding, we must reject the Attorney General's position that the setting of an execution date is exempted from the stay. The setting of execution date is in anticipation of the termination of a stay clearly constitutes a preparation for the carrying out of an execution in violation of federal

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law. Silence breeds silence, doesn't it? Then the court cites a case showing what it said to be true. The Attorney General thus asks us not only to perform a useless act, he asks us to perform a lawless one. It appears he has overlooked the U.S. Constitution, Article VI which subjects the state of Nebraska to the constitution and laws of the United States, and that the Attorney General himself is sworn not only to support the constitution of the state, but of that of the United States as well. It must be borne in mind that the legal barriers that exist to preserve the individual's constitutional rights, and protect against the unlawful execution of a death sentence, separate the unlawful killing by a person and the lawful killing by the state. If the law is not given strict adherence, then we as a society are just as guilty of a heinous crime as the condemned felon. Concerns for finality to a state's judgment do not outweigh the absolute need to protect against the deprivation of an individual's constitutional rights which might invalidate his capital sentence. That was the quote that the court itself gave. The Attorney General's motion replicates that situation. This court's response in that case should be replicated here. The Attorney General is obliged by the rules of professional conduct to know the law or to discover it if he does not know it. Also, he is charged with knowledge of his duties as a member of the Board of Pardons, and with knowledge of the matters pending before the board. And finally, he is required to comply with the requirement of candor before the court, that is, not to withhold or fail to disclose to the court any fact or facts having a bearing on a decision to be rendered by the court. The only thing this court should consider is what is actually contained in the motion to expedite. It must stand or fall on its specific contents. Nothing else is incorporated by reference. The Attorney General is presumed to know the contents of any document that he references in his filings with this court. Also worthy of note is the affidavit of Director of Corrections Frakes wherein he discusses the death drugs and their acquisition. So much hubbub is surrounding the expiration date of one of the drugs and has given as a reason for expediting Moore's execution, that is so much rubbish. If the drugs were lawfully procured from a reputable lawful provider, all that is needed is for the state to acquire another batch. Something is out of whack here. P. S. To determine the nature and quality of an act, the facts and circumstances in esse, or actually existing at the time of the act is performed, will govern. What that letter says is that the Attorney General misled the court when he asked for an execution warrant to issue, or for the state-- for the court to set an execution date. He knew or should have known that there was a stay of execution in place. Whenever a person condemned to death submits a-- a claim or a request for clemency, that execution cannot be carried out until that matter is resolved and it had not been resolved at the time that the Attorney General made his request. I believe that the Chief Justice read this letter, he indicated that the clerk should send me a letter saying he and nobody else would read it because had he read it, they would have had to take action against the Attorney General for requesting an execution date when the Attorney General knew that no execution could be carried out. That is withholding information from a court. Such an act is a violation of a lawyer's ethics, and that court would have had to chastise and discipline the State Attorney General, but it was not about to do that. So I'm going to read some other documents which I had promised the ones who are having a listening session would be made a matter of record here

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today. This is to the Chief Justice, and it's dated September 21 of last year, regarding transmittal of excerpts from the transcript of a Judiciary Committee hearing on LR406. And this is the letter that was used as a cover for the transcript that was sent. Chief Justice Michael Heavican, Nebraska Supreme Court. A renowned judge famously observed regarding addressing judicial misconduct, quote, sunshine is the best antiseptic. My intent is to let the sunshine in. In presenting this material, I am as serious as a heart attack. Enclosed are pertinent excerpts from the aforementioned transcript from the hearing conducted September 7, 2018. The entire transcript may be obtained by contacting the Clerk of the Legislature. Although each excerpted-- then I tell how the page numbers are there. Each page will have the original page number in the transcript, but since I wasn't using all of the pages, I numbered them individually in sequence so that the judge could follow. Pages 13 through 18 comprise my colloquy with Jeffrey Pickens, chief counsel of the Nebraska Commission for Public Advocacy who is compelled by the court to represent Cary Dean Moore, despite Moore's express desire to waive counsel. Coupled with Mr. Pickens' motion to withdraw as counsel in view of Moore's directive he do nothing whatsoever on Moore's behalf to interfere with, delay, or derail his scheduled judicial execution by lethal injection. The purpose of that paragraph is to point out the impossible situation the court had put this lawyer in.

PANSING BROOKS: One minute.

CHAMBERS: This lawyer-- thank you, Madam Chair. This lawyer, Jeffrey Pickens was found to have been the lawyer of record for Cary Dean Moore in the past. The court ordered him to continue representing Moore. Moore instructed the lawyer to file a motion asking that he, the lawyer, be removed as Moore's counsel. The lawyer couldn't do that. The lawyer was required to represent that man by the Supreme Court. The lawyer's ethics require that a lawyer represent a client zealously, that means to do any and everything under the law that's allowed to carry out the representation of that person. But since Cary Dean Moore did not want to be represented, the lawyer was put in an impossible position.

PANSING BROOKS: Time, Senator.

CHAMBERS: Thank you, Madam Chair.

PANSING BROOKS: And you are next in the queue, Senator Chambers.

CHAMBERS: Probably the only one, I understand. Although the matter is discussed in detail during the colloquy, I feel constrained to offer comment here. This scenario provides a starkly graphic example of a heavy-handed, overreaching, hypocritical, judicial double-standard that contemptuously shreds the first principle of law, that the seeker of equity shall not come with

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unclean hands. In this instance all things considered, the court's hands drip with ropey smut. It should be clear from this that I have considerable contempt for what the Nebraska Supreme Court and the Chief Justice did, and I want it a matter of record. Continuing the letter. I speak without temporization or apology. I said what I have said in that transcript and stand immovable behind it. Judges are not gods or even demigods, but mere fallible men and women on the state payroll, as am I. My disdain for the Nebraska Supreme Court explained in the transcript is the equal of the court's manifested disdain for justice and judicial propriety and is, like the universe, boundless. Ode to judging the judges and the Nebraska Supreme Court. Each judge individually is a political hack. The Supreme Court collectively is a political clique, c-l-a-q-u-e, a gang. As proclaims the traditional saying, Caesar's wife must be above suspicion. The old testament says at 1 Samuel 4:21, and she named the child Ichabod saying, "The glory is departed from Israel because the ark of God was taken. Unquote. Employing identical rationale for the identical metaphorically speaking reason, I dubbed the Nebraska Supreme Court Ichabod for the glory certainly has departed. The judicial code of conduct, 5-301.2 promoting confidence in the judiciary provides, quote, a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety. And 5-302.4, External influences on judicial conduct, (B) A judge shall not permit political interest to influence the judge's judicial conduct or judgment. Unquote. The dignity and integrity of the court have been compromised by its inexcusable rush to accommodate the political agenda of Republican Governor Pete Ricketts and Republican Attorney General Douglas Peterson by prematurely authorizing Moore's execution prior to disposing of relevant litigation on appeal that has a direct bearing on the constitutionality and lawfulness of any execution carried out pursuant to the state's existing execution protocol. Unlike those timid souls who throw a rock and hide their hand, I shall neither hide, neither bite my tongue, pull my punches, nor strike from ambush. If the court can boldly, even brazenly, behave in such illegally and ethically questionable and problematic manner that it did vis-a-vis the precipitant execution of Moore, which resulted in the extinguishment of a human life--Moore had been executed by this time--the least I can do is, based on deeply held convictions, speak out in forthright manner whose only consequence may be some indignation on the part of judges who engaged in conduct prejudicial to the administration--

PANSING BROOKS: One minute.

CHAMBERS: --of justice that brings the judicial office into disrepute. In the same manner that amber has encased insects intact for countless thousands of years, the transcript shall encase my critical remarks intact for as long as legislative history is maintained. That's the letter for my listeners outside the Legislature. And now I'm going to read from that transcript. Senator Morfeld: Thank you-- this is before the Judiciary Committee, just a little bit to let you know what this hearing was about. Thank you, Chairman Ebke. Members of the Judiciary Committee, for the record, my name is Adam Morfeld, representing the 46th Legislative District, here to

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introduce LR406, a resolution to study and to adopt the American Bar Association's standards for defense counsel in death penalty cases.

PANSING BROOKS: Time, Senator. And next is Senator Kolterman. Senator Kolowski, sorry.

KOLOWSKI: I would comment on that, but I will not at this time. I yield my time to Senator Chambers. Thank you very much.

PANSING BROOKS: Senator Chambers, you are yielded 4:45.

CHAMBERS: Thank you, Madam Chairman-- chairperson. Thank you, Senator Kolowski, and I will accept any time anybody gives me, but I do have motions I can make in case nobody chooses to do so. After Senator Morfeld made his introduction, these are my remarks, some of them. Madam Chair, members of this committee, while Senator Morfeld, the introducer is here, there's a statement I'm going to make. And I want to make it while a senator is in the chair so it won't seem like my remarks are addressed to somebody who testifies or that person would have to respond to them. And Senator Morfeld, naturally you can respond any way you'd like to. I've been against the death penalty for as long as I knew that there was one. The recent travesty, that was the execution of Cary Dean Moore, upset me more than any of the other cases where an execution was carried out. And in three of them, I spent time with the condemned prisoner prior to their execution. I accompanied two of them to the execution chamber. I did not watch the killing, because that is not what I have an interest in doing. But I wanted to be sure that as they strap these men into that chair, there was nothing done in the way of inappropriate taunting or torture. And the reason I spent time with them in preparation of their execution, guards had been doing things that were inappropriate, so I told the director of Corrections I was going to come out there and I was going to be in the room with the person who was going to be executed until his time was up to make sure none of these inappropriate things happen. If anybody needs somebody to go his or her bond, so to speak, it's somebody who has been convicted of a crime and has been sentenced to be killed by the state and I was willing to be that person. And I will always be that way. In fact, I'm more like your Jesus than you are. Jesus didn't kill anybody. Jesus forgave all the killers. And you all call yourselves Christians? That's also for my listeners out there. Continuing. As it turned out, they had one man's elbow with a crazy bone, as they call it, against the post on the back of a chair, and he was grimacing. I asked him what was wrong, and he told me. I told him, loosen those straps and you're going to do this the way you're supposed to. So they loosened the straps, and this man, he was about to die, but he thanked me. This last incident involved a situation where Cary Dean Moore had counsel of record, the Public Advocacy Commission. The Attorney General did not notify the commission of anything that was going on in the way that were required. So the court on its own motion contacted the Attorney General's Office, asked them why they didn't do it--that is, notify the commission--and

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ordered them to make the notification. But the court did not reprimand the Attorney General for not doing what the law required. Anyway, the Attorney General's response to the court was snippish, it was insulting, it was demeaning, it was degrading to the court, and the court did not respond to that. But the commission was required to represent Cary Dean Moore. Cary Dean Moore rejected that and wanted to waive representation by counsel. The Nebraska Supreme Court has said in one of the cases that it decided, that a defendant is allowed to waive representation if it's done knowingly, willingly, and so forth.

PANSING BROOKS: One minute.

CHAMBERS: In this instance, the court went against its own ruling and required Cary Dean Moore to have representation of counsel even though he made it clear he did not want it. When the commission did assume the representation and head counsel Jeffrey Pickens was the lawyer, he asked to be removed from the case because Cary Dean Moore did not want any actions of any kind filed in his name. And I'll stop now and continue when I'm recognized.

PANSING BROOKS: Thank you, Senator Chambers. Next in the queue is Senator Chambers.

CHAMBERS: Thank you, Madam President. Mr. Pickens made it clear that to be representing a client under these circumstances was not allowed due to the wishes of the client. The client would not allow the lawyer to file any papers in his name. Anything filed would have to be verified by Cary Dean Moore, which Cary Dean Moore would not have done. The court refused to allow the lawyer to withdraw. My response, my reaction, was this. The court wanted to mandate representation to give the appearance of regularity in this execution that was being done hastily, indecently, and out of order, in my opinion. They compelled an honorable lawyer, because they were behaving as a dishonorable court, for which I have no respect whatsoever, and I wanted a matter of public report. I had written them communication to the Chief Justice, and because several years ago in 2007, I wrote one, and a majority of the court withdrew the death warrant for Cary Dean Moore those years ago, based on what I had written, they now called this latest one that I read to you an ex parte communication that the court would not read. But continuing from the transcript. The Chief Justice, in my opinion, was the one who led the effort to adopt a new court rule so that such communications could not be accepted by the court. I would not be allowed to intervene where an inmate, as like Moore, did not want a lawyer to file anything. But be that as it may, I did not know how the rule would be applied, so I did address that communication to the Chief Justice. I received a letter from the clerk which I read. The court behaved in a way that was dishonorable. The court engineered a train wreck and then withdrew itself from the damage that would result but made the lawyer stay there. The court in pretending to create regularity and carrying out the most solemn duty that it had, which is to issue a death warrant and allow a person to be killed at the hands of the state did like Pilate, washed his hands,

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but left the mess on the table of the attorney. The attorney was not allowed to behave as an attorney who had been drilled with the information and the requirement that a lawyer represents a client zealously and he could not represent that client at all. The only reason they could execute Cary Dean Moore is because he cooperated and let them. There were several motions that could have been filed that would have kept Cary Dean Moore alive. The death drugs would have expired. There would have been no execution. This that is being offered today is meaningful, it's worthwhile, but it will be no better than the dishonorable court the majority of whom our Republicans appointed by this Republican Governor. What I was talking about being worthwhile was the attempt by Senator Morfeld to have this committee study adopting the ABA rules stating qualifications for those who had represent people on death row. The majority of this dishonorable court were-- are Republicans, appointed by this Republican Governor, who made executions a keynote-- a keystone to everything he was doing. He went so far, and my colleagues who were here at the time know it, to play the race card. And it was publicized. And I have the article where he said, anybody who would vote to overturn the death penalty and then to override will be voting with Senator Chambers and sending a message to the criminals that you're soft on crime.

PANSING BROOKS: One minute.

CHAMBERS: That's what the court-- the Governor actually said. There were 30 other white people. Why did the Governor mention Senator Chambers? There were white people who had co-signed the bill. There were pending at the time cases dealing with very critical aspects of the death penalty machinery. They had been appealed. The Supreme Court was going to have to rule on those cases. Had the court ruled in the way I thought the court should have, namely, that the protocol was adopted in a way that was illegal, there could not have been an execution carried out. And I will turn on my light.

PANSING BROOKS: Thank you, Senator Chambers. Next in the queue, Speaker Scheer.

SCHEER: Thank you, Madam President. In order to keep the conversation moving, I don't want to interrupt for any type of vote, so I will yield my time to Senator Chambers.

PANSING BROOKS: Senator Chambers, you have 4:45.

CHAMBERS: Thank you, Madam President, and thank you, Mr. Speaker. And I'm not just taking time only, I'm putting things into the record and there are people who were looking forward to this. In fact, they were waiting for days because they saw this judge's salary bill on the agenda. Despite the pendency of those cases before the Supreme Court, because they were on appeal, the court allowed the execution to be carried out. The court is dishonorable, despicable,

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worthy of contempt, because they prejudged the outcome of those appeals that they're going to hear by allowing the execution. They are not in a position to rule any way other than against that pending litigation, because were it to rule otherwise, it would be acknowledging that it allowed an execution to be carried out that should not have been carried out. So now that they've gotten their robes in the slime of dishonor, they're now pulling up the hems of their robes and tiptoeing, pretending that they're going to behave as a court should. In England, judges will put on robes, and they'll put on a wig. And it was not to be theatrical but to symbolize for everybody to see the solemnity of what was being done. This was a body of people carrying out the solemn duty of the state. Either they were going to administer the judgment and punishment of the king, or they were going to extend and bestow the mercy of the queen. The people wearing those robes were not intrinsically more moral, ethical than anybody else, but those accoutrements were designed to project what the court is about and the duties that were being performed. For this dishonorable Republican political-leaning court to allow an execution to have been carried out under these circumstances is inexcusable. And there is no way to call them to account. There is nobody who will call them to account. They overlooked the slipshod, slapdash way the Attorney General was operating in prior cases. And I'm wrapping it up now-- this Nebraska Supreme Court with different judges sitting had instructed the Attorney General before seeking a death warrant to ensure that no stays were in place because former Attorney General Don Stenberg had done such a thing. In chastising him for doing it, the court said, you are bound by federal law. There was a federal stay in place. When you swore your oath of office, you swore to uphold the law and Constitution of the United States as well as the state. You're bound by that and the only reason sanctions will not be imposed is because this is the first time we're ruling directly on this issue. So he escaped. Jon Bruning, as Attorney General withheld information from the court about not having drugs to carry out an execution, and the court issued an execution warrant. Then it became clear that the drugs were not there, the execution could not be carried out. And the lawyer for the prisoner had pointed out that this was a sham execution, it was in the nature of torture, it should not have resulted in a death warrant being issued. The judge looked at the facts. And he had some harsh words for Attorney General-- the Attorney General's Office. He said, the judge, not only did you withhold information from the Supreme Court, you withheld information from the--

PANSING BROOKS: One minute.

CHAMBERS: --Douglas County Attorney and withheld it from the attorney for the lawyer, for the prisoner. And the only reason I will not impose sanctions, as is being requested, is because the motion filed by the inmate does not allow for that kind of relief. But the Attorney General's Office should be called to account. But it was not. This time around. And then-- do I have another time to speak, Madam President? I don't?

PANSING BROOKS: Just your close, Senator Chambers.

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CHAMBERS: Then I'll take it, if that's it. Am I recognized to close?

PANSING BROOKS: Not right now, there are others in the queue. So-- OK. Thank you, Speaker Scheer and Senator Chambers. Next in the queue are Senator Lathrop, Senator Crawford, Senators Walz, Gragert, Murman and others. So next we recognize Senator Lathrop.

LATHROP: Thank you, Madam Chair. I will yield my time to Senator Chambers.

PANSING BROOKS: Senator Chambers, 4:53.

CHAMBERS: Thank you, Senator Lathrop. Thank you, Madam Chair. I'll tell you why I want this in the record. I want the court to know that somebody-- and they know it anyway --but is willing to make it a matter of record as publicly as I can possibly make it. And I wish that my colleagues would pay attention and be aware of how this court behaved when it was doing the most solemn thing it could do. And that was to issue a death warrant and it didn't have to do it, and it should not have done it. I'm going to get ahead of the story. The reason they hastened was because the expiration of date on one of the death drugs was rapidly approaching. The court should not have been influenced by that at all. There were reasons not to carry out this execution. But the majority of the court were appointed by the Governor, they're all "Repelicans" and they did what the Republican Governor wanted them to do, and a man died who should not have died. Continuing. Oh, this judge said that the only reason he would not sanction Jon Bruning was because the inmate had filed a motion which did not allow for that kind of relief. This time around, speaking about Cary Dean Moore's execution, Attorney General Douglas Peterson prevailed on the Supreme Court to issue a death warrant. That was his request. He included documentation from every level of the federal courts that there was no stay pending, no actions filed, so it's all right for the court to do this, and the court trusted them. Digressing from this, another reason I'm putting this on the record, that letter that I got from the Clerk of the Supreme Court indicated that the judges did not read that letter. Well, they can read the transcript. They could have listened to the hearing. But they know what that letter said, because I believe they read it. And if they will allow a man to go to his death to carry out a political wish of a governor and a political person like the Attorney General, that court will also lie. And I believe that they compel the clerk to get involved by writing a letter that did not tell the truth. The Attorney General has said there was no stay pending, no action filed, so it's all right for the court to issue the death warrant. And the court trusted them. But they did not issue the warrant at that time. The ACLU filed a document that mentioned the existence of a request for clemency by Cary Dean Moore before the Pardons Board. What the law says is that when there is a request for clemency pending, the sentence of death cannot be carried out until that has been acted on. The Attorney General is a member of the Pardons Board. As a lawyer, he's required to know what is involved in any case he or she is handling, and especially one like this. So there was what would

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have to be called a statutory stay in place that he did not notify the Supreme Court of when he requested the issuance of the death warrant, and that is working a fraud on the court. The court did not do anything about that. At least three Attorneys General have--

PANSING BROOKS: One minute.

CHAMBERS: --shown contempt for the Nebraska Supreme Court and the Supreme Court has rolled over, swallowed spit, and behaved in the most craven, partisan, political manner imaginable. So when it became public, and even lawyers commented on the existence of this request for clemency, then the Attorney General, about a week later, offered a supplemental filing calling attention to the existence of that request and pointing out that after the Pardons Board had its hearing, the court would be notified. I'll stop at this point. Thank you, Madam Chair.

PANSING BROOKS: Thank you, Senator Chambers and Senator Lathrop. Next in the queue, Senator Crawford.

CRAWFORD: Thank you, Madam Chair. I yield my time to Senator Chambers.

PANSING BROOKS: Thank you, Senator Crawford. You're allotted 4:50, Senator Chambers.

CHAMBERS: Thank you, Senator Crawford. Thank you, Madam Chair. The Attorney General is a member of the Pardons Board, he's a lawyer. He's required to know the responsibilities of the position of being a member of that Pardons Board. Digressing. This is what I sent to the-- to the Supreme Court. They claimed that they would not read the letter. So I said it at a public hearing. I have the transcript. I put a letter covering it, informing the court that I was sending this to them, and it's getting to them not only what was in that letter but other things. Let me continue. He's required to show ordinary diligence which the Attorney General did not. And the Supreme Court allowed an execution. You know why I don't mind doing this? A man was killed in a way that he should not have been. No other senator said anything that I'm aware of, but I know some were very upset about it. It's not my responsibility as a senator to do the-- these things that I do, but it's the responsibility on me as a human being. And this final note on why I will always be against the death penalty. I don't care who the victim is, who the perpetrator is, or the methodology by which the crime was carried out. There is a basic fundamental human dignity that attaches to every person, no matter how far or low he or she has fallen, and when the state kills, it commits violence against that basic human dignity. I don't mention personal things. But a young man was killed not long ago in Omaha who is my grandnephew. He was my sister's grandson. People ask how I feel about the death penalty. There should be no death penalty, and I'm going to write a letter to the Chief Justice because a district judge put a million dollar bond on two women who

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supposedly had information and didn't want to give it. So he put a bond on them and it's in this case involving the death of my grandnephew. That bond should not have been offered. It should not have been imposed. It dishonors the court, it disrespects the constitution. That's an excessive bond or bail, it cannot be met. There was no need for it. The judge wanted to send a political message, so even where one of my family members was involved, I've got to lay all that aside and still try to maintain the integrity of the court and the judicial system because it ain't much, but it's all that black people have. We might be able to get a little justice. So I have to try to keep it behaving in the way that a court should, and the courts in Douglas County do not. So I'm going to say for the record, no judge, no salary increase for a judge will be enacted by the Legislature while I'm in the Legislature. And people can take that to mean whatever it wants to. And I don't have any more to say. I have no questions. I'll make no further comments, but I wanted that on the record, because unlike my colleagues, I don't throw a rock and hide my hand. Everything we say is recorded and transcribed. And when this is transcribed, I'm going to make sure every member of the Supreme Court gets one with a cover letter. That's what I did. And when you are in a situation like the one I find myself in, you have to be-- you have to exercise ingenuity and find a way to at least get the message out, even if you can't obtain the action that you want. An example--

PANSING BROOKS: One minute.

CHAMBERS: Thank you, Madam President-- is the best way to try to persuade or to give instruction, be what you tell other people they ought to be. And maybe nobody wants to be like me. Maybe nobody would do what I do, but I wish there were more people who had the attitude that I have about the death penalty being against it, and I can do only what is available for me to do to try to persuade them. I try to appeal to what I think was Abraham Lincoln who referred to the better angels of the higher-- the higher angels of their nature, or something to that effect. I think people know that the state should not be killing. But people don't want to be condemned and criticized in the way the Governor did me. But if I have a principle, then nothing and nobody is going to make me deviate from it out of fear.

PANSING BROOKS: Time, Senator.

CHAMBERS: Thank you, Madam President.

PANSING BROOKS: Thank you, Senator Chambers. Next in the queue, Senator Walz.

WALZ: Thank you, Madam Chairwoman. And as Senator Sara Howard would say, I yield my time to Senator Chambers.

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PANSING BROOKS: Thank you, Senator Walz. Senator Chambers, you have 4:47.

CHAMBERS: Thank you, Madam Chair, and thank you, Senator Walz. I have talked in the past about how I had saved Cary Dean Moore's life at an earlier time. I literally-- and when I say literally, I mean I saved that man's life. And this that I'm going to go into now relates to a prior time, years ago. In fact, in 2007 when Cary Dean Moore, based on this headline, Moore has a last wish for execution. Senator Ernie Chambers says the setting of a date comes thanks to my colleagues who rejected his repeal of the death penalty. I'm going to read excerpts from this first article, then I have a couple more that will bring up to date so that I can read a letter that I wrote to the court those years ago. Unless he changes his mind-- and you'll see how this is eerily similar to what happened when Moore finally was executed--unless he changes his mind, Cary Dean Moore appears almost certain to go to the electric chair on May 8 after spending nearly 27 years on Nebraska's death row. Moore now 49, was sentenced to death in June 1980 for the murders of Omaha cab drivers Van Ness, Jr. and Helgeland, in robberies five days apart in August of 1979. He was 21 at the time. His victims each were 47. In the document filed earlier this month with the Nebraska Supreme Court, Cary Moore said he was finished appealing his death sentence. He said he did not object to the Attorney General's request to schedule his execution, and would make no further attempt to delay it. He described his request for an early May date as his, quote, last wish, unquote. On Wednesday, the Supreme Court scheduled Moore's execution for May 8 and issued his death warrant. Moore's attorney, Alan Peterson of Lincoln filed a document acknowledging Moore's wishes. He wrote that he believes Moore has grounds for a civil rights lawsuit challenging Nebraska's electric chair procedures, but Moore has chosen not to pursue that lawsuit. Three appeals from other death row inmates challenging the constitutionality of the chair are moving toward oral arguments before the Nebraska Supreme Court, but they almost certainly will not be heard before May. In an interview Thursday, Peterson, the lawyer, said attorney-client privilege prevents him from further discussing Moore's decision. Peterson, who has handled Moore's federal and state appeals since 1988, said he could not answer when asked if he would try to persuade Moore to change his mind. The Supreme Court's order setting the execution date came one day after the Legislature voted 25 to 24 against repealing the death penalty. Lawmakers rejected a bill by State Senator Ernie Chambers of Omaha that would have replaced Nebraska's death penalty with the sentence of life in prison without possibility of parole. The court's order prompted an angry outburst from Chambers during debate on another issue Thursday. Quote, the court didn't even have the decency to give repeal a decent burial, he said. They know this man is suffering depression,--

PANSING BROOKS: One minute.

CHAMBERS: --they were so eager. What this Supreme Court has done is indecent, it is cruel, and it is a slap in the face at me. Chambers said the execution date comes, thanks to my

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colleagues. It is unknown whether someone outside Moore's case could try to prevent his execution. Thank you, Madam Chair.

PANSING BROOKS: Thank you, Senator Chambers and Senator Walz. Next in the queue, Senator Gragert.

GRAGERT: Thank you, Madam President. I yield my time to Senator Chambers.

PANSING BROOKS: Thank you, Senator Gragert. Senator Chambers, you have 4:49.

CHAMBERS: Thank you, Senator Gragert. Thank you, Madam Chair. This article was written May 1, 2007, seven days before Moore was to be executed. Chambers asked the court to hold off executions. State Senator Chambers asked the Nebraska Supreme Court on Monday to suspend executions until it can review the steps prison officials have devised for putting an inmate to death in the electric chair. If the Supreme Court agrees to Chambers' request, it could stop the scheduled May 8 execution of death row inmate Cary Dean Moore. In recent days, the Omaha lawmaker has raised questions about Nebraska's execution procedure which calls for a 20-second application of 2,450 volts of electricity. Chambers said he fears that it may not guarantee a quick death for the condemned man and it could set him on fire. Both Attorney General Jon Bruning and the State Department of Correctional Services last week rejected Chambers' arguments that the execution procedures should have been given a public hearing and executive review before being adopted. In his letter to the state's high court, Chambers wrote: This is such a serious issue, and this execution protocol is shrouded in so much confusion and uncertainty, and so likely in my view, to result in a botched execution that this court must satisfy itself that there's not going to be a shameful fiasco on May 8 of such proportion and notoriety as to engage the critical attention of CNN and the world. The lawmaker noted that prison system rules for carrying out executions advise keeping a fire extinguisher available. An aide to Chief Justice Michael Heavican confirmed receiving Chambers' letter Monday. Heavican said he could not comment upon how the court might address it. The Corrections Department notified Chambers on April 20 that the execution protocol had been changed again, this time to last 20-seconds. I had been writing to the Attorney General, to the director of Corrections about this change in the protocol because the one that they had used in prior executions had violated the constitution. Chambers said the issue he is raising transcends Moore's case and reached the very core of the integrity of the legal system. Cases questioning whether the electric chair is cruel and unusual punishment are pending before the state Supreme Court, but those won't be decided before Moore's execution, Chambers noted. He reasoned that the court has the ability on its own initiative to put Moore's execution on hold, at least until it satisfies itself that the execution procedure was properly researched and reviewed before being adopted. Haste to execute is unwarranted, noted Chambers. Nobody is going anywhere. This last article that I'll read is dated May 2, six days

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before the scheduled execution. Fight to stop execution goes to court. And this was after I had written to the Supreme Court itself.

PANSING BROOKS: One minute.

CHAMBERS: Senator's position says Corrections Department must publish, give notice, and hold hearing on new protocol. As the state prepares to put convicted murderer Cary Dean Moore to death in a week, a state senator opposed to execution continues to leave nothing undone in his efforts to stop the death. Omaha Senator Ernie Chambers filed a petition Tuesday in Lancaster County District Court asking for a judgment and order from the court declaring that the procedures and protocols to be used in the May 8 execution failed to comply with the Nebraska Administrative Procedures Act. Because of that failure, Chambers told the court, the protocol is null and void. Thank you, Madam Chair, I will stop there.

PANSING BROOKS: Thank you, Senator Chambers. Thank you, Senator Gragert. Mr. Clerk, items for the record.

CLERK: Thank you, Madam President. Enrollment and Review reports LB298 to Select File. I have a notice of hearing from the Executive Board. Amendments: Senator Friesen, LB462; Wayne, LB155; Stinner, LB4. Thank you.

PANSING BROOKS: Thank you, Mr. Clerk. Returning to debate. Senator Murman.

MURMAN: Thank you, Madam Chairperson. I yield my time to Senator Chambers.

PANSING BROOKS: Thank you, Senator Murman. Senator Chambers, 4:50.

CHAMBERS: Thank you, Senator Murman. Thank you, Madam Chair. Continuing this article. Chambers asked the court to stop the Department of Correctional Services from electrocuting Moore until it has complied with state law, with publication, notice, and a public hearing on the new execution protocol. Chambers believes it's possible the new protocol, 2,450 volts of electricity for 20-seconds, and then a 15-minute pause before checking the inmate for a heartbeat or pulse, could result in setting the inmate on fire. The state adopted the protocol after consulting with a Miami doctor. Chambers said it remained unclear what would happen if the inmate were still alive after the current was applied. Experts and scientists say the procedure will not permanently stop the heartbeat and breathing, rather those vital signs are likely to restart. State officials adopted the new protocol after two district judges ruled unconstitutional the former protocol of 2,450 volts for 8-seconds followed by 480 volts for 22-seconds, and then repeated

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after a 20-second pause. Chambers, the senior senator in the Legislature, and senior member of the Legislature's Executive and Judiciary Committees, said that as such, he is an aggrieved party and that those named in the petition have interfered with his legal rights. Quote, I was denied those opportunities created by statute, unquote, Chambers said Tuesday. A public hearing is certainly called for, he said. State law requires publication of execution procedures and a public hearing at which time Chambers and appropriate committees and others may comment, Chambers explained. The Judiciary Committee should have reviewed the proposed change and had an opportunity to submit a written or oral statement at a public hearing, he said. Individual senators also can file complaints with the Chairman of the Executive Committee if they believe a rule or regulation is contrary to law. Chambers did not get those opportunities because procedures were not followed, he said. In his petition, Chambers said determining the protocol required specialized expert knowledge and experience to avoid violating the Eighth Amendment, prohibition against cruel and unusual punishment. A Maryland court, he said, stopped the Department of Corrections from using a lethal injection protocol that had not been adopted by that state's Administrative Procedures Act. On Monday, Chambers asked the state Supreme Court to bar all state executions until it has reviewed the Corrections Department's death penalty protocol. Moore, who received death sentences in the 1979 murders of the cab drivers, has said he wanted-- that he would not attempt to stop the execution and told the Lincoln pastor he would be disappointed if the execution were halted. Even so, Chambers has said, it is the duty of the Supreme Court to follow the law and it was important, he said Tuesday, to file the petition with the district court. I have to be convinced I did every possible thing that can be done by me, he said. Creighton University law professor Richard Shugrue said Chambers likely did not have standing in district court to pursue the petition. Quote, he has the next best thing to standing--

PANSING BROOKS: One minute.

CHAMBERS: --but courts are very reluctant to say moral arguments cut it anymore, the professor said. The person who has standing is the person who has an imminent threat to be-- threat to --of irreparable harm. That's the guy who's about to be executed, he said. And I'll stop at that point.

PANSING BROOKS: Thank you, Senator Chambers and Senator Murman. Next in the queue, Senator Geist.

GEIST: Thank you, Madam Chairman, and I, too, will give the balance of my time to Senator Chambers.

PANSING BROOKS: Thank you, Senator Geist. Senator Chambers, 4:50.

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CHAMBERS: Thank you, Madam Chair, and thank you, Senator Geist. In April, Chambers sent a memorandum to Nebraska Attorney General Jon Bruning outlining the same claims. In his reply, Bruning said he would defend the Corrections Department if it proceeded with or without adopting regulations. In a written reply to Bruning last week, Chambers said the Attorney General was being indecisive. Quote, it is your duty to advise the department and not simply to wash your hands of the matter and leave it to the sole, untrammled discretion of the Department of Corrections to decide what they are by law to do, Chambers wrote. Chambers added that Bruning could have short-circuited the execution fiasco. Quote, instead you have helped create a macabre Keystone Kops atmosphere. Moore has been moved to the State Penitentiary and housed in the prison hospital pending execution said Win Barber, an assistant to the warden. Several rooms had been set aside for his living area, for visitations, and for security searches. During Moore's last hours, a modified lockdown of inmates will be enforced until officials conclude the execution. At the time of the execution, no public parking will be allowed at the prison and the public will not be admitted inside. And now, what I'm going to read is the letter that I had written to the Supreme Court on Moore's behalf. And to explain why I did this, the court would not accept any filings from any lawyer on Moore's behalf. No lawyer could file any papers on Moore's behalf that Moore did not sign. He would not sign any. So this is the letter that I wrote to the Supreme Court a few days before the execution was to be carried out. Honorable Members of the Nebraska Supreme Court. Issue. Judicial executions in Nebraska should be suspended until after this court satisfies itself that such executions are carried out in a manner that comports with the U.S. and Nebraska Constitutions and human dignity, and does nothing beyond what is necessary to extinguish human life without the infliction of unnecessary pain, suffering, torture, or mutilation. Then I cited the Supreme Court, U.S. Supreme Court decision from which that came, which was *Furman against Georgia*, 1972. Part 1, introduction. This approach may be out of the ordinary, but extraordinary circumstances justify extraordinary measures. I had thought to begin this communication with an apology for possible impertinence. Upon deeper and more mature reflection, however, I concluded that no apology is warranted. After all, the stakes involved here are the weighty matters of (one), life or death, literally; (two), respect for the law and its dignity; and (three), the integrity and dignity of the judiciary itself. I approach this court in my capacities of lawmaker, citizen, human being for the purpose of making a plea that the basic human dignity of condemned prisoners and the rest of us who comprise society--

PANSING BROOKS: One minute.

CHAMBERS: --not be trampled in an unseemly haste to kill another human being under morally, ethically, legally, problematic circumstances. Societal interest, part two: Close on the heels of the national debate of whether there should be a death penalty at all is the secondary debate regarding the manner and process of carrying it out. For example, judicial executions by lethal injection have been suspended in eleven states, either through executive, legislative, or

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judicial action due to serious problems associated with its implementation. Significant ramifications exist for society and the administration of law and justice when generalized doubt is present regarding the appropriateness of the methodology employed by the state to extinguish a human life. Every person has a stake in how the state deals out death to condemned prisoners.

PANSING BROOKS: Time, Senator.

CHAMBERS: Thank you, Madam President.

PANSING BROOKS: Thank you, Senator Chambers and Senator Geist. Next in the queue, Senator Dorn.

DORN: Thank you, Madam Chairman, and I, too, yield my remainder of my time to Senator Chambers.

PANSING BROOKS: Thank you, Senator Dorn. And Senator Chambers, you have 4:47.

CHAMBERS: Thank you, Senator, and thank you, Madam Chair. It is far from merely an internal management procedure of the Department of Corrections as suggested by Attorney General Jon Bruning in a letter to me. Even if a death sentence itself is both lawful and appropriate, it is neither lawful nor appropriate for the state to carry it out in a manner that is barbarous, unnecessarily painful and torturous, and uncivilized. If a prisoner were bound to a stake and a pile of wood ignited beneath and around him, this and every other court would express emphatic disapproval, yet death by electrocution pursuant to the protocol of the Department of Corrections constitutes nothing less than high tech burning alive. I am a lawmaker concerned about the integrity of the judicial system and the law. Therefore, I repeat, judicial executions should be suspended until after this court satisfies itself that the protocol utilized will extinguish life in a manner mandated by Section 29-2532 and nothing more, such as unnecessary pain, suffering, torture, disfigurement. If a procedure is going to exist in statute for taking human life, and if an execution protocol is put in place for the implementation thereof, regardless the manner of its adoption by the Department of Corrections, the resultant-- the result must not extend beyond the extinguishment of life. Number three, Time is of the essence: Unquestionably, time is of the essence in view of the impending May 8 execution of Cary Dean Moore. However, the issues raised herein transcend the case of a single individual or his particular wishes going as they do to the very core of the integrity of the judicial and legal systems, and to the question of whether this indeed is a nation of laws or of mere political expediency; of equal importance is public confidence or lack thereof in the judiciary. A prisoner cannot waive or vitiate the state's obligation and duty to obey the law. This is such a serious issue. And this execution protocol is shrouded in so much confusion and such uncertainty, and so likely in my view, to result in a

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botched execution that this court must satisfy itself that there is not going to be a shameful fiasco on May 8 of such proportion and notoriety as to engage the critical attention of CNN and the world. I'm giving forewarning. Would it not be an intolerable scenario to carry out a judicial execution, even if not botched, pursuant to a legally and valid protocol which under the law cannot lawfully be applied to any person. Number four, Legal underpinnings: And these points that I'm making were accepted by the court in their opinion. Sound legal considerations, not mere sentimentality, justify this court in taking the requested action which request is not made in a vacuum. First, cases currently are pending before this court with fully-developed records based on evidence from below. This court will be afforded the opportunity to examine thoroughly, resolve, and dispose of all relevant issues.

PANSING BROOKS: One minute.

CHAMBERS: Haste to execute is unwarranted. Nobody is going anywhere. Second: This court and the exercise of its inherent powers may sua sponte, or on its own motion, suspend the carrying out of any judicial execution until it assures itself that whatever execution protocol may be utilized by the Department of Corrections is appropriate to the accomplishment of such purpose without the real possibility of performing a botched execution which may result in heavy smoke and the ignition of the condemned prisoner. Third: The United States Supreme Court has put cases which are right for decision on hold until after it decided the particular cases determination would either resolve the other cases or give guidance for their resolution. As mentioned above, there being cases pending before this court fully-developed records--

PANSING BROOKS: Time, Senator.

CHAMBERS: Thank you, Madam President.

PANSING BROOKS: Thank you, Senator Chambers and Senator Dorn. Next in the queue, Senator Scheer-- Speaker Scheer.

SCHEER: Thank you, Madam President. I'll yield my time to Senator Chambers.

PANSING BROOKS: Thank you, Mr. Speaker. Senator Chambers, 4:50.

CHAMBERS: Thank you, Madam President, and thank you, Speaker Scheer. As mentioned above, there being cases pending before this court with fully-developed records making possible the reevaluation of the constitutionality of the electric chair and related issues, this court ought to and legitimately can place on hold all judicial executions until after such reevaluation occurs or

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at least until after it satisfies itself as to the effectualness and appropriateness to the purpose of the Department of Corrections' protocol-- 15-second protocol. Part five: In a memorandum order dated April 7, 2005, Keith County District Judge Robert Hippe overruled the defendant's motion to declare electrocution unconstitutional. After taking documentary evidence, he offered the final explanation. This was in the case of State vs. Mata. This is what the judge wrote after he got all of this evidence from experts, scientists, and so forth. The current mode used for electrocution in Nebraska is one-year-old. It calls for application of a current with 2,450 volts for 15-seconds, subsequently changed to 20-seconds, April 2007, followed by a wait of 15 minutes to check whether the condemned has signs of life. This mode will result in instantaneous death in some cases and will certainly not result in death at all in some cases. The current mode is untested and has never been used. There is no question that electrocutions continued use will result in unnecessary pain, suffering, and torture for some condemned murderers in this state. Which ones or how many will experience this gruesome form of death and suffer unnecessarily, and which ones will pass with little conscious suffering cannot be known. That's what the judge wrote. Part six, New 20-second protocol: The old protocol preceding the 15-second protocol used in the last three judicial executions called for a total of four jolts of current spanning a total of 80-seconds, including pauses in-between. Responding to Judge Hippe's ruling that multiple jolts violated the statutory mandate of a continuous flow of current until death occurs, the department replaced the multiple-jolt protocol with a new one, calling for the single 15-second application. I was notified by letter dated April 11, 2007, regarding the change which had occurred March 10. If death does not occur, a second application is employed. In response to questions I raised about the 15-second protocol in a memorandum to the Attorney General, the protocol was changed yet again. I was notified of the change by the director of Corrections, in response to which I made written reply to the Attorney General. I told him, quote, this type of arbitrary, capricious, slapdash handling of the taking of a human life by this state is totally unacceptable. It should give pause to every elected official and to every judge. Why did the expert change to the 20-seconds when his expertise earlier led him to recommend 15-seconds. Part 8, Twenty-second protocol is facially unlawful:

PANSING BROOKS: One minute.

CHAMBERS: The new protocol is facially unlawful because Section 29-2532 provides, quote, the motive of inflicting the punishment of death in all cases shall be by causing to pass through the body of the convicted person a current of electricity of sufficient intensity to cause death and the application of such current shall be continued until such convicted person is dead. A crime punishable by death must be punished according to the provision herein and not otherwise. The statute has been judicially construed by two district courts to mandate an uninterrupted flow of current until the prisoner is dead. Yet the protocol calls for an additional application of current following a 15-minute hiatus if the prisoner should not be killed by the first one. Thus, on its face by its terms--

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PANSING BROOKS: Time, Senator.

CHAMBERS: Thank you, Madam President.

PANSING BROOKS: Thank you, Senator Chambers. Next in the queue is Senator Lowe.

LOWE: All right. Since question wasn't my first word out of my mouth I think that escapes it. Senator Chambers, I'm going to give you a bit of a rest here.

PANSING BROOKS: Thank you.

LOWE: I'm going to talk about a speech that Theodore Roosevelt gave, it was Strength and Decency. It is particularly incumbent upon you who have strength to set a right examples to others. I ask you to remember that you cannot retain your self-respect if you are loose and foul of tongue. That a man who is to lead a clean and honorable life must inevitably suffer if his speech likewise is not clean and honorable. Every man here knows the temptations that beset all of us in this world. At times any man will slip. I do not expect perfection, but I do expect genuine and sincere effort toward being decent and cleanly in thought, in word, and in deed. As I said at the outset, I hail the work of this society as typifying one of those forces which tend to the betterment and uplifting of our social system. Our whole effort should be towards securing a combination of the strong qualities with those qualities which we term virtues. I expect you to be strong. I would not respect you if you're not. I do not want to see Christianity professed by only weaklings. I want to see it a moving spirit among men of strength. I do not expect you to lose one particle of your strength or courage by being decent. On the contrary, I should hope to see each man who is a member of this society, from his membership in it become all the fitter to do the rough work of the world; all the fitter to work in the time of peace, and if, which may Heaven forfend, war should come, all the fitter to fight in time of war. I desire to see in this country the decent men strong and the strong men decent, and until we get that combination in pretty good shape we're not going to be by any means as successful as we should be. There's always decency among very young men and among boys who are not quite young men as yet to think that to be wicked is rather smart; to think it shows that they are men. Oh, how often you see some young fellow who boasts that he is going to "see life", meaning by that that he is going to see that part of life which it is a thousandfold better should remain unseen. Roosevelt was an advocate of many children in making sure that the next generation would continue to uphold the great virtues of civilization. He was always concerned that young men would not be coddled or cowardly and grow up to live a rugged, strenuous life, and thoroughly--

PANSING BROOKS: One minute.

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LOWE: Thank you, Ms. President. --and thoroughly manly lives, but it is also strongly believed that being ruggedly manly and being refined in mind and spirit were not incompatible and should not, in fact, go hand in hand. In this speech he exhorts young men to pursue a virtuous and manually life. Thank you, Ms. President.

PANSING BROOKS: Thank you, Senator Lowe. Senator Lathrop, you are next in the queue.

LATHROP: Thank you, Madam President. I will give my time to Senator Chambers.

PANSING BROOKS: Thank you, Senator Lathrop. Senator Chambers, 4:50.

CHAMBERS: Thank you, Senator Lathrop. Thank you, Madam President. I'm concluding this letter, then I'm going to read a decision by the Nebraska Supreme Court. Can this court ethically follow the hands-off course pursued by the Attorney General when confronted with a facially unlawful protocol? If pursued, such a questionable problematic course would be a blow to the dignity and integrity of the judiciary itself, as well as a body blow to public confidence in the integrity of the judiciary if this state's high court assumes a do-nothing stance when confronted squarely with such a protocol regardless of how adopted. The Attorney General and the Governor, representatives of the executive department, by shirking their respective responsibilities have bungled the handling of this critical issue and have thereby landed it squarely in the lap of the judiciary whose purpose is to disclose the amount of public discussion, this notorious matter has generated, for it is not occurring in a corner. It would be prudent and judicious and just to suspend all judicial executions until after the court thoroughly considers and weighs the matter raised. That letter, as I said, was dated April 29, 2007. This case was decided by the court, May 2, 2007. By order of the Supreme Court, execution stayed and warrant withdrawn. The one who delivered the decision and read the opinion was Judge Gerrard. The ones who agreed were Connolly-- well, I will not read all their names, but I will read the names of those who dissented at the end. But here are all the judges: Heavican, Chief Judge, Connolly, Gerrard, Stephan, McCormack, Miller-Lerman and Cassel. Gerrard for the court. The court on its own motion-- I'd say it in a nutshell, the court on its own motion could stay this execution. It had the inherent power to carry out what I was asking it to do, but to read the decision. The court on its own motion has reconsidered its order for the issuance of a death warrant for Carey Dean Moore. Under Nebraska law, the motive inflicting the punishment of death in all cases is by causing to pass through the body of the convicted person a current of electricity sufficient-- of sufficient intensity to cause death, unquote. In another case on our docket, we have been asked to determine whether electrocution is cruel and unusual punishment. We have repeatedly noted that recent decisions of the U.S. Supreme Court at least raised the question whether electrocution is unconstitutional. Our constitutional responsibility to decide whether electrocution is lawful requires us to consider whether any convicted person--

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PANSING BROOKS: One minute.

CHAMBERS: --should be electrocuted before that question is answered. We conclude that we acted prematurely in ordering a death warrant before resolving that constitutional question. For the following reasons, we stay Moore's execution and withdraw the order of our clerk directing the warden of the Nebraska Penitentiary to electrocute him. And I will pause there.

PANSING BROOKS: Thank you, Senator Chambers. Next in the queue, Senator Cavanaugh.

CAVANAUGH: Thank you, Madam President. Senator Chambers, would you yield to a question?

PANSING BROOKS: Senator Chambers, will you yield?

CHAMBERS: Yes, I will.

CAVANAUGH: I don't want to assume that you want more time, but would you like more time or would you like a break for a few minutes?

CHAMBERS: No, I don't need a break.

CAVANAUGH: OK, then I would like to yield my time to Senator Chambers.

PANSING BROOKS: Thank you, Senator Cavanaugh. Senator Chambers, 4:35.

CHAMBERS: Thank you, Madam President, and the way things are moving it's not going to take me much longer to finish. Notwithstanding the issuance of a mandate to a trial court of death-- or death warrant to the warden, we retain jurisdiction to set an execution date or suspend the execution of a death sentence, and every court has the inherent power to control the execution of its orders or processes to the end of preventing an abuse therein. Such power is not derived from legislative grant or specific constitutional provision, but from the very fact that this court has been created and charged by the state constitution with certain duties and responsibilities. Through this court's inherent judicial power, which is the power essential to the court's existence, dignity, and functions, we have authority to do all things that are reasonably necessary for the proper administration of justice. In deciding whether to execute-- exercise our inherent power we are mindful of the special concern that is a natural consequence of the knowledge that execution is the most irremediable and unfathomable of penalties that death is different. Our unique

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constitutional responsibilities impose a heightened standard of vigilance as we administer and supervise implementation of the death penalty. There can be little-- oh, Moore's electrocution has been ordered by this court, and there can be no bureaucracy that discharges us from that responsibility. There can be little question that Moore has received due process of law and has sought refuge in the courts before. We recently declined to consider on post-conviction review Moore's challenge to both the mode and protocol of execution in Nebraska. Given the procedural posture of that case and the uniquely limited scope of a post-conviction proceeding, we correctly concluded that Moore's claims were barred, but issuing a warrant, ordering Moore to be electrocuted implicates different responsibilities for this court and places the case in a different procedural posture. Had we properly considered those responsibilities at the time, we would not have ordered the issuance of a death warrant. As already noted, another case on our docket on a complete briefing and fully-developed record, squarely presents us with the question whether electrocution is consistent with the prohibitions on cruel and unusual punishment imposed by the U.S. and Nebraska Constitutions. That case is scheduled for submission to this court September 2007. While we have previously concluded that electrocution is constitutional, we have also noted a changing legal landscape that raises a question regarding the continuing vitality of that conclusion. Were we to conclude that electrocution is no longer constitutional, then we would have undeniably permitted a cruel and unusual punishment only a few months earlier.

PANSING BROOKS: One minute.

CHAMBERS: The damage to Moore and to the integrity of the judicial process would be irreparable. It would be premature to permit this electrocution to proceed without the benefit of deciding on a developed record whether electrocution is a lawful punishment, and if we were to conclude that electrocution was cruel and unusual after Moore had been electrocuted, our citizens' confidence in this court and the rest of the judicial branch as a bastion of civil rights might suffer irreparable harm.

PANSING BROOKS: Thank you, Senator Chambers and Senator Cavanaugh. Next in the queue, Senator Erdman.

ERDMAN: Thank you, Madam President. I appreciate that. I yield my time to Senator Kolowski. Oh, he's not here. I yield my time to Senator Chambers.

PANSING BROOKS: Senator Kolowski is excused, and so Senator Chambers, you have 4:45.

CHAMBERS: Thank you, Madam Chair, and thank you, Senator Erdman. And it was very appropriate that Senator Erdman yield time because I probably can wrap this up on the time he yielded me. In deciding-- I want to get through some things that I've already read. The purpose

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of a stay is to prevent a state from doing an act which is challenged and may be declared unlawful in a pending proceeding. The unique problem presented by this case is that Moore has not asked for a stay, but we simply are not permitted to avert our eyes from the fairness of a proceeding in which a defendant has received the death sentence. It is a natural reaction for some to wish to be rid of an admitted murderer who asks to be executed. We are, nonetheless, required to ensure the integrity of death sentences in Nebraska. In this case, that requires Moore to see control of his defense to protect the public's interest in the integrity and fairness of capital proceedings. Although we respect the defendant's autonomy, the solemn business of executing human beings must be above caprice of accused. We must adhere to our heightened obligation to ensure the lawful and constitutional administration of the death penalty regardless of the wishes of the defendant in any one case. Concerns for finality to the state's judgment do not outweigh the absolute need to protect against the deprivation of an individual's constitutional rights, which might be invalidated-- which might invalidate his capital sentence. Finally, we observe that should Nebraska's mode of execution be found unlawful, the state's interest in executing Moore's sentence would only have been delayed. When a stay of execution is granted, it is also within the inherent power of this court to terminate that stay and set a date when the sentence shall be carried into execution. We have the power to set successive execution dates and issue death warrants as the circumstances may dictate. If Nebraska's method of execution is constitutional, a new warrant is not precluded and will issue. For the foregoing reasons, we order a judge and decree that the execution of Moore be and hereby is stayed and that the warrant of our clerk dated March 21, 2007, directing the warden of the Nebraska State Penitentiary to execute Moore be and the same hereby is withdrawn. Execution stayed and warrant withdrawn. But that wasn't the end of it. That was the end of the decision. Chief Justice Heavican wrote a very spirited dissent, and one of the things he mentioned was that Moore had not requested that anything be done in his case. And I think the next time I speak, I'll probably be able to wrap that up.

PANSING BROOKS: One minute.

CHAMBERS: And I will say this. When Moore actually was executed, the circumstances were worse than they were in this prior case where I was able to rescue him. There was-- well, right now even, pending appeals challenging the state's protocol, but the court is going to rule that the protocol is all right, otherwise it would admit that they allowed an execution under unlawful circumstances. So had that court, which sat in the most recent case, read the decision by this earlier court that I'm reading, they would not have allowed Moore to be executed and he'd be alive today. Thank you, Madam President.

PANSING BROOKS: Thank you, Senator Chambers and Senator Erdman. Next in the queue, Senator Arch.

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ARCH: Thank you. Thank you for calling on me, and I yield my time to Senator Chambers.

PANSING BROOKS: Thank you, Senator Arch. Senator Chambers, 4:36.

CHAMBERS: Thank you, Madam President. Thank you, Senator Arch. And the schedule that the Speaker and I agreed to will, I think, be met. Heavican, C.J. dissenting: Initially we note that state and federal courts have considered numerous cases concerning Moore's conviction, sentencing, and resentencing. In his second post-conviction action following his sentencing to death, Moore raised an Eighth Amendment challenge to execution by electrocution generally, and to the electrocution procedure in the then newly-adopted 15-second protocol. Moore requested an order declaring electrocution to be unconstitutional. On appeal from the denial of his request, discord determined that Moore's constitutional challenge to electrocution as a state mandated method of execution was procedurally barred because in his direct appeal following the resentencing he did not appeal the district court's overruling of his motion making that challenge. We specifically distinguish civil rights actions from what Moore was attempting to do. Going farther into the dissent. Despite our clarification of the proper method for challenging the means of execution, Moore has not filed a civil action seeking to enjoin his execution until the state alters its protocol or adopts another means of execution. Moreover, Moore has recently filed a pleading in this court stating that he no longer wishes to challenge his sentence and further stating that, quote, no filings are to be accepted by this court, which are not prepared and filed by myself, unquote. Moore's statements and lack of action show that he has elected to waive his right to challenge the state's protocol. Through its inherent judicial power, this court has authority to do all things reasonably necessary for the proper administration of justice whether or not any previous form of remedy has been granted. We have specifically stated that we have the inherent judicial power to set successive execution dates and so forth, but he went on to say that in view of all of the facts, and Moore not having requested any action to be taken in his behalf, the majority should not have ruled as they did. When Moore was executed, this time around, this Supreme Court didn't have to read anything that I submitted because I was not a party to the action, and the Chief Justice was so offended at what had happened in my rescuing of Moore he had the court rules changed so that the court and no judge could accept any communication from somebody not a party to the action. And that was tailored to make sure that I would not intervene in a case like this again because apparently I could be more persuasive than a lawyer, and Moore would have been rescued again. I think it's a stain on the court of Nebraska and on the state itself that a man was executed under the circumstances of Moore's execution in order to make the execution occur before the expiration of drugs. The Supreme Court knew that other drugs--

PANSING BROOKS: One minute.

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CHAMBERS: --would not be obtainable. In a subsequent action before a federal court, the director of Corrections acknowledged that if those drugs expired, not only did the department have no way to get the drugs for this execution, but they couldn't get the drugs in the future. And despite all that, my colleagues voted against abolishing the death penalty knowing that it can't be carried out. But I do want to express appreciation for all those who yielded time to me, and I will keep my promise to the Speaker and to Senator Lathrop that he can get a vote on this bill and his A bill, which as I said is the appeal bill, but he calls it-- well, he'll tell you what it is. Thank you, Madam President.

PANSING BROOKS: Thank you, Senator Chambers and Senator Arch. Senator Wayne, you're next in the queue. So Senator Wayne is not here right now so-- that I can see, so Senator Chambers, you are welcome to close.

CHAMBERS: Madam, I withdraw anything I have pending, if I have anything pending.

PANSING BROOKS: OK. Senator Chambers waives closing, and he withdraws his motion, his floor motion 79 and FA68 and without objections it is so ordered. Now we are returning to debate on AM1500. Senator Lathrop, you're welcome to close.

LATHROP: I'll waive close.

PANSING BROOKS: Senator Lathrop waives closing. So the question before the body is, shall AM1500 pass? Those in favor say aye; those opposed nay. Have all those voted who wish to? Record, please, Mr. Clerk.

CLERK: 30 ayes, 1 nay, Madam President, on the adoption of Senator Lathrop's amendment.

PANSING BROOKS: AM1500 is adopted. Returning to debate on LB300. Senator Lathrop, you are welcome to close. Senator Lathrop waives closing. The question before the body is, shall LB300 pass? Those in favor vote aye; those opposed nay. Has everyone voted who wishes to? A record vote has been requested. Mr. Clerk, please record.

CLERK: (Record vote read.) 37 ayes, 1 nay on the motion to advance the bill.

PANSING BROOKS: LB300 passes. The next item, Mr. Clerk.

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CLERK: LB300A by Senator Lathrop appropriates funds to implement LB300. Senator Lathrop, I have pending AM1579.

PANSING BROOKS: Senator Lathrop, you are welcome to open on LB300A.

LATHROP: Thank you, Madam President. This is simply the bill, the A bill that's following LB300, which we just passed. AM1579 is the amendment to the A bill and I would encourage your support of both. I'd be happy to answer questions if you have to them, too, or we can move right along. Thank you.

PANSING BROOKS: Discussion now opens on AM1579. Seeing no one in the queue, Senator Lathrop, you're welcome to close. Senator Lathrop waives closing. The question before the body is, shall AM1579 pass? Those in favor say aye; those opposed nay. Has everyone voted who wishes to? A record vote has been requested. Mr. Clerk.

CLERK: (Record vote read.) 38 ayes, 1 nay on the adoption of the amendment.

PANSING BROOKS: The amendment passes. Now, we'll move to LB300A. Senator Lathrop waives closing. The question before the body is, shall LB300A pass and advance to E&R Initial? All those in favor vote aye; those opposed vote nay. There's been a request for a record vote. Has everyone voted who wishes to? Mr. Clerk.

CLERK: (Record vote read.) 37 ayes, 1 nay, Madam President, on the advancement of the bill.

PANSING BROOKS: Thank you, Mr. Clerk. LB300A passes. Mr. Clerk for items.

CLERK: One item, communication from the Governor to the Clerk. (Read re LB6, LB130, LB130A, LB138, LB177, LB227, LB237, LB237A, LB356, LB405, LB496, LB524, LB585, LB616 and LB693.)

Madam President, Senator Dorn would move to adjourn the body until Thursday morning at 9:00 a.m.

PANSING BROOKS: You've heard the motion to adjourn. All those in favor say aye. Those opposed nay. The motion passes. We are now adjourned.