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The Committee on Appropriations and the Committee on Revenue met at 9:30 a.m. on Friday, August 30, 2013, in Room 1113 of the State Capitol, for the purpose of a presentation of the 2012 Nebraska Tax Incentives Annual Report pursuant to LB612. Appropriations Committee senators present: Heath Mello, Chairperson; John Harms, Vice Chairperson; Kate Bolz; Bill Kintner; John Nelson; and Jeremy Nordquist. Senators absent: Danielle Conrad; Tyson Larson; and John Wightman. Revenue Committee senators present: Galen Hadley, Chairperson; Paul Schumacher, Vice Chairperson; Burke Harr; Charlie Janssen; Beau McCoy; Pete Pirsch; and Kate Sullivan. Senators absent: Tom Hansen.

SENATOR HADLEY: Thank you all. Just a quick update. The last session we passed LB612, and that basically said that the annual report that the Commissioner gives us on tax incentives, which has been done for years, will formally be presented to the joint meeting of the Appropriations and Revenue Committees. So we're going to have Commissioner Ewald give us the report. And I just want to make sure that there's just a general understanding among the committee members and the people here, this is a report of what has happened. If you want to have policy discussions, that's where you get into your own committees, the Revenue Committee and the Appropriations Committee, to talk about policy issues. Here we're talking about the reports of what happened for this. And it...again I want to reiterate, it's not new. Is that correct, Senator...or Commissioner Ewald?

DOUG EWALD: Yes. (Laugh) That's right.

SENATOR HADLEY: Senator. You want to be a senator? Come on up.

DOUG EWALD: No, thank you. (Laugh)

SENATOR HADLEY: I looked at your Web site and it goes back a number of years that you've had this report. Is that...?

DOUG EWALD: Correct.

SENATOR HADLEY: Okay. We will start with you. And questions, however you want to handle them, will be fine.

DOUG EWALD: (Exhibits) I'll address that. Thank you. Chairman Hadley, Chairman Mello, members of the Revenue Committee and the Appropriations Committee, we're here due to, as Senator Hadley said, a 2011 passed LB612 with respect to the Tax Incentive Annual Report. And that is what I am here to present to you. I'm here to report history, what actually happened in 2012, and a little bit of cumulative history up and through that point in time. We have a pretty...a fair amount of ground to cover this morning with respect to...and I'm going to try and give you a little bit of history with respect to the program, kind of build your understanding with respect to the programs that we administer, and then kind of tie it all together with some of the numbers that fall behind that, but. The outline, as you can see up there, we're going to talk about the...basically what I've done there already is that's LB612 and that was actually in 2012, but it said that we're going to report to you on the Nebraska Advantage Act and a number of other items. We're going to give a summary of the program. We're going to talk about the Nebraska Advantage Act, in particular. We're spending quite a bit of time here in this area because I want you to understand the steps in the process and what's involved from our perspective as well as from a taxpayer perspective. We'll talk about the annual report, and then we will...which will include the benefits, what's been provided out there, with a summary of a variety of programs. We'll talk about other Advantage Act information. And then we'll close with some of the other incentive programs, some of the smaller programs, like Rural, Micro, the R&D program, and then some of the historical programs that are no longer in force in the state of Nebraska. All right, as I said, in 2012, LB612--that's why we're here, to talk about...it said by

September 1 we will be here and I will present this report to the Appropriations and the Revenue Committees. We're going to talk about the Nebraska Advantage; the Rural Development Act; Microenterprise; R&D--Research and Development; the Employment and Investment Growth Act, LB775, which was the predecessor to LB312; Invest Nebraska; and then the Quality Jobs Act. So that's what we're going to cover today. And we'll spend more time on the Nebraska Advantage Act though. The first item you have is really a summary of what happened in 2012. We have this...this table is broken down by program. It has a little bit of when the program actually began and when the actual program terminates; and then the 2012, the cost to the state. Nebraska Advantage: approximately $44 million in 2012. You can run down through the list there: Rural, Micro, the R&D. And then the Employment and Investment Growth Act, LB775, approximately $115 million in 2012. And we're still administering that act and we'll be doing so for some time. And then the Invest Nebraska Act, LB620 and LB829 are no longer active statutes. We don't disclose the dollars involved with those because it's...if we don't have at least three companies involved in those, we don't report those due to confidentiality. So here's kind of an overall snapshot of what happened in 2012. Now I would say this: As we come to breaks here, if you want to ask questions before I move on to a particular section, feel free to ask questions as we move along here, and then we'll wrap things up at the end as well. But as we go through here, if you need some clarification, feel free to ask questions. Those of you on either side, if I'm looking one way or another, you might have to get my attention from that perspective. But let's dig into the Nebraska Advantage Act. And the annual report, I know everybody was provided with a copy of the annual report. This is the annual report to the Legislature we do by July 15 of every year. It's 135 pages. There's a lot of detail in here, and this basically is as of what happened through 12/31 of 2012. So it's the prior year from that perspective. And basically Nebraska's tax incentives are performance based, which means you have to meet certain investment and employment requirements. And I guess at this point in time I'd like to have you refer...I think everybody has a copy of the brochure put out by the Department of Economic Development. This...our Department of Economic Development is our marketing partner for the state. They're the ones who market the Nebraska Advantage program and our other programs. We basically administer the programs. But we work with DED on this brochure that basically says, okay, I'm a business; what do I want to do in the state and what can I qualify for? There's tiers 1 through 6. We have now large data centers that are in certain tiers here as well. But businesses that meet investment and/or employment requirements may receive tax benefits in the state, and the benefits really depend on the tier that they apply under. So if you apply under tier 1, you get certain things. You apply under another tier...and also in this it says the qualified business on here. Okay, who can qualify? What type of businesses qualify under each tier? And then what can you get? There's investment tax credit, there are wage credit, sales tax refunds, other credits, those type of things very specific here. It's really a good...it's a very good marketing tool. It's a nice cheat sheet, kind of an overview of the program at a very high level when they're out there selling the program with respect to what's available in the state of Nebraska. Okay, as I alluded to earlier, there are quite a few steps in the process with respect to Nebraska Advantage, and page 10 of your annual report talks about some of these items. But basically what happens here is that a company will decide that they're going to submit an application to the state of Nebraska and they submit it to the Department of Revenue, and they're going to basically say, okay, we want to qualify or we want to apply for benefits under one of the tiers that I alluded to here in the Nebraska Advantage brochure. So they are going to file an application with the state, and if the application is complete, that will establish the base year. The base year is the year prior to the year you filed in. So if you send us an application today, in 2013, your base year here...if you're a calendar year taxpayer, your base year is going to be 12/31/12, so it's the year immediately preceding from that standpoint, so. When you select the tier that you want to apply under, that establishes the required investment level and the required wage level. Now, why I say required wage level, that may seem a little strange to you but the specific tiers and the dollar amount of investment and the wage levels go up and down each year based on an index that we use here in the state. So the rules that we use if someone applies in 2013 is different than the rules potentially for somebody who applied in 2012. So from that standpoint, you need to really understand...our staff has to be on their toes from the standpoint, okay, what year did somebody apply, so what are the rules associated with that particular year? The purpose of the application, really they define the scope of the project. Are they a qualified business and what do they do? What locations are they going to include? If they have multiple locations, are they going to include all those locations? And it basically allows us to put things in perspective as far as, okay, what type of project is it? We prefer to ask the questions and understand a taxpayer's business up front as opposed to on the back side and say, okay, no, that doesn't qualify. We let you know up front. We work through that stuff back and forth to the taxpayers on an up-front basis so we completely understand what their project is, what's included, what locations, what their employment is, base levels, those type of things. So that's kind of the application process. Based on what we do there, we either approve it or we deny. Hey, you're not a qualifying business so you don't fall into one of those categories here, because the state law is very specific with respect to what type of businesses qualify. Retail does not qualify. If you're a retail operation, you're not going to qualify under Nebraska Advantage. Once the application has been approved or denied, assuming it's been approved, we sign an agreement with a company. These agreements are legally binding contracts with the state of Nebraska for tax incentives. You do X, Y, Z, we're going to give you A, B, C. You invest $30 million and hire 30 employees, you're going to get these certain things. You're going to get investment tax credit, you're going to get a number of things from those type of things. All right. Once a company signs an agreement, basically it's up to them to monitor their particular project. So on an annual basis we ask them to provide us with the information, it's a 312N where they say, okay, this is my project; this is how much I've invested so far, this is how many people I employ, those type of things. And basically we ask them to tell us when they've met those minimum thresholds. Okay, I think I've met those minimum thresholds for my particular project, so I want you to come in and audit me; I want you to come in and validate my numbers. So at that point in time, we go out to the taxpayer and it's not an easy process. You've got to make sure you've got all your capital investment there. You've got to make sure you count your employees, and by that I mean you've got to (inaudible). We have to have hours. We calculate FTEs based on the number of hours worked in a particular year from that standpoint, so. Service dates as far as investments go, when is it placed in service; is the property owned, is it leased; the employment, the number of new of new employees; the wage and hour verifications. So we will want to see payroll records, a detail of those; and we will want to make sure, as well, that they are using E-Verify. They have to, under Nebraska Advantage as well as a number of incentive programs, they have to be using E-Verify with respect to their employees, so. And they need to do that from...really from Day One, and they basically tell us that they've signed up for E-Verify. But when they bring somebody on board, within three days they need to go through the E-Verify process at the federal level. And then basically there's stuff that they get reports on that, and we can see if they've met those E-Verify requirements with the state of Nebraska for qualifying for (inaudible). And that's been a struggle for us. And I will mention that we do...I think LB403, there's an annual report that we give to the Legislature that says, okay, Doug had asked me or asked the Department of Revenue how many businesses failed or didn't use E-Verify for any of the programs, whether it's Nebraska Advantage, R&D credits, any of those type of things. Well, that's an annual report we provide to the Legislature as well. And we've had some companies that have failed because they weren't using E-Verify. So it's a process we go through on an annual basis. Senator?

SENATOR NELSON: When they fail, what happens then? I mean, you find it at the audit there. Do they owe us something back at that time?

DOUG EWALD: Well, at that point in time, we're still auditing so they haven't received anything from the state. Now, if they fail to E-Verify an employee, that employee no longer counts. So it could be a situation, if I have to hire 30 employees and I had 30 on the nose, 30 FTEs, and now I'm at 29, I don't qualify. So you hope you have enough to backfill in that situation. Now, we have had situations where they didn't E-Verify people and I told them, I said, well, to the extent...I said, what's your turnover rate? Well, it's like 30 percent. I said, well, if this person is no longer employed and you bring somebody new on, I would E-Verify them, because that person would count in that particular situation. So it really depends. Senator, they could get down the road somewhere where they did it initially, but then later on we go out and we do a maintenance audit and we find out they didn't do it, then that could have some potential recapture provisions or reduced benefits.

SENATOR NELSON: Thank you.

SENATOR JANSSEN: Commissioner.

DOUG EWALD: Yes.

SENATOR JANSSEN: Is there a scenario, I guess expanding on Senator Nelson, in which they E-Verify 30 people but they could have 300 people working for them, and 270 weren't E-Verified, and they could still capture these credits?

DOUG EWALD: That would be...yes, that would be correct. We would only count those that were E-Verified in a timely manner. So to the extent that they have somebody, we potentially wouldn't...we wouldn't count those people from that standpoint. We don't dig any deeper I guess is what I'm saying.

SENATOR JANSSEN: Okay. Thank you.

DOUG EWALD: Um-hum.

SENATOR KINTNER: And I have a question.

DOUG EWALD: Yes, sir.

SENATOR KINTNER: If someone, a company, shoots for tier 3 and they get okayed for tier 3, they end up not fulfilling their requirements for tier 3 but they could fulfill the requirements for tier 2, can they drop down after they sign the agreement for tier 3 and in case we overshot we're not going to produce that many jobs? Is that a possibility?

DOUG EWALD: I'm going to bring you over to Revenue, Senator, because yes, there is a process for amending down with respect to certain tiers. We don't allow companies to amend up, to say, oh jeez, I did better than I thought so I'm going to get more benefits from the state. No, I'm sorry, you don't get to amend upward and get more from the state. But you do in certain tiers. We have a revenue ruling out there that allows you amend downward with respect to certain tiers. Now tier 3, in your particular example here, is...I believe that is an investment only, no employees; so there's nowhere to go from there. Either you meet the investment or you don't from that standpoint.

SENATOR KINTNER: Okay.

DOUG EWALD: But if you have a tier 4, yeah, we'll let you amend down to a tier 2, you know, those type of things. So there's a revenue ruling out there that we publish that acknowledges that you can amend downward in certain situations.

SENATOR KINTNER: And how were these tiers developed? Did we look at what other states were doing? How did we come up with how we were going to structure this? Was there a process by surveying the other states around us and then coming up with it?

DOUG EWALD: Well, what you see here, Senator, and Nebraska Advantage is really the second version of what was drafted in the late '80s under LB775. So I think what you see here, and I'll talk about it a little bit later, is that okay, this is the second generation of the tax incentives in the state of Nebraska. So basically what happened from '86 through--I think this came in 2006--so what happened from '86 through 2005 and what do we really want to incent in the state of Nebraska; what types of businesses, those types of things, the qualifying businesses were changed, the level of tiers--and I'll talk about this a little bit later. But there was no investment-only tier 3 under LB775...or there might have been $20 million, I think. But there are some differences from that standpoint, and I think it's a combination of working with the Legislature along with the business community and the types of businesses that we really want to incent in the state of Nebraska.

SENATOR KINTNER: Thank you. Appreciate it.

SENATOR NORDQUIST: Mr. Chairman, may I ask a quick one? Doug, I see you have it broken down here by investment amount, by sectors, or manufacturing, nonmanufacturing. Do you have a report anywhere or could you get data that shows by tier the number of job created and the total investment and companies?

DOUG EWALD: It's not in the report for what's required, as far as being required. We could probably find some general information from that standpoint, the number of by tier. That kind of would...it's more of a policy I guess, from that standpoint is, okay, do we want to have a certain tier there, I guess, if nobody is using it, you know, that type of thing of maybe what you're alluding to.

SENATOR NORDQUIST: Yeah, exactly. That would be helpful. I'll follow up with you on that.

DOUG EWALD: Well, you can...I think...actually LB612 says that if you, after this meeting, you ask questions and we don't have the answers, within 30 days we will provide you with those. And I guess to the extent that we have questions, if we could have a central point, Senator Hadley, from your office...

SENATOR HADLEY: My office would be...

DOUG EWALD: ...over to ours with respect to that, that would be...we'll catch them all in one shot.

SENATOR NORDQUIST: Great.

DOUG EWALD: All right. Thank you. Okay, I'll go back to where we were here.

SENATOR HADLEY: Pete.

SENATOR PIRSCH: Thanks. Just for...and thank you for this chart, I think it's very helpful, that you handed out from the Department of Economic Development with...just to make sure that I'm reading it correctly then. For example then, you're talking about the lowest tier, tier 1, investment of just a mere investment and you don't have to do job creation, $1 million. The attainment period, up to five years then, right? So that's starting then the next...is that the fiscal year or...?

DOUG EWALD: It's your year of application and the next four years in that particular situation, Senator.

SENATOR PIRSCH: Year of application.

DOUG EWALD: So year of application and the next four years to get to those minimums in tier 1, which is $1 million and the ten employees.

SENATOR PIRSCH: Cumulatively, right?

DOUG EWALD: Cumulative. Correct.

SENATOR PIRSCH: And with respect to the employees, then, and it says ten, the criteria then for...is it uniform across all the tiers for what constitutes an employee, or is it...does it change somewhat from tier to tier?

DOUG EWALD: Well, they're W2 employees from that perspective, and we are counting hours worked, basically, unless you're salary. If you're salary, you're deemed to be full time.

SENATOR PIRSCH: Okay, so...and then with respect to that then there's, I see under wage credits, some criteria. That doesn't affect the definition though of employee for the purpose of the (inaudible).

DOUG EWALD: No, Senator, that does not.

SENATOR PIRSCH: Okay.

DOUG EWALD: That just basically tells you what's available to you based on how much you pay your employees on average from that standpoint. So you get a 3 percent credit if you're paying 60 percent of the Nebraska average wage, and it goes all the way up to 6 percent if you're paying 125 percent of the Nebraska average. So that's determined by a company's business model with respect to that and what they pay their new employees.

SENATOR PIRSCH: Um-hum. So salaried employees definitely qualify as a...

DOUG EWALD: Well, I mean...and yes, they would. And we would count their hours...well, I mean, we're not going to count them as a full FTE if they didn't start work until July 1. They'll be a...

SENATOR PIRSCH: Okay. I got you. Thank you for clarifying that.

SENATOR HADLEY: Commissioner Ewald, just to refresh people's memory, I'm not good with numbers, but was it LB34, this year, that we passed out of the Revenue

Committee and was passed unanimously on the floor, did a lot to help in determining how we, when we counted employees, what we meant by years. And if you remember that, we cleaned up, through the Commissioner's help and the Department of Revenue's help, cleaned up a lot of the nuances of reporting. They were responding to what the business community had been telling us were just concerns from a reporting standpoint. And I commend the department for coming up with that legislation, and we passed it unanimously this last session.

DOUG EWALD: Yeah, thank you, Senator, and thank you for your support. It's stuff that we saw over the years that just made things, either they were unnecessary or just makes things easier for us to administer, as well as taxpayers too. Because obviously, the recordkeeping associated from this from a taxpayer's perspective, having personally lived this, it's not small. It's extensive. Okay.

SENATOR HADLEY: Thank you. Oh, Senator Bolz.

SENATOR BOLZ: Along those same lines, I'm looking at the Performance Audit report and it says for 2011 the estimated cost for a job ranged from $42,000 to $234,000. And I was just curious if any more detailed information was available about that, maybe which tiers are costing more or what jobs are created at the $234,000 level versus a $42,000. That's just a broad range, and I'm curious what we're getting in terms for those dramatic investments.

DOUG EWALD: Yes. And obviously that's not our figure, but...and we don't provide any figures on that. And actually, in order to get any more detail on that, you'd really have to drill down project by project in a particular tier from than standpoint. And that's something actually the Performance Audit group could have done, but they didn't want to do the...sign the confidentiality statements and those type of things. But what we have to be careful with a little bit there, Senator, is that there's a number of things that go into...or come into play here that we have...we have tax incentives that expire every year, unused. We have...if you look at LB775 from a historical perspective, 48 percent of the companies that applied never qualified; so half of the companies that applied never qualified. Twenty-five percent of our incentives earned expire. And we also know that there are jobs, there are thousands of jobs that are created every year out there that don't earn any benefits because the companies never get to the minimums. So there are many moving pieces here with respect to that to get to what a true cost of a job is from that standpoint. And we don't do anything with that, so. There's many ways to slice and dice the data, is what I'm saying, from that perspective, depending on what inputs you want to consider and what you...from that.

SENATOR BOLZ: Well, maybe we can have a follow-up conversation...

DOUG EWALD: Sure.

SENATOR BOLZ: ...about how to slice and dice.

DOUG EWALD: Yep. Okay.

SENATOR HADLEY: Senator Schumacher.

SENATOR SCHUMACHER: I would think that one of our purposes here today is to look at the data and to determine whether or not these things are working and how much they cost us to make them work. And what I've heard so far is that it's really, really hard to put any quantification on that, and that some of these things have liabilities carrying forward into the future that we don't know if they're going to claim or not claim. How would you suggest we do this or restructure this so that we have a decent handle on whether or not the things are working and how much they cost us.

DOUG EWALD: Well, I mean, that's a good question. I'm here to present the report with respect to that. I'm not here to give an opinion on what works or doesn't work. I mean, if you have a policy question on with respect to incentives, I mean, that's really kind of up to the Legislature to determine, okay, are we investing the right amount of money in these types of programs.

SENATOR SCHUMACHER: Well, in looking backward though, I mean, let's take the world of businesses that get a break because of these programs--that's history, that's past, that's part of the report or should be--and businesses who don't get a break. Which ones have the greatest growth? The ones that get a break under this program or the ones who, for whatever reason, don't qualify, don't want to qualify, don't fit into some idealized world of this is a business we want to qualify as opposed to one we don't want to have here? I mean, what's the comparison?

DOUG EWALD: Well, I...

SENATOR SCHUMACHER: Has there been greater growth in the nonparticipating businesses than in the participating businesses?

DOUG EWALD: Well, I mean, you'd have to...the thing you're missing there is you don't know what the nonparticipating businesses have as growth, so you don't have any benchmark to compare one to another.

SENATOR SCHUMACHER: Well, we know how much income is produced by the nonparticipating businesses, don't we? And don't we have a way to look at...just the same income tax records to say...

DOUG EWALD: Well, I would say that unless you change the law, that information in confidential.

SENATOR SCHUMACHER: No, not on an individual basis, but in gross numbers that's not confidential.

DOUG EWALD: I don't know. I guess I'd have to think about that, to how you would go about comparing businesses, every single small business or whatever, that didn't apply or whatever, how their employment or their number of employees or their capital investment. You would never know their capital investment unless you're looking at depreciation schedules and those type of things, I guess.

SENATOR SCHUMACHER: But we would know the number of employees. That's reported to the Labor Department. You've got to fill out all those forms.

DOUG EWALD: Right. But I mean, you don't know the hours. Are they full-time employees, are they part-time employees?

SENATOR SCHUMACHER: You could apply some statistical guesstimates that would get you pretty close.

DOUG EWALD: I suppose you could...you could make certain assumptions, I suppose.

SENATOR SCHUMACHER: Thank you.

SENATOR HADLEY: Senator Harms.

SENATOR HARMS: Thank you, Mr. Chairman. I want to just talk a little bit about Performance Audit, because I know that's...I happen to chair that particular committee. The questions you're asking are typical questions that are being asked all across the state, all across the United States. Everybody is starting to look at do these programs have the value that we would like for them to have? Are they transparent enough? What are the benchmarks that you have to measure against? And to be frank with you, folks, there are very few of these programs that have benchmarks written in law that they want to have measured. I think in order to help the Revenue Committee, we're going to have to sit down and decide just exactly the transparency that we want as a legislative body, what benchmarks you want to have placed into this structure and system to determine whether or not this is functioning in the way that we want. But the questions that I said we were asking today are questions that are being asked all across about every state. I will tell you, there will be, I think it's next week, we will release our second report and our review of this particular question through the Performance Audit Committee. And then there will be a third one that will come that will be in-depth in regard to working with the Tax Commission to address this issue. So I think when we get to the end of this and the reviews of this, we'll have a better picture and a better understanding about how this works and maybe what the suggestions would be, and sit down with the Revenue Department and determining what are our benchmarks, how do we measure this, how can we fix this, so that it's a little more transparent. We place a lot of money into the system. And the question I have always had is, is it working the way we want it to work, and would these businesses do it anyway if they didn't have this? All those are the kinds of things we're going to try to address in some form or manner to help. And I think together with the Revenue Department, I think we can begin to put together a system that we feel comfortable with. Because you're in a tough spot. I mean, this is the law. We haven't given enough, I don't think enough direction, of what kind of things we want to have in measurements and being transparent. So I think we have to be a little patient and go through this. But I'm hoping at the end of this we'll have a much better picture, because you'll have three fairly in-depth reports from the Performance Audit that kind of lays some of these questions out which will help you and will help all of us have a better understanding. Now the question about the salary: He's right, there is just...it's really...it depends on how you want to go in and measure that. And I think that's the thing that we have to clarify, Senator, is to make sure that we understand this is a criteria we're going to use all throughout our structure and our system to measure that. And I think Richard and everybody else would say there's a lot of different ways you can do this, and we have to decide as a Legislature what's the best way to do that. And I hope that's helpful because I think that's where we are.

DOUG EWALD: Yeah. You're right on, Senator. These questions are being asked in all the states, basically, from that perspective.

SENATOR HARMS: And I'm hoping that we can help you and you can help us, that we'll just have a better understanding about this. But it's going to take the legislative body to come together to decide, what do you want to have measured and what is the transparency? We use the word transparent. What is it that you want to have transparent and how do you want us to measure whether or not this is being successful and what are the benchmarks you want to have? And I think once we answer those questions, that it's going to be so much easier for you and so much easier for us, and we've got a gauge to determine this. Thank you, Mr. Chairman.

SENATOR HADLEY: Okay. Senator Pirsch.

SENATOR PIRSCH: I'll just ask you quickly. It kind of fits in with his question. Are you familiar with the Pew Center recommendations with respect to best practices in this area in terms of, I think, evaluating and having...making transparent economic incentive programs? Are you familiar with that at all, or...?

DOUG EWALD: I understand there's something out there and I'm not familiar with the details of it, Senator.

SENATOR PIRSCH: Okay. I won't ask.

SENATOR HADLEY: Okay. Do you want to continue?

DOUG EWALD: Yes. We were talking about a company believes they've met their minimum employment and investment levels. We go out there...they call us up to do a qualification audit; we go out there. We find everything they've qualified; then we issue them a qualification letter. And from there, once they have that qualification letter, they are able to file refund claims or use tax credits, those type of things, anyway. And basically pages 16 and 17 of your annual report talks about the credits that are available by tier, and it's also kind of in here but it's a little bit more detailed on pages 16 and 17. Okay, speaking of with respect to what's actually disclosed, and this is where Senator Harms is kind of right on, because with respect to confidentiality there's only certain things that we can disclose with respect to a particular project. And the name of the applicant, the location, the size. I believe pages 36-49 talk about the projects basically since the history of Nebraska Advantage. But we break it down by the year the agreement was signed, the applicant, the name, location, the estimated size, and by estimated size this is how much they tell us. We're going to hire so many people and we're going to invest so much. Some of them basically make it mirror the tier. Okay, it's 3 and 30; that's exactly what I'm going to do. Well, I'm going to do $3.4 million and 35 employees. Some get more specific. That's a company prerogative with respect to what they put on there and what we report, in that section anyway. So the investment, the employment. And they also give us the average wage is reported here on page 54, and that's actually broken down by the different industries.

SENATOR HADLEY: Commissioner, just a quick question.

DOUG EWALD: Yes.

SENATOR HADLEY: You talked about the tax credits. Am I correct that these are basically nonrefundable tax credits? The company has to earn these credits in order to get them. Is that...?

DOUG EWALD: That's correct.

SENATOR HADLEY: And I only think that's an important point because next...very well, the next session, we could have legislation that becomes refundable tax credits, which means the companies can sell the tax credits if they can't use them. And that becomes a completely different ball game if you don't...the company basically doesn't have to earn the credits, I can sell them to Senator Janssen's company that's profitable. So we have to keep that in mind, right, that they...?

DOUG EWALD: That's right, and we'll get to the tax benefits in the next one. But that's a good question.

SENATOR HADLEY: Okay.

DOUG EWALD: Exactly. Okay, with respect to disclosure, on page 51 it talks about the qualified projects by the different industry groups. This is a chart here that we spend a lot of detail, a lot of time with the Performance Audit Committee, going through. And it's basically the history of Nebraska Advantage, the tax benefits received, the employment, the investment, the average compensation by year, and then a total for the life of the program through 2012 from that perspective. Project-specific information is reported every two years, beginning one year after the qualification letter is issued. So in 2012, we reported 2,000 projects that were reported that are qualified in 2009 and 2011. Next year we'll report 2010, 2012. In 2015, we'll report '09, '11, '13. So we're adding, as we go through every year, with respect to odd and even years on different projects. Okay, tax benefits. And this is where Senator Hadley kind of alluded to. The...

SENATOR HADLEY: Oh, I'm sorry. Senator Harr.

SENATOR HARR: Sorry to interrupt. I just wanted to...and I don't want (inaudible) a little bit. I'm looking...you made reference to companies that have agreements still in effect, and I'm looking at them, and none of them are after 2007. Is there a reason why?

DOUG EWALD: Well, they probably didn't enter into an agreement with us...

SENATOR HARR: Okay.

DOUG EWALD: ...until later on. There's none in 2000...

SENATOR HARR: I'm on the wrong one. I'm on...

DOUG EWALD: Well, what page are you looking at?

SENATOR HARR: (Inaudible.) I'm on the Employment and Investment Growth Act, which...yeah, (inaudible).

DOUG EWALD: Yeah, you're the predecessor.

SENATOR HARR: Nevermind.

DOUG EWALD: Okay.

SENATOR HARR: Isn't that was Gilda Radner said? Thanks.

DOUG EWALD: Okay, with respect to the tax benefits, companies if they meet those minimum thresholds in employment and investment, they get a direct refund of sales and use taxes paid on their qualified property. They earn an investment tax credit of 3, 10, or 15 percent, and that depends on the tier under which they filed under and qualified under. And they also, as I alluded to earlier, they get a compensation credit, anywhere from 3 to 6 percent, and sometimes 10 percent, I believe, on tier 6 on the Nebraska Super Advantage with respect to the wages paid. And then some of them can qualify for personal property tax exemption on certain personal property. Now the thing you have to remember on personal property here, is that's no impact to the state of Nebraska. That's basically property taxes at the county level they never receive. We basically say send us a list of personal property. From that standpoint we say, yeah, you're a qualifying business; you've met the thresholds for this year. We send it back to the county and say, okay, this amount is exempt from property tax this year, and the county does not send them a bill.

SENATOR MELLO: Senator Hadley.

SENATOR HADLEY: Yes.

SENATOR MELLO: Commissioner, just for a point of clarification though. That exemption though does impact local political subdivisions such as school districts, cities, counties, and others who do levy property taxes.

DOUG EWALD: Correct.

SENATOR MELLO: So that is personal property that's removed from their taxing authority and limits the amount of revenue they would be able to generate for their local share of city and county school services.

DOUG EWALD: That's correct, Senator. Yes.

SENATOR MELLO: Okay.

DOUG EWALD: You're right on. Absolutely. While it's no impact to us it is an impact at the local level.

SENATOR HADLEY: Commissioner, when we were talking about looking at wind incentives and such as that, this past session, we noticed that some of the states around us get involved in property tax refunds, rebates, and such as that. And basically, in Nebraska, that's a local issue that is not part of the Advantage Act or such as that. Is that a correct statement?

DOUG EWALD: That's correct, with one exception, and that is for Nebraska Super Advantage and I think that maybe for the large data centers that they can have their real property taxes refunded to them by the state. They pay them to the local, the county, from that standpoint, but they can send the bill to us and we will reimburse them for that. So that's the only situation...

SENATOR HADLEY: Okay. Well, I just wanted to make it clear, because I remember checking the states around us and it was quite common that local entities, the state would, in essence, give up property taxes as well as these other taxes. Okay, thank you.

DOUG EWALD: Yeah. When we talk about qualified property, we're really talking about tangible depreciable property that's used at the project. So we want to know if somebody has two locations, we want to know...and they only include one in their project, well, we want to verify when we go out there and do the qualification on it, that that investment took place at the location that they identified in their application. Qualified property doesn't include aircraft, barges, motor vehicles, railroad rolling stock, watercraft, that type of stuff. And that's a carryover from LB775. So a lot of that property that's transitory, that might operate in multiple states, is not qualifying investment in the state of Nebraska. With respect to direct refunds, they can get a refund at the state and local sales tax on purchases of qualified property used at the project, so...but in order to do this, we've been out there, we've done the qualification on it, they've met those minimum levels. And they have to maintain those required levels for a period of five, seven years, from that standpoint, and then they're able to monetize those. Investment credits, like I said, 3, 10, 15 percent of the qualified investment at the project based on the tier under which they qualify. And the same thing with the compensation credit. It's a formula-based 3-6 percent, 10 percent in one situation. But basically that's where we're at. Okay, now, we've told how they earn the credits. Now, how do we use...how do companies use those credits? Investment and compensation credit, so that's your investment tax credit and your wage benefit credit, you can use those to reduce your income tax liability. So you basically send us, when you file your form, say okay, I'm using my credits. I'm not sending you a check, I'm not making an electronic funds transfer to you at the state; I'm going to monetize those through my income tax liability and then...or else I'm going to compensation credits, I'm going to reduce my monthly withholding to the state with respect to the withholding requirements that I withheld from my employees from that perspective. And the use of credits really vary by...they vary by tiers. We kind of covered it. The tier, whatever you lock into, that's what drives what's available to you and how you can monetize those and over what period of time. Okay, the annual report that we put out. So I gave you a little bit of background, kind of built the structure here through the application process, the agreement process, the qualification on it, and kind of the highlights there of how companies can earn and utilize those. This here, the annual report, is really a summary of through 2012, and it has 2012 specifics; so it depends on what you look at. But basically we have 195 signed agreements, of which 58 were signed in 2012 alone. And pages 39-49 talks about all the signed agreements, the 195 agreements, and who they're with, the location, their planned investment, and that type of stuff. Of those 195, we have 45 companies that have actually qualified. So they've been through the whole process. We've been out there and we've audited them. They've met those minimum thresholds from that perspective. So they have accrued benefits. They have earned those benefits. They've utilized some benefits from that standpoint. And with respect to page 51 is kind of that summary table that talks about, okay, these are those 45 companies here, and they've reported almost $3.5 billion in investment to us. They've received direct refunds associated with investment of approximately $31 million. They've earned about $412 million of credits, and they've used about $99 million. So based on that, there's about $313 million in outstanding credits associated with those 45 companies as of the end of 2012. They've also hired 7,100 full-time equivalents through 2012. As I said, the chart here on page 51 only includes those qualifying projects. The chart is cumulative. We've got 45 projects. The increase in new jobs is the increase in FTEs in any particular year. So if you look at 2008, there were 269 employees, and then on 2009 there's 641. So the total for 2008 and '09 is 910. You basically add them together from that perspective.

You can kind of look at it graphically in a pie chart here, the benefits used through 2012. We have it broken down into the different categories. On the left is the pie chart. On the right is kind of a little bar chart that basically identifies the type of tax. Corporate incomes tax was 36 percent of the benefits used, almost $59 million. Individual income tax was $7 million. You have the income tax withholding was $28 million, which is...oh, let's see here...it was about 17 percent. And then sales tax refunds, about $5 million. Direct sales and use tax refunds is $31 million. And then the personal property taxes exempted...now what we do here is we basically...how we calculated that is there's about $1.7 billion. We took a 1.9 percent average mill levy across the state from that perspective, and estimated--and I say estimated--about $33 million in personal property tax was exempted in 2012.

SENATOR HADLEY: Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Senator Hadley. Commissioner Ewald, I must be doing my math wrong or something here, but did I understand you to say there were 1,700 full-time employees generated?

DOUG EWALD: Seventy-one hundred.

SENATOR SCHUMACHER: Seventy-one hundred. Okay.

DOUG EWALD: Yeah, on page 51 of the annual report there, in the total column, the far right at the bottom, there's 7,103 FTEs.

SENATOR SCHUMACHER: And they cost us, the exposure is $300-and-some million?

SENATOR NORDQUIST: $412 million total. The total is $412 million, Paul.

SENATOR SCHUMACHER: $412 million?

SENATOR NORDQUIST: Yeah.

SENATOR SCHUMACHER: Thank you.

SENATOR HADLEY: You know, I've been, I guess, to enough national meetings and talked to people from other states, and this is...if we cut through everything, the chart number...I wish I could see it better, is a key chart, because you have some numbers there. You have the fact that the 45 qualified companies reported an investment of $3,481,340,212. The question every state in the nation is asking: Would those companies have come to our state if I did not give them some kind of incentive to come? I don't know how you answer that question. And that's...I've talked to a lot of people from other states and that's exactly...you go down the...7,103 FTEs. Would those jobs have come to Nebraska if we did not have some kind of investment credit system? And every state in the nation is wrestling with this problem of how do you measure what's happened. What we do have is that we do know, if these numbers--and I assume they are correct--what, $3.5 billion of investment, the companies that got, right?

DOUG EWALD: Exactly.

SENATOR HADLEY: And we know that is 7,103. So Senator Schumacher says it's our decision then as policymakers is do we roll the dice and say okay, no more...we don't have to do this. Let's just hope we get $3.5 billion companies willing to come just because they like us. They like the wide-open spaces and the 100 degree heat and those kinds of things. So anyway, when you cut through, that's...as policymakers, that's where we're...and I think Senator Harms's Performance Audit Committee, that's basically where you're getting down to, do you...you know, how do you answer? Do you go out to a company and say, would you have come if we hadn't given you this incentive? So I guess I just wanted to, you know...Senator Nordquist.

SENATOR NORDQUIST: Yeah, just a question. And if we were to look at other options, let's say we wanted to take all of the dollars we're investing here and invest in a reduction in our corporate tax rate or maybe an elimination. I don't think there would be...maybe there wouldn't be enough, I don't know, on an annual basis. How soon, if we enacted legislation saying this was ending today, how soon would we have no liability left for these programs? Because the contracts are signed for eight years or...?

DOUG EWALD: Right. Well, I guess, if you're...if what I hear you saying, is okay, say, we eliminated the corporate income tax next year.

SENATOR NORDQUIST: Yeah.

DOUG EWALD: So basically what you've done is that you've taken away one of the vehicles for monetizing the credits that have been earned from that standpoint. So that's all you've done. You've taken away one of the monetization of credits. You haven't eliminated those credits but that still doesn't mean they can't use it against other things from that perspective.

SENATOR NORDQUIST: But the credits we have, how far forward are contracts that are signed today, we have credits that could be used for...

DOUG EWALD: Well, I mean, you could have seven years plus a carry...you know, you could...

SENATOR NORDQUIST: Ten years?

DOUG EWALD: Fifteen years.

SENATOR NORDQUIST: Fifteen years. Okay.

SENATOR PIRSCH: So in looking at the investment, I think it's clear from this, $3.5 billion approximately. And then at the cost you would add the direct refunds on investment and then the total credits earned minus...it's uncertain if they'll ever be redeemed, in fact, right? So we do know that we have about $100 million used and that there's $300 million, a little over $300 million still floating out there. But assuming, even if you were to add the total credits earned, which is over $400 million, plus direct refunds on investment about $30 million, you're under $450 million as far as the highest potential obligation the state is on the hook for, for that $3.5 billion investment. Is that what you're saying?

DOUG EWALD: That's...well, the direct refunds have already been paid. The credits used. But they basically, the $300 million is what's...that's the payable sitting out there right now.

SENATOR PIRSCH: Um-hum. Which may end up...

DOUG EWALD: Which may or may not, you know.

SENATOR PIRSCH: ...or it may not be redeemed.

DOUG EWALD: We don't have enough history under LB312. We have pretty significant history under LB775.

SENATOR PIRSCH: LB775.

DOUG EWALD: And actually, this year, is in...I'll say this: In 2013, this is the first year we're starting to see a crisscross of more LB312 and less LB775. So this is the first year. We're kind of at that bridge from that standpoint. So that program is starting to wean its way off and LB312 is ramping up.

SENATOR PIRSCH: And I do notice in your summary screen, you said Nebraska Advantage in '12 was...the state cost was somewhere around $44 million; and LB775, I thought was, in 2012, $114 million in cost.

DOUG EWALD: Correct.

SENATOR PIRSCH: But they're dropping that remarkably...

DOUG EWALD: Yeah. This is...we're paying more this year in LB312 than they are LB775.

SENATOR PIRSCH: Okay. That's good to know because it was almost a multiple of three the other way, last year. And...

SENATOR HADLEY: Senator Mello.

SENATOR MELLO: Thank you, Chairman Hadley. And Commissioner, just looking at slide 13...and I want to draw both the committees' attention to page 59 of your report that goes over the personal property value exempted by type, by county. And I noticed you left the personal property that's exempted off of the cumulative credits earned and used and what's available. Am I correct to see that from page 59, the total over the last five years would be roughly $1.7 billion of personal property that's been exempted, that...?

DOUG EWALD: That's the value of the property. Correct.

SENATOR MELLO: Value of the property that's been exempted. How did you come...then I'm glad you went to my next question. On slide 15, you equated essentially this past year's value, and I thought you said that dollar amount, the $1.7 billion, equates to about $32 million or $33 million of property taxes that would have been paid. How do you get to that, and is there a way moving forward...? Because I noticed an overwhelming majority of this personal property is exempted in Douglas County. And I don't know if that's within the city of Omaha's limits or within specific school district limits, for even that matter. Is there a way for us to be able to dig down further to be able to find out where that personal property is exempted and possibly see how that may impact some of the local property taxes that may be paid to certain political subdivisions?

DOUG EWALD: Could it be done? Sure. Would it be difficult? Yeah. I mean, from that standpoint we report to the...you know, the county from that standpoint. And you're right that it's $1.7 billion. There's a lot of it in Douglas County. This will continue to grow. We'll add more counties over time from that standpoint. I guess the 1.9 percent mill levy is kind of a statewide average. We know it's higher in Douglas County from that perspective anyway. But it would take a lot of work, especially...and here's the challenge. You have companies that have statewide projects. So how much property in what county and the value...I mean, from that standpoint. So to dig deeper in that would be fairly exhaustive when you have a statewide project.

SENATOR MELLO: Okay.

DOUG EWALD: But could it be done?

SENATOR HADLEY: Senator Bolz.

SENATOR BOLZ: I wanted to pick up on the questions that Senator Schumacher and Senator Hadley were asking around job creation, and I'm looking at page 65. And you report out for 2012 the estimated new jobs for qualifying tax credits was 3,024, and the estimated net economic job increase was 0, and those numbers change over time. Can you help me understand the distinction between those two criteria and specifically how you calculate the second, the estimated net economic job increase?

DOUG EWALD: Yeah, we've had questions on this. This is an economic model that's used by the state. And actually, Senator, what I'd like to do is--we could spend days on this--if we could get back to you on that to kind of explain...delve into that a little bit.

SENATOR BOLZ: You can't even give me an initial answer to that question?

DOUG EWALD: Well, I mean, it's...I'm not an economist from that standpoint. It runs an econometric model with respect to...based on a variety of...the TRAIN model that used to reside over here in the Legislature, that honestly, for me to give you an answer on that, would be...would not be...I would say would not be wise or to...it would be outside my area of expertise, honestly.

SENATOR BOLZ: Okay. Thank you.

SENATOR HADLEY: We can certainly get back, if you would let my office know. Senator Mello.

SENATOR MELLO: And...thank you, Senator Hadley...and Commissioner, while we're on page 65, they had kind of a 50,000-foot perspective question that kind of will help, I think, guide some of the other questions I may or may not have. Can you explain kind of the general interpretation, if I was to look at this page without understanding or without a general understanding of kind of how the program works, is it...is the revenue gain/loss component, on page 65, is that cumulative over the ten-year period? So I'm looking at this right now, and I see revenue gain/loss, and I see a revenue loss every year for ten years. Is that per year or is that cumulative?

DOUG EWALD: That's a cumulative number.

SENATOR MELLO: So the cumulative number then would be $218 million in 2023, not $218 million that year.

DOUG EWALD: That's correct.

SENATOR MELLO: It's a cumulative amount.

DOUG EWALD: That's right.

SENATOR MELLO: Does that work the same way then with the tax credits earned and the expired recaptured and balanced component as well? Is that the number of credits that are earned each year or is that a cumulative number as well? So that looking at that 2023, it shows that we have a credit balance or a credit liability of $900 million. Is that a cumulative amount or is that an individual year amount that we are on...

DOUG EWALD: Yeah. I don't think...I don't believe that that is a...the revenue gain or loss is based on...okay, economic model input output from that standpoint...

SENATOR MELLO: Yes. Yes.

DOUG EWALD: ...from that perspective. But I don't know that we know the amount of...I guess we forecast...

SENATOR MELLO: The forecast. This is the...

DOUG EWALD: We forecast based on history, and really that forecast is being...is primarily, I'm going to say, driven by the old LB775 program, because we don't have enough history under LB312, so.

SENATOR MELLO: So this kind of fiscal analysis for Nebraska Advantage is very similar to what you did then for LB775?

DOUG EWALD: Correct.

SENATOR MELLO: That would take me to page 124 then because that's the same model or same components, and that...so I can just be safe to say then, the revenue loss for LB775, based on that model on page 124, shows in 2023 we will have lost $16 million. Would that...then I asked that question the cumulative versus the annual loss, because I have to assume that's an annual loss in year 2023, not cumulative loss. It's a cumulative loss over a ten-year period is what you just said. For Nebraska Advantage it would be a $16 million loss in over a ten-year period.

DOUG EWALD: Right. I think what you see there is you see the cost reducing because you still have those jobs that were created 20 years ago in the economy from that perspective. So companies aren't earning benefits for them but the state is withholding, you're spending sales tax money dollars, those type of things, anyway. So what you're seeing...I mean, I guess that's kind of one way of looking at it kind of what your payback is, almost; how long does it take to get a payback on it.

SENATOR HADLEY: Okay.

SENATOR MELLO: That's good.

SENATOR HADLEY: Yes, Senator.

SENATOR NELSON: Back to Senator Hadley's question about nationally we're wondering about whether it's worthwhile incentivizing people coming into the state. Now I'm looking here at pages 36 and 37, agreements signed in 2012. There are a lot of longtime companies here in Nebraska that are taking advantage of this. So do you have a...do you keep track separately of the companies that do come in from outside the state and establish something here, a number of those and who they are, so that you can take a look at those to answer, to kind of get answers to that question?

DOUG EWALD: I don't think we break anything down between already, who was here already, versus...I think that's your question, you know. Did...who wasn't here at all and brought operations to the state as opposed to who might have had a small manufacturing operation and just chose to expand it greatly, something like that. We don't track that from that perspective.

SENATOR NELSON: Okay.

SENATOR HADLEY: Okay. Senator Schumacher.

SENATOR SCHUMACHER: The $3 billion that Senator Hadley speaks of in investment under this program, over what period of time was that?

DOUG EWALD: That's through 2012 for the 45 companies that have qualified.

SENATOR SCHUMACHER: So that would be since, what, 2006 that started?

DOUG EWALD: So that would be companies that applied anywhere from 2006 through 2011.

SENATOR SCHUMACHER: Okay. And in perspective, that $3 billion worth of investment, how does that compare to the total business investment in the state? This is subsidized businesses, $3 billion investment. Do we have a way to find out what was the unsubsidized investment in the state?

DOUG EWALD: Probably not, because you have multiple multistate operations that don't break down their assets by state. They apportion their income to the state but they don't break down their assets by state, or...

SENATOR SCHUMACHER: Would it be fair to say that the unsubsidized business investment in the state is many multiples of $3 billion over that period of time?

DOUG EWALD: I have no idea, honestly.

SENATOR SCHUMACHER: So how are we to make a comparison between subsidized investment and unsubsidized investment and whether or not this is working if we can't get a handle on comparisons on something...some solid numbers?

DOUG EWALD: That's your challenge.

SENATOR SCHUMACHER: So...but we're making commitments thinking that this thing produces results. We do see some results but what's missing is the causal link. And I guess what I struggled through in looking through this data is where's the causal link? Here is what caused it and here is what the world would have been like if we didn't have it. Any clues from all the (inaudible)?

DOUG EWALD: Well, there's...honestly, Senator, there's no "but for" test in here. There's no "but for." Would this investment be here had these incentives not been here, you know, from that standpoint. So in the past there have been prior incentive programs: LB312, LB829. Both had "but for" tests, you know. And basically you had a hearing. There was a formal hearing with the committee. The Governor and the Treasurer and some other (inaudible) say basically that said, okay, you sit down and we have...say, okay, we're not doing this but for this incentive. And you basically, the companies had to acknowledge that, you know, but for that we wouldn't be here, we wouldn't be bringing those jobs.

SENATOR SCHUMACHER: So on the productive side, we don't have a "but for" test, but certainly on the exposure side of what we've given away in tax revenue that we know for sure how much that was, or at least a good guesstimate.

DOUG EWALD: Correct.

SENATOR SCHUMACHER: So there is a "but for" test there. Thank you.

SENATOR HADLEY: Okay. Yes, go ahead.

DOUG EWALD: All right, where are we at?

SENATOR HADLEY: We've kind of skipped around, so.

DOUG EWALD: Yeah.

SENATOR HADLEY: Which is fine.

DOUG EWALD: We'll try to...yeah, that's fine.

SENATOR HADLEY: Which is absolutely fine.

DOUG EWALD: Let's go to...okay, let's go to 16. Okay, there's the...okay, we have...of the 195 companies that have signed agreements, we talked about the...basically, this is page 54. So this is 195 signed agreements. We have 141 of those that have provided us with the required annual reporting. We have somebody...some companies that don't tell us what they did last year from that standpoint, so that's a little bit of a...a little challenging, but that doesn't go into factoring into any businesses...or benefits, I should say. So 56 didn't respond. Out of the 141, 45 are qualified. We've got 96 that are basically unaudited out there. And year-to-date this year, I'll tell you this: We have 13 that we've completed already from that perspective. So we're working through those as companies tell us they're ready for audit. Okay, pages 56 and 57 basically break down those benefits by industry. They're the same industry groups that existed under LB775. You have to have at least three companies in a particular category to list them here in a particular column. And the similar industries, some of them are combined for confidentiality purposes. And as we have more projects qualify, we will...this will grow from that perspective. And actually there's one key thing: The number of people employed is the actual number of employees at the taxpayer's statewide location. So that's not necessarily at the project. It's at their total operations in the state of Nebraska. We don't convert those to FTEs. That's just employees as a particular point in time, and the project usually only includes...a project may only include a portion of a company's activity versus some of this stuff is statewide. So you've got to dig into the details a little bit from that perspective anyway. On pages 60 and 61, we have basically 18 projects in 2012, and some of this stuff I alluded to earlier about how we report. We reported 2009 and 2011 qualifying projects; and then projects with qualification letters in '12 will show up in this report next year. So like I said, in 2012 we reported '09 and '11. Next year we'll report '10 and '12. The year after, in 2015, we'll report '09, '11, '13. So we'll continue to report the activity and the cumulative activity associated with those particular projects based on the year they qualified. And okay, the total tax used and refunds approved or credits distributed, those type of things. Investment, employment and compensation information is really the cumulative totals for the project at that particular point in time. Other reporting: And this here, Senator, you've been asking this, pages 18-35, we report on what other states do. So that is a state-by-state breakdown on pages 18-35 comparing Nebraska to other states or the incentives available in other states. Principal...on pages 52 and 53, we talk about principal business activity codes and application tier of the different projects. Personal property, on page 59, as we spoke about earlier, that's the personal property by type and by county. And then on pages 62-65, it's the revenue gains and losses for those that we kind of alluded to from that perspective.

SENATOR MELLO: Galen.

SENATOR HADLEY: Yes.

SENATOR MELLO: Now, Commissioner, just...I had a question for the LB775 component in relationship to page 65. So this projection says in ten years we will have lost, revenuewise, $218 million; and we will be liable still for $904 million worth of tax credits.

DOUG EWALD: That's correct. I mean that's based on the model and the estimate that's...

SENATOR MELLO: Now that takes me to...that's why I asked the question on the LB775 to get a longer perspective. On page 124, it shows that in 2023 the LB775 program that was created in 1988, that will be a 35-year span of the program, will show kind of a cyclical up and then down. So then the state, in theory, if you look at that page, it would be safe to say possibly that the TRAIN model in future years will not...will show the state will not see a revenue loss, and instead may see a revenue gain at, let's say...let's take two years or take three years after that,...

DOUG EWALD: Sure.

SENATOR MELLO: ...you would see then the cyclical where you would see a revenue gain?

DOUG EWALD: Correct.

SENATOR MELLO: So it's...simply it's a 35-year time frame we were talking about before based off the LB775 program and the model that's used, it may be a 35-year model before we see revenue gains in the state?

DOUG EWALD: That's...you know, obviously...you're right, as obviously it's project specific when you get into that. You know, a particular...but as you look at everything as a whole, the TRAIN model would say, okay, it's...you know, we're still dealing with stuff from 2005 and will be for another 15 years for LB775. But, you know, I guess that's one way of looking at it. Okay, it takes us 35 years to break even or something along those lines, I guess. You could draw that conclusion, I guess.

SENATOR MELLO: Okay.

SENATOR HADLEY: Mr. Commissioner, I quickly took a look at pages 18-35, and it's interesting because there's quite a list of states there, aren't there?

DOUG EWALD: Yes.

SENATOR HADLEY: And this would be a great deal if we could convince every one of those states that are listed there that let's all get out of this business. Let's all just, you know, just attract businesses with our climate and with our work force or whatever. But that's a lot of lists of states that if I'm an economic decision-maker for a company, and I have stockholders or owners that I'm supposed to maximize their return, I'm going to be looking at these states. And as long as you have all of these states trying to do that, they'd all like...I'll guarantee you, if you went to every one of these states, they would say we'd love to get out of this. We went to a meeting where...Missouri and Kansas are, every year, we listen to how they're trying to agree so that they aren't poaching each other's businesses. Well, they have a heck of a time agreeing. We have the same. You know, we'd love to have an agreement with Iowa that we don't poach each other's businesses. It works good in theory, but the minute you have a business that's in Fort Dodge that might want to come to Omaha with 500 jobs, you say, all right.

DOUG EWALD: Well, and that...

SENATOR HADLEY: But anyway, I just wanted to make the point that if you look at those states, they're all in this economic development business.

DOUG EWALD: You're exactly right, Senator. And these things have evolved over time. You know, how do I...you know, we've seen it. I mean, you can talk to the Chambers of Commerce, but I've sat in on meetings with site selection representatives from different companies, and saying, okay, you know, well, what do you have here in Nebraska? This is what we have, this is who you're being compared against. We have a large data center we'd like to bring here but it's between you and Iowa and then somebody else from that standpoint. What do you have to offer? So it's kind of like either everybody is in or everybody is out, almost, from that standpoint, that you'd like to be able to compete on quality of work force, you know, those type of things. But the reality of it is that it is a competition.

SENATOR HADLEY: And I would...you know, I certainly agree with Senator Schumacher, it would be nice if we had more data so we could...or we could get data that said, well, let's make a rational decision whether it's worth being in this game or whether we become the outlier and just say to companies: Please come. Senator Nordquist.

SENATOR NORDQUIST: I did notice that Alaska doesn't have anything. They probably don't have a lot of competition up there, but.

SENATOR HADLEY: But they also give, what, $1,000, $1,200 a resident per year as a rebate.

SENATOR NORDQUIST: Yeah, that's right. But my question is, so just looking at the data on page 65 again, just so I have this right. So right now we have $300 million roughly of outstanding credits that will be used over a 15-year period?

DOUG EWALD: That's probably a fair estimate.

SENATOR NORDQUIST: And 2023, we're looking then at a $904 million over that same length of time, right? I guess maybe not a question just a concern that I wanted to raise that...I mean, now you're looking at almost triple the amount of fiscal impact in those next 15 year rather than the next 15 years that we're going to see. Is there ever a point, I guess, that this will reach its capacity and stay at that level where the fiscal impact on the state will remain consistent rather than...?

DOUG EWALD: Yeah, that's a great question. That's a huge unknown obviously. You know, I guess if you can...the question is investment going to continue? You know, we have recessions. But over time it's going to ebb and flow based on economic conditions, customer demand, those type of things, that it's probably fairly consistent over a 10-, 15-year period, honestly.

SENATOR NORDQUIST: Okay. Okay, thank you.

SENATOR HADLEY: Any other questions of...?

SENATOR HARMS: I just have one, Senator Hadley.

SENATOR HADLEY: Okay, Senator Harms and then Senator Nelson.

SENATOR HARMS: I think it is pretty clear to me, after listening to the discussion, that until we can identify the benchmarks that we want to have measured, it's very hard for our Commissioner to get that information to us. And I think we have to come together in some form or manner, which I stated earlier, and decide what is it that you want to know and what benchmarks do you want to put into law and require Commissioner and his staff to present to us so that we have a clearer picture of exactly whether this is working or not working. Now there's only about three or four other states, I think in the review that I did, that have in law--maybe not even that many--of benchmarks. So I think that's what it boils down to and I think the Commissioner has done a pretty good job, and it gets very tough because we haven't helped him much. We haven't put the requirements in that we want to have measured. And I think just as soon as we do that, then it will be a little bit clearer whether or not maybe this is working or not working. And so I hope you'll keep that in mind as we go through this. I think we have to be competitive nationally and I think we would be foolish if we eliminated such programs. I just think we have to fine-tune it better so you have a better way to measure this. I don't know of very many companies that are not going to come into this state without some kind of an incentive, even in our own community. I can tell you that now. That's the first thing they ask: What's available for me? I just can't quite make this move and I'm looking over in Colorado and Denver and they've got all these sort of things; what do you have that you could draw me in here, because this is where we'd like to come because of your work ethics and your work values. So I think we have our work cut out to sit down in some form, probably the Revenue Committee with our Commissioner, and decide what is it that we really want. If we want to put it into law, then let's get it done and so we can measure it and then move forward. Because the idea here is to keep our economy strong and that's what it's all about. So that's how I feel...and I don't know, Mr. Chairman.

SENATOR HADLEY: Thank you, Senator Harms. Senator Schumacher.

SENATOR SCHUMACHER: Senator Nordquist hit on this a little bit when he talked about the possibility of just cutting some corporate taxes and applying it to all businesses regardless of flavor. Now it seems to me what we're doing here is we're saying, okay, we're going to impose a nearly 7 percent corporate income tax. We're going to tax business inputs; and, oh my gosh, that's going to run businesses off. Okay, so let's create a special program for a special class of businesses and a whole bunch of overhead and to give to undo those corporate taxes. Is there any model, anything that you can tell from your data or you can get from your data to say, okay, why don't we just cut through this and why don't we just reduce tax on business--sales tax on business inputs--regardless of what color your business is, and reduce a corporate income tax regardless of what color, and get...would that be more effective than these kind of programs?

DOUG EWALD: Wow. There's obviously different ways there, different approaches. Is there a simpler approach? Sure, I'm sure there's...I know there's simpler...there has to be. I mean, this is...we have a lot of overhead, you know, in the department. Companies have a lot of overhead to track and maintain this stuff. Like I said, I've lived this for 17 years from that standpoint, and another seven at the state. It's not easy. But when the Legislature set this stuff up originally, you know, everything is performance based. And at that time in the '80s, you know, they were trying to attract Mercedes Benz in Alabama and BMW, and they were writing $200 million and $300 million and $400 million checks up front just to lure them. And Nebraska basically said, okay, we're not going to do that. And we've talked to states right now...we talked to site selection companies out there, and basically said, okay, remember, the states that wrote those big checks, what does their fiscal balance sheet look like today and what they've been through from that standpoint. So we've been...we're conservative. Everything is performance based. If you do this and this, we're going to give you this. But honestly, Senator, you know it begs the question: Is there an easier way from to do that with...? You know, okay, we're going to educate your work force for you or we're going to do, you know, something, you know, along those lines. We're not going to have a corporate income tax. We're going to...but those are all, you know, everyone you talk to is going to give you a different answer from that standpoint, and that's for you guys to try to sort out those pitfalls. But honestly, what you see here is what the competition we've got into with our states.

SENATOR HADLEY: Commissioner, I think we've asked you a number of great questions such as that. But some of the questions, I think we're asking the wrong person, because you're the scorekeeper.

DOUG EWALD: Right.

SENATOR HADLEY: You don't make the policy. You don't make decisions about whether the policy is working or not. You're the scorekeeper.

DOUG EWALD: Right.

SENATOR HADLEY: So maybe we need to have a meeting with the Department of Economic Development and say, are these working? Are they...you know, what is the competition? You know, am I wrong in that? I mean, you're reporting...

DOUG EWALD: I think you're exactly right. I mean, there are the...

SENATOR HADLEY: You're reporting what policy we put in...

DOUG EWALD: What happened. Exactly. What the results of that policy was. They have their boots on the ground today out there across the state and, you know, out there with the site selection people. What are they hearing, you know? And I understand that I think it would be valuable to know, okay, how many projects do we have by tier? Do we need that tier anymore, you know, from that standpoint? Or what do we want to incent in the state of Nebraska? That's up to you, you know, from that perspective.

SENATOR HADLEY: Well, it just seems to me that DED could...would be a logical person to answer some of these questions that...and then we could come to you and say this is what we found out from DED; can you give us data that might prove, disprove,...

DOUG EWALD: Right.

SENATOR HADLEY: ...lend credence to what we want? Are there other questions for...?

SENATOR SCHUMACHER: Just I want to follow up. Isn't what we want to incent from a revenue and state budget perspective, the taxable income line on the business tax return regardless of the flavor of the business that produced that taxable line?

DOUG EWALD: Boy, I don't know the...that's a good question. That's kind of a philosophical question. And you talk to the business and what do they want? I mean, everybody wants a higher bottom line from that standpoint. But, you know, there's certain...that's a...you know, that's business specific, you know. I mean, in publicly held companies, you have shareholders you have to report to. What do they want to see? They want to see earnings per share, you know, that type of stuff, which is usually driven by a financial number. But at the same time they're trying to minimize their tax liability and basically make...trying to make themselves more competitive with their competitors from that standpoint, so. But at the same time I'm assuming a lot of capital investment is driven by business need.

SENATOR HADLEY: Any other questions? Well, Commissioner, is that...do you want to continue or...?

DOUG EWALD: Yeah, let's...we've got a little bit more here and we'll try to...other information. This next one is a chart, one of Burke Harr's, Senator Harr's favorites. It's actually...it's not in the annual report anymore because it's not statutorily required and it created a lot of confusion out there. But basically it's by year, the number of applicants, and then the number of qualified businesses associated with their application in that particular year. So, in 2006, we had 90 applications. We now have 28 of those companies that are qualified at the end of 2012. So that's the 45. But here's the deal: We have 400 companies. We have 45 that are qualified as of the end of 2012. And the number of qualified projects decreases over...you know, from that standpoint. Companies just don't qualify from that standpoint. But we have 400 applicants. But if you remember, I was talking to you about we have 191...195 that we're really talking about, which is consistent with our pool of what we saw under LB775, with basically half the companies qualifying or not qualifying and withdrawing or whatever from that standpoint. All right, let's go to the next one. Differences...and quickly here. Differences between Nebraska Advantage Act and its predecessor LB775. There's way more project tiers here under Nebraska Advantage. There's additional qualified business activities. The length of the attainment periods are different. The length of the projects are different from that standpoint, so things have been tweaked. They've been shortened up in some instances. The usage, you can now have an income tax withholding. You couldn't do that in the past. The property tax reimbursement for tier 6, that wasn't available before. The employment calculation requires a rate of pay today. It didn't always require that under...or it didn't require it under LB775. And there's additional types of property that are eligible for the personal property tax exemption today compared to what was out there under LB775. Other incentives programs: Nebraska Advantage, the Rural Development Program, it's a million-dollar program in 2012. And these basically...these are pages 70-73. These projects or their tiers are usually capped by a certain allotment every year from that standpoint. In 2012, Rural was capped at a million dollars. They are able to get a refundable income tax credit and they can get a refund of sales tax paid, and it replaced a smaller program which was LB270, which coincided with LB775 back in the day. Microenterprise: There's $2 million available in 2012 for this program. This is a...and these programs are kind of...the smaller ones are kind of a first in, first out. So you apply and get in and get your money. If we run out later on in the year, you're just kind of...you're kind of out of luck from that standpoint with respect to that. But there's a refundable income tax credit. The maximum credit is capped at $10,000 per individual or per applicant. And you have to be involved in a microbusiness and you have to operate it in a distressed area. And basically that's everything in the state of Nebraska other than certain tracts in Cheyenne and Washington Counties. So it's virtually the entire state of Nebraska. Research and Development, R&D, and basically any business that incurs research and experimental costs in the state of Nebraska are under the Internal Revenue Code Section 174, this credit is available to them. The type that's either...it's a refundable income tax credit or it's a refund of Nebraska sales and use tax paid on that particular...those types of expenditures. Interesting to note that that component of it has never been used as a sales tax fund ever in the history, but it is...they opt to use the income tax credit. From that perspective it's pretty straightforward and it could be claimed for over 20 years--21 to be exact. And then it's pretty straightforward. It's 15 percent of your federal credit or a few years ago, we...if you're out here at the research on the state university campus out here, it's 35 percent of the federal credit for research taking place out there on campus.

SENATOR HARR: Does that include PKI?

DOUG EWALD: Do we know if that's included? Yeah, I believe it does.

SENATOR MELLO: Yes, it is. It's a college campus.

DOUG EWALD: Yeah, yeah. But we just haven't...there hasn't been as much R&D out there. I mean, I guess I don't know what's been broke up between the two, but it would include PKI. Under LB775, the predecessor, a lot of the same type of things: direct refund of sales tax on qualified property. The investment tax credit was a flat 10 percent. There wasn't 3 or 6 or 10 or 15 from that standpoint. There was a flat compensation credit of 5 percent of your wages. Today it's 3-6 percent from that standpoint, and there was a personal property tax exemption that existed under LB775 as well. Okay, use of credits. And really things were simpler. There were three application levels: $3 million and 30 employees; $10 million and 100; $20 million flat investment. But the investment and compensation credits likewise could reduce your income tax liability and you could get a refund of those local sales and use taxes paid on otherwise nonrefundable purchases. So that's sale tax you pay on noncapital...stuff you don't capitalize as a business; so your office supplies, you know, those type of things. That's another way to monetize your credits anyway. LB620 was the Invest Nebraska Act. That was in existence from 2001-2005. It basically had two. One or another of the tax benefits were either a 15 percent investment tax credit or a compensation credit paid to new employees of 0-5 percent, depending on what was paid. We don't report anything on this one just because there's not more than three companies in there. And the same way under LB829 which was in existence from 1996-2000 was really a wage benefit credit, and basically companies could keep the withholding on their employees instead of remitting it to the state or they could use the credits to...if they didn't want to go that route, they could just use it to reduce their corporate income tax liability. That draws to a conclusion my formal presentation. Appreciate the opportunity. Appreciate the dialogue back and forth with respect to some very tough questions. And a lot of you...you'll see you have a lot of policy questions in front of you from that standpoint, and I gave you some history with respect to the program, what occurred through the end of 2012. And I guess I'd ask if there are any other follow-up questions. And if there's any specific questions that you have and you want data, I know Senator Bolz, Senator Nordquist, maybe if you can direct them through Senator Hadley, they can get them to us and we'll get them to you within 30 days, something along those lines.

SENATOR HADLEY: Commissioner, thank you very much. I think this was worthwhile to talk it through. As Senator Harms has said, you go to national meetings, there isn't a state in the Union that isn't wrestling with this problem. And so we've got to do it but it's also nice to know how the program is working. And we realize that your job is to report the data, and maybe we do need to have a meeting with DED just to talk about from their perspective how they see the programs working, given the data you get. So with that, I will...

SENATOR SULLIVAN: Can I ask one question, Senator?

SENATOR HADLEY: Yes.

SENATOR SULLIVAN: Thank you. In relation to that, I just wonder if in seeking additional data your department would probably need some additional capacity in order to do that.

DOUG EWALD: I would say yes, depending on how much, because there's a lot of data. I mean, we do a lot of stuff electronically but a lot of the stuff I heard here today would require digging into tax returns or sampling tax returns or something like that, that would require, you know...if you could help us with an electronic filing mandate for corporate, that would help (laugh), but you know, some of those type of things. Yeah, in all likelihood we would require some additional staff.

SENATOR HADLEY: With that, I will call this meeting to an end, and the next meeting will start in ten minutes, so...and the next meeting is an Executive Session...correct, I believe? The Tax Committee meeting is an Executive Session.