[]

The Committee on Appropriations and the Committee on Revenue met at 1:00 p.m. on Friday, August 19, 2016, for the purpose of a briefing on the 2015 Nebraska Tax Incentives Report. Appropriations Committee senators present: Heath Mello, Chairperson; Robert Hilkemann, Vice Chairperson; Kate Bolz; Tanya Cook; Bill Kintner; John Kuehn; John Stinner; and Dan Watermeier. Senators absent: Ken Haar. Revenue Committee senators present: Mike Gloor, Chairperson; Paul Schumacher, Vice Chairperson; Lydia Brasch; Burke Harr; Jim Smith; and Kate Sullivan. Senators absent: Al Davis; and Jim Scheer.

SENATOR GLOOR: (Recorder malfunction)...this meeting or this hearing started. I'm Mike Gloor. I'm the senator from District 35, which is Grand Island. I welcome you all to the joint hearing of the Appropriations and Revenue Committee. I happen to be Chair of the Revenue Committee. Senator Mello, to my immediate right, is the Chair of the Appropriations Committee, as if you didn't know. This hearing is required under State Statute 77-5731. The Tax Commissioner is required to appear at the hearing for purposes of presenting the Annual Tax Incentives Report. It's a public hearing, but the testimony is limited to the Tax Commissioner and other employees of the Department of Revenue. Due to the length of the report, although the senators have copies in front of them, we don't have printed copies available for those people within the audience. And with that, I think I'll ask Senator...we'll have the senators introduce themselves. Senator Harr, we can start with you. Would you please introduce yourself.

SENATOR HARR: Senator Burke Harr, Legislative District 8, Omaha.

SENATOR BRASCH: Lydia Brasch, District 16, Cuming County, Burt County, and Washington County.

SENATOR SMITH: Jim Smith, District 14 in Sarpy County.

SENATOR SULLIVAN: Kate Sullivan, Cedar Rapids, District 41.

SENATOR SCHUMACHER: Paul Schumacher, District 22, Platte and parts of Stanton and Colfax County.

SENATOR MELLO: Heath Mello, District 5, south Omaha.

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

SENATOR COOK: Tanya Cook, District 13, northeast Omaha and Douglas County.

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

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

SENATOR KINTNER: Bill Kintner, District 2.

SENATOR GLOOR: And I've seen both Senator Watermeier and Senator Stinner around. I expect they will probably join us in a few minutes. I would as a reminder ask people, please, turn off your cell phones or put them on a silent mode. And for the senators, we'll ask the Commissioner to give an overview. Hold your questions until after he's done his presentation, and then we'll have time for questions of him directly. I think when his staff do presentations we can probably do an interchange a little easier then, but let's let the Commissioner go through his report. And with that, welcome, Commissioner Tony Fulton. And the floor is yours.

TONY FULTON: (Exhibits 1-3) Okay. Thank you, Mr. Chairman. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I'm your Tax Commissioner. We have before you the Nebraska Tax Incentives Annual Report per the statute. Two members of Department of Revenue will be here sharing what I call the meat and potatoes of the report with you. And I will be here and I'll close up and I'll be glad to answer any questions you have in the beginning. Recognizing that this is Friday afternoon and in the interest of time, we'll get started. And I'm going to introduce to you Mary Hugo who is with the Department of Revenue.

SENATOR GLOOR: Thank you, Commissioner. Welcome, Mary.

MARY HUGO: Hello. Good afternoon. I'm Mary Hugo, M-a-r-y H-u-g-o. I work in the compliance area for the Department of Revenue. We're going to go over the provisions of the report. There's kind of two parts to what we're going to discuss this afternoon. We're going to do a general overview of the terms that we're going to use to describe the programs and particularly how Nebraska Advantage works. And there will be a summary of the costs. We'll also then go over the details of some of the reports that were issued in July when we sent out the report. We'll do some terminology, the terms that we're going to use, program costs, and we'll talk about the report. The bills that are included in the Tax Incentive Report were: the Nebraska Advantage Act; Nebraska Advantage Rural Development (Act); Nebraska Advantage Microenterprise (Tax Credit Act); Nebraska Advantage Research and Development (Act); the Employment and Investment Growth Act; the Invest Nebraska Act; and the Quality Jobs Act. In general, when you look at the report, if there's less than three companies represented in any amount, we will not disclose that information because it would be considered confidential. General terminology: We have refundable and nonrefundable credits. On the tax incentive program that has a refundable credit, the company earns the credit and they would receive a payment. If it's a nonrefundable credit, they establish the credits but the credits aren't necessarily the same as cash; they have to have a way to apply the credit against a tax liability. So it makes a difference of whether it's refundable or nonrefundable as whether they can get to all of the credit. If you have a nonrefundable credit program, you also would have in many cases a direct refund. It's a refund of the sales and use taxes paid on the qualified investment. They would earn credits based on investment amounts based on compensation to new employees. Some of the programs you earn credits based on research and development expenditures. The credit can be earned based on a percentage, it could be a certain dollar amount based on an amount of investment, they could be based on a percentage of compensation. The credits are used in different ways. It depends on the program how they can be used and it depends on, in some case, sometimes the tiers within the program, especially within Nebraska Advantage. The credits can be used for the applicants to offset their corporate income tax liability or individual income tax liability, depending on the program. They can distribute the credits to the owners of (inaudible) and they can use it to offset their income tax responsibilities. The credits can be used for a sales and use tax refund, including the state and the local option taxes. You can use the credits under some of the programs to offset withholding taxes that they've withheld from their employees' payroll. A couple tiers in Nebraska Advantage: You can use the credits to get a reimbursement of the real estate taxes that were paid to the county. Many of the provisions of the act have a provision for recapture, which is if you don't maintain the required levels you have to pay back some of your benefits. There's not recapture in all of the provisions. There's not one for R&D, for the livestock modernization part of rural, or for microenterprise. The programs talk about periods of time and they run in this order: attainment; entitlement; and carryover. The attainment period is the time you have to reach level, so if you're supposed to get to a $3 million investment and 30 new FTEs, whether you have five or seven years to get there. The entitlement period is once you've attained your levels that you both earn and use credits. The carryover period would be after you've established all the credits, whether you have a period of time to consume the credits that have been unused thus far. Within the programs, if we're looking for an employment growth or calculating full-time equivalents, so we're counting hours; we're looking at whether there's an increase over the base year, which is the year before you apply, and the current year to see if you have a growth of 10 FTEs or 100 FTEs. So we're counting hours. It makes...if one person worked 20 hours a week for the entire year, there would be half an FTE. If they worked 50 hours a week for the entire year there would be over one FTE. So we're worried about an increase in full-time equivalents. In general, here's a summary of the programs. Now we've talked about refundable and nonrefundable credit programs. The refundable credits relate to Nebraska Advantage Rural Development has a refundable credit; Microenterprise; and Research and Development Act. The other programs have a nonrefundable credit. The dates listed there as to when the program began and when they sunset refers to when they can accept an application. The Nebraska Advantage Act started accepting applications in 2006 and currently is expected to sunset in 2020. Employment and Investment Growth Act is the first one...the oldest one listed on there, started taking applications in 1987 and stopped taking applications in 2005. It's still on the list of an active program because that program had a potential life of 21 years, so if somebody applied in 2005 you're still well within the period of time they're going to be an active filer. Two of the programs, Invest Nebraska Act and the Quality Jobs Act, there's no information disclosed for 2015, because there's not enough participants to keep the information confidential. If we have a nonrefundable program, the cost is the direct refund plus the credits they've used minus the recapture that they've paid. Now in this year, the total cost for 2015 was $136 million. It's the first year, in 2015, where the cost of Nebraska Advantage Act was higher than the Employment and Investment Growth Act.

SENATOR GLOOR: Senator Harr.

SENATOR HARR: I guess, so the Invest Nebraska Act,...

MARY HUGO: Right.

SENATOR HARR: ...you say not too small a number. How many is it?

MARY HUGO: I believe there were only ever 14 applicants and not all...

SENATOR HARR: How many, 14?

MARY HUGO: ...applied in total and not all of them qualified.

SENATOR HARR: How many qualified?

MARY HUGO: I would guess about half. That's what it runs across our programs, but I don't know if I know for sure to tell you out of the 14 how many qualified.

SENATOR HARR: Can you tell us the mean amount that the seven received?

MARY HUGO: I don't know that.

SENATOR HARR: Yeah. I guess I can't...if we're here to justify and be able...if we don't know how much it costs, I mean, you can't...how am I supposed to, as a policymaker, know how to make a decision if you don't give me the facts?

MARY HUGO: You know, in regards to...we've tried to look at all the numbers and release as many as we could. But if we don't have enough participants to limit that, it would be disclosing a value that's for a taxpayer there's not at least two other taxpayers represented. We don't think we can disclose (inaudible)...

SENATOR HARR: I'm not asking that. I'm asking, how am I supposed to make a decision? We do it in Education, where we have small classes and we're able to keep numbers anonymous. I don't understand...I mean, I just...you tell me what I'm supposed to do.

MARY HUGO: I don't have an answer for that. I don't. I mean, maybe the Tax Commissioner has a response, but I don't know how to address that question.

SENATOR HARR: Can you give us a ballpark? Is it $100 million? Is it $5 million? Is it $100,000?

MARY HUGO: It's definitely...you know, the whole total for all the programs is $136 million, so for Invest Nebraska it's not like $100 million. It's probably...and I don't know the total. I'd just be guessing. But I know it's not nearly as big as Nebraska Advantage or the Employment and Investment Growth Act. Invest Nebraska still has applicants that haven't ran through the life of their project.

SENATOR HARR: I couldn't hear what...

SENATOR GLOOR: Could you say that again so we can pick that up?

MARY HUGO: There was a question about whether Invest Nebraska would still have active applicants, because it says the program sunset in 2005. But similar to Employment and Investment Growth Act, if we had an applicant toward the end of the life of the...when we took applications, they could still have an active project, because the life of the program hasn't expired yet. I don't...I honestly don't know the answer to tell you, and I don't believe I could disclose it if I did know it.

SENATOR HARR: I wish I could say that all the time. All right.

SENATOR GLOOR: Senator Schumacher.

SENATOR SCHUMACHER: Just a little follow-up on Senator Harr's questioning. Is the requirement of confidentiality for these programs, is that something imposed by the Legislature? And what useful function does it serve if we're the ones responsible for it?

MARY HUGO: In regards to, like Nebraska Advantage, within--I'm most familiar with the actual words in that statute--it actually lists in the statute that it's confidential unless it's listed that it can be disclosed. And so like when we go through the report, we've looked at each of the reporting requirements and tried to address each of the items that we're supposed to list. But it says the only thing that's not confidential about the application is the name of the applicant, their location, and their estimated size. And what we can report under (Statute 77-)5731, which is the reporting statute, about what...these are the numbers we're supposed to include in the annual report. So it is my understanding that it is, you know, part of the statute and rules that we're to follow.

SENATOR SCHUMACHER: So that's something we could change in the future to say future applicants--don't suppose we can go back--this is public information if you apply for one of these grant programs or these aid programs.

MARY HUGO: And there were changes, like between LB775, which is kind of the predecessor to Nebraska Advantage; there's more information that's public under Nebraska Advantage than there was under LB775, so there were some changes made in the statutory sections as to what could be disclosed.

SENATOR SCHUMACHER: What are the arguments for keeping it confidential?

SENATOR GLOOR: Senator Fulton is now Commissioner Fulton, who's now coming.

TONY FULTON: Yes. I'll answer some of the questions. The...so, it is statutory, so it would be within your purview to make this change. As to the arguments, there are a number of arguments as to why it's kept confidential. I can tell you that the department takes very seriously the statutory charge of confidentiality. So there are plenty of arguments out there and you'll have to find them out I guess. There are a lot of policy arguments...reasons as to why. And legitimately, when businesses apply perhaps an argument would be that a business doesn't want to reveal to a competitor what it is that they're doing within their business. That could be an argument. That's an argument I remember when I was on your side of it. There are numerous others. But statutorily, it's within the purview of the Legislature.

SENATOR SCHUMACHER: Thank you.

TONY FULTON: This may...for Senator Harr's question, if, for instance...and this is an example I'm giving. Since I've been there, I've come to appreciate this confidentiality more. On the legislative side we pass these confidentiality statutes for whatever reason. They become law and then it becomes the executive branch's...we have to execute. For instance, if there are only two applicants in a given program and if there are only two applicants and you reveal how much the program costs, then there's a pretty good idea of what was incurred by a particular applicant, in which case that applicant can be identified, which we are statutorily prohibited from doing. So that could be a reason here.

SENATOR GLOOR: Senator Watermeier had a question first, and then I'll go to Senator Harr.

SENATOR WATERMEIER: Thank you, Chairman. I just would reiterate what Commissioner Fulton is saying. I mean, you have trade secrets, market share, confidentiality in a lot of those things. And I've become more appreciative of the fact of that confidentiality as I've worked with the Commissioner last year too. It is very important. But the question I have is actually for Mary, so I'll wait till you come back up, if you're coming back up, depending if he gives up the seat. Yeah, he's not moving.

SENATOR GLOOR: She'll be back. Senator Harr.

SENATOR HARR: Thanks. Thank you, Mr. Chairman, and I appreciate that. I also appreciate transparency. And there is a question of are you releasing...you're not intentionally releasing it. Others can figure that out. That's what we do in Education all the time, so I'll let that go. But I guess in the interest of transparency, how many recipients were there at the Nebraska Advantage Act of that $85.8 million?

TONY FULTON: That's a Mary question.

SENATOR HARR: Okay. Well, then I, too, will wait like Senator Watermeier.

SENATOR GLOOR: Senator Brasch.

SENATOR BRASCH: Thank you. And thank you, Commissioner Fulton. I just wanted to add...and there's not really a question, but a comment. In '87 I was an employee at the Department of Revenue, as was Len Sloup, and we were one of the last states to initiate a tax incentive program. And so when this was written, there was a lot of research and a lot of competition that we were trying to, at that point, hold several major employers in our state, because some had already started breaking ground in St. Louis and other places. (Nineteen) eighty-six was the great farm recession at that point, where we were looking at some pretty bleak numbers. I think Kawasaki maybe was one of the companies that came in shortly after that has grown tremendously here. But it was a matter of economic survival then. And I know we're questioning today, but...and maybe Mary can establish more on that. But we did not invent economic incentives. They were already in place in every other state.

SENATOR GLOOR: Thank you, Senator Brasch. We'll return to Ms. Hugo.

MARY HUGO: Okay. Senator Watermeier?

SENATOR WATERMEIER: Can I go?

SENATOR GLOOR: You want to...sure.

MARY HUGO: I didn't know if...

SENATOR GLOOR: Now is as good a time as any to ask one.

SENATOR WATERMEIER: I just wanted to finish up. I was just trying to write down what you said. The $136 million was the first time that...

MARY HUGO: Nebraska Advantage...the Nebraska Advantage Act cost more in the year at $85 million than the Employment and Investment Growth Act.

SENATOR WATERMEIER: Okay.

MARY HUGO: In the prior years, the Employment and Investment Growth Act, even though it was an older program, had cost more money within each of the years.

SENATOR WATERMEIER: Okay. Thank you.

SENATOR GLOOR: Senator Harr.

SENATOR HARR: Sorry. Thank you. What is the average...well, how many people...companies received a credit of some sort under the Nebraska Advantage Act?

MARY HUGO: Okay. In the annual report that you would have in front of you, it's page 37. Page 37 is the grand summary of the activity in the Nebraska Advantage. In the first row that says the "Number of Qualifying Projects," would indicate the number of projects that have qualified to receive benefits. So as of the end of 2015 we had 94 projects that had qualified to receive benefits. And like the year before, there were 73. So in 2015, we added 21 more projects.

SENATOR HARR: So how many...so they're qualified, but how many were able to take advantage of it?

MARY HUGO: That would be the ones that we confirmed were able to take advantage of it. So...

SENATOR HARR: So 94 were able to take advantage of it. And what was the median amount that they received in tax credits?

MARY HUGO: I would...I can't really do the math in my head...

SENATOR HARR: I suppose if I took $85 (million) minus...divide by 94 I could figure that out. Okay. And do you know what the largest amount was?

MARY HUGO: I think if you go back through the annual reports, we do specific company information that's reported after those two years' worth of benefits, it's one of the things we'll talk about later. And so if you go back through each of the reports, you would see every two years a certain...you know, if I had a project that qualified, I might be reported in this report in '15 and my activity was reported in '17 and then in '19. And so if you went through them, you could add them up and see which company had the most benefits, you know, for that period of time.

SENATOR HARR: Yeah, just in the last year, because I know sometimes they save them up and use them all in one year. I mean, there are different ways of doing it. I'm just trying to figure out what the largest percentage...well, not largest, but the largest one of that was, if you know. And if you don't know...

MARY HUGO: I don't know who the largest one was in 2000.

SENATOR HARR: I don't want to know who it is. I want to know the amount.

MARY HUGO: Across the program, I know that there's some that...I think it's probably up in the $75 million value across the years. But in 2015 I don't know what the largest number was for any one company.

SENATOR HARR: Okay. Thank you.

SENATOR GLOOR: Go ahead.

MARY HUGO: The next slide is a line graph that shows the difference across the years for Nebraska Advantage Act, the Employment and Investment Growth Act. The blue line is Nebraska Advantage Act and the red line is the Employment and Investment Growth Act. They crossed in 2015. It would be expected that the Nebraska Advantage Act in future years will incur more cost than the Employment and Investment Growth Act. Under LB775 the Employment and

Investment Growth Act, we have a 150 active agreements yet, which was down 175 from 2014, and we would expect it to continue decline. Under that program the total number of applicants we ever had was 942; about half of them qualified, and we have 150 left that are still active.

SENATOR BOLZ: Mr. Chair?

SENATOR GLOOR: Yes. Senator Bolz.

SENATOR BOLZ: Thank you. Are you able to provide that information for additional years out, for 2019, for 2020? Are you able to extrapolate that information?

MARY HUGO: That information we would have received from like Hoa Phu Tran who is going to speak later. It's in the booklet on...if we go to page...probably I think on page 52. That's for Nebraska Advantage. And then there would be a separate page for the Employment and Investment Growth Act. It's page 113.

SENATOR BOLZ: So just from my quick read here, that trend line upward is going to continue upward, as far as we can predict?

MARY HUGO: Correct, for the Employment...

SENATOR BOLZ: Okay. I just...

MARY HUGO: ...for the Nebraska Advantage Act.

SENATOR BOLZ: Yeah. I just think, given our current budget scenarios, it's worth pointing out that in future and out years we can expect that impact. Thank you.

MARY HUGO: Okay. This slide does a comparison of 2015's costs to the prior two years. And I wanted to also comment that the cost that's listed here is in addition to the state cost from the different tax categories. It also includes the local sales and use tax refunds that have been included in these programs. So the 2015 cost is about the same as it was in 2014. Fluctuations could be based on the economy, the filing pattern of the participants, or the size of qualifying companies when they come in. They come in usually as a large number in the first year. We're going to do an overview of Nebraska Advantage. Within the report that you have, the Annual Report, pages 9 through 16--and in the slides the blue numbers reference a page number in your report--pages 9 through 16 are a summary, a narrative, and a listing of the benefits under the various tiers of Nebraska Advantage. But I think at this point in time, I'd you to look at the blue brochure that DED sent out. It looks like this. So the Department of Economic Development puts this together and uses it when they meet with prospects. And so if you look, it lists across the first part of it, the tiers one through six under Nebraska Advantage. And on the far right, it lists the tiers for Nebraska Rural Advantage. There are six tiers, but also within the tiers there's variations of that. Tier two, you can have a tier two large data center or a small data center; tier five you can have a small data center or a large data center. So really there's probably at least ten different options. Under tier five you could have a project for renewable energy that has a different investment level. Investment amounts by tier are listed there and whether it requires job creation. Tier three is an employment-only tier. Tier five is an investment-only tier. The other tiers require some combination of investment and employment. Each of the tiers has a stated list of qualified business activities that you need to participate in. So if you look at just the length of the list, tier one is a shorter list as to what you can be involved in and have a $1 million and ten-FTE project. Tiers two through five have the same qualifying activities, other than a tier two large data center is limited to a data center. A tier six can be generally any type of business other than retail, but the wage requirements for a tier six project are significantly higher. It lists the investment credits. They range from 3 percent to 10 percent to 15 percent for tier six. The wage credits for tiers other than tier six range from 3 percent to 6 percent, depending on how well the new employees are paid. A tier six project offers a 15 percent compensation credit. The sales tax refund in here is what we call the direct refund, a refund of sales and use taxes paid on your qualified property. There is the personal property tax benefits that are offered. You can use credits, list different tax programs depending on the tier, sales and use, income tax withholding. You can use it against reimbursement of real estate taxes under a couple tiers. It lists the time periods for the attainment, the entitlement, and the carryover periods. The attainment period runs from five to seven years. It varies by tier. The entitlement period comes next. There is a limit. The program, in general, is 15 years where LB775, indicated earlier, was 21 years, so it's generally shorter. And there's a different application fee by tier. You have to attain levels before you receive benefits for almost every provision.

SENATOR GLOOR: Senator Harr.

SENATOR HARR: Sorry, I have a question. So of the 94, how many come from each of the six tiers?

MARY HUGO: We would know that in our database, but it's not something that we've accumulated for the report. And so I don't know. I don't have the information with me.

SENATOR HARR: Can you get that information for us?

MARY HUGO: I believe...I'm not sure every tier has three people in it, but otherwise I think we could get that information for you. I don't think it would be confidential because the number in each tier would be more than three and we wouldn't necessarily need to disclose who they're for.

SENATOR HARR: So if you have one that's less than three, you won't give us any, or if you have more than one?

MARY HUGO: We won't give you the information on that tier. We'd just say we wouldn't be able to disclose it.

SENATOR HARR: I just...we're up to redo this act.

MARY HUGO: Right.

SENATOR HARR: And it sure would be nice to know which parts are being taken advantage of, which parts aren't, and then we can drill down a little deeper and try to figure out, okay, why is...let's say tier one. I know a lot of tier ones don't want to do it because they know they're going to get audited and they don't think the cost of the audit is worth the tax break. Okay? I know that. But that's only because I've gone out and talked to them. But if I don't know...you know, if I find out, well, why aren't there a lot of tier threes, because that seems like a great one, that's your creative class people. I've got to be able to figure out how many are taking advantage of each.

MARY HUGO: We would know in our database how many have qualified under each tier. It's the (inaudible).

SENATOR HARR: Okay.

MARY HUGO: But I don't believe that every tier would have at least three.

SENATOR HARR: And then can you give us a correlation of also how much each one tier costs of the $85.8 (million) so that we can see, okay, tier three cost $40 million, tier one cost $1 million. Are we able to get that information, as well, so we can see which ones are being taken advantage of?

MARY HUGO: I think we have that information and could retrieve it from our database.

SENATOR HARR: And you can provide that to us?

MARY HUGO: I believe so.

SENATOR HARR: Okay. Thank you.

TONY FULTON: (Inaudible)...the answer is yes.

SENATOR HARR: Okay. Thank you.

SENATOR GLOOR: Senator Watermeier.

SENATOR WATERMEIER: Thank you, Chairman Gloor. And not a direct question to you, Mary, but just to the group, I just would like to remind everybody that we are in the middle of a performance audit. And I apologize for walking in late, maybe you discussed that, but some of these questions that you are bringing up, I think we can get to some of those as far as break down into tiers. So if you would give me a day's break on it, and we'll be around the rest of the afternoon, but I think we can maybe ask...

SENATOR HARR: Okay. Don't promise I'm not going to be...have them in front of us again.

SENATOR WATERMEIER: Before the session we will.

SENATOR HARR: What's that?

SENATOR WATERMEIER: Before the session we'll have it.

SENATOR HARR: You'll have it, but I won't have them in front of us again.

SENATOR WATERMEIER: Yeah. I understand.

SENATOR HARR: So that's...yeah, sorry. Sorry.

MARY HUGO: Okay?

SENATOR GLOOR: Go ahead.

MARY HUGO: The tax benefits that you earn depend on the tier that you selected, and there's definitely variations among the tiers as to what you would receive. A direct refund, we talked about it briefly before, a refund of the sales and use taxes paid on qualified property. You could also get a direct refund of taxes paid on an aircraft. For a tier one project the direct refund is limited to 15 percent of the sales and use taxes that you've paid, 50 percent of the state tax, and 50 percent of the local option tax. There is a provision within the act to delay the impact of some of the payments of the local option taxes in order to assist the cities. Since the program began, there's a delay that if the city amount is over $25,000 it won't be paid out till the following November 15 and so that the city will have a little notice. In addition, starting for refunds that were paid in 2014, we pay the money to the company, but we don't recover it from the city for at least a year. If the amount of the refund is more than 25 percent of the city's receipts, we stagger it over the second year and recover it a twelfth per month. The investment credit can be earned at 3 percent, 10 percent, or 15 percent, depending on the tier that you've selected. The compensation credit is earned at 3 percent, 4 percent, 5 percent, or 6 percent for the tiers one through four, and the compensation credits are earned at 10 percent for tier six. It's a percentage of the wages paid to the new employees. And we use Medicare wages as the standard for the new applicants. There's a personal property tax exemption. This is really only provisions within LB775 and Nebraska Advantage. It's limited...and within Nebraska Advantage it's limited to certain personal property types: aircraft, computer equipment and peripherals listed in a environmentally controlled area; equipment used to process an agricultural product; and distribution facility equipment. Other than for a tier two LDC and a tier six project, they could claim all property at the project as for property tax exemption. The personal property tax exemption also has some variations; it's one of the few things you could get before you qualify. Any tier that has a property tax exemption could get the aircraft, they could claim it before that they've met levels. And for a tier two LDC project they're allowed to claim their computers as exempt before they've demonstrated that they met the investment employment levels. The use of the credits, you can use it for an income tax liability of the applicant to offset or get a refund of it. You can distribute the credits to your owners if you're a flow-through entity in the same ratio as income. You can use the credits for both investment and compensation credit to get a refund of the other sales and use taxes paid at your project. So if you have a direct refund of the taxes paid on your qualified depreciable property, you could use the credits to get a refund of expense-type items you have at your project. A tier two large data center, a tier five could also receive a refund for taxes paid elsewhere in the state. You can use your investment compensation credit to get a reimbursement of real property taxes, so you pay the taxes to the local government, but it's reimbursed by the state. The compensation credit has a particular way that it can be used that the investment credit cannot. You can use the compensation credit to offset or refund a portion of the taxpayer's income tax withholding liability. So it doesn't affect the employee, you still withhold from the employee as you would. You issue them the W-2 just as you would, but the amount that you would be expected to pay to the state is reduced. You can use your withholding credit...your compensation credits to offset that. I think there's a question.

SENATOR GLOOR: Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Senator Gloor. With reference to that one, the...where you withhold taxes that the employee owes to the state and do it kind of as a trustee and dip into his paycheck and you take a chunk out to withhold to send to the state, it's not your money, it's the employee's, you're acting as a trustee for the state just as if you were collecting sales tax from a customer, how is it, then, that being the state's money, that the state can just say, oh, well, you can keep it? Isn't that an appropriation of some type back to the business? That's not the business's tax. They're just a middle man.

MARY HUGO: Right. And so there is a statutory section within Nebraska Advantage that says it won't impact how the individual can claim the credit. It just indicates that instead of...you can use your credits if you've earned them as a method of payment. And so there is a particular...there was a prior...Invest Nebraska had...I'm sorry, Quality Jobs Act had a provision to offset withholding and it worked differently but this...when Nebraska Advantage passed, it said that you would just...the employee could have all the same treatment as if the program didn't exist and the state would just accept the credits instead of payment of the money.

SENATOR SCHUMACHER: What would the administrative position be if the Supreme Court said that that was an illegal extension of credit of the state, because it is allowing a credit not against your tax, but somebody else's tax? Is that a refund...would we then have to refund that or double bill that business entity or has there been no thought into that?

MARY HUGO: I don't know the answer to that question. You know, if it was determined that it was not appropriate to have that stated in the statute, we'd have to try to fix the problem. But currently, that's what it says and so we apply that rule.

SENATOR SCHUMACHER: Thank you.

MARY HUGO: We're going to review the steps in the process of participating in Nebraska Advantage. You submit an application. The application determines what your base year is for employment as of the year before application. Currently, all applications are based on a calendar year and your base year would be the calendar year before. We, for new applications, don't use their tax year any longer. It determines if the qualified property is property placed in service after your date of application. It determines your required wage level to determine what's a new employee. For most of the tiers, it's 60 percent of Nebraska average. And for tier six, it's actually 150 percent of Nebraska average what's required in order to have...they consider to be a new employee. It also determines required investment levels, because they're indexed each year. And if there's a statutory change in general they've been applied based on date of application, so it would impact that as well. The applications that are submitted have to be approved or denied within 180 days. This 180-day count is tolled for the period of time that the applicant is working on the response to questions that the department may have posed. We review the applications to determine whether the qualified...they're involved in a qualified business. And, in general, that's what takes most of the clarification. We're trying to define a project that has an eligible taxpayer, qualified business activity, and interdependent locations. But probably most questions come on qualified business activities. Also because it differs by tier, we have to have maybe different types of questions on a tier one project than on a tier two project. After the approval the agreement must be mailed in 180 days. After they have applied and they have filed the Form 312N, which is a reporting document to show us the progress toward their investment and employment growth, once they've met their minimum required levels, we would complete an audit. The taxpayer often requests that so they can get started with the program. And we try to review process to make that go better. We issue a qualification letter. The taxpayer, after they receive the qualification letter, can file for refund claims and use the tax credits.

SENATOR COOK: Mr. Chair.

SENATOR GLOOR: Yes. Senator Cook.

SENATOR COOK: Thank you. I have a question and I wanted to wait until you completed your presentation about the steps before I asked it. And it also took me a few minutes to internalize what I thought you told me. And that was in the first slide there on the previous page, page 5 at the top, "Use of Credits," so, "Income tax liability offset or refund, to the extent of the liability." And I'm going to use a simplistic example using my friend, Senator Burke Harr. So Senator Burke Harr and I have one of these qualifying businesses and we own it and we're due one of these tax credits. So he and I could, as owners of the business, split the money for our own pockets and profits or toward our own individual tax liabilities?

MARY HUGO: So if the entity was organized as a partnership or an S corporation where the income flowed through to the owners, then the credits could be...you could elect to distribute part or all of the credits in the same ratio as income. So if each of you received 50 percent of the income and you decided to distribute $10,000 in credits, you would each get $5,000 in credits that you could use against your Nebraska individual income tax return.

SENATOR COOK: Okay, as credits.

MARY HUGO: As credits.

SENATOR COOK: All right. And I'm wondering how...why--and maybe my colleagues can help educate me later--when this was invented how this could have been imagined to be an incentive for job creation, why that needed to be part of it as an incentive of job creation. And maybe this is a model that we got from someplace else. But in my mind, and Burke and I deserve all the money we can earn lawfully and legally and we would do it that way, but I just wonder out loud--and I know my constituents would wonder--how is that...why does that need to be a part of it? Thank you.

MARY HUGO: Okay. I think is where we were. In regards to the application activity under Nebraska Advantage, since 2006 we've received 572 applications. As LB775...as a pattern and what we've seen thus far, of all the projects that applied, about half of them qualify. It takes about two or three years for them to reach their levels. When they make their application, they state they're going to reach this much investment and this much employment. That estimate does not determine what their benefits are, other than it determines what tier they've applied for. The benefits are based on actual performance in regards to how much they actually have invested and how much employment growth they've had. The estimate also is not a limit. If they under guess what their growth is, it's based on what their growth actually is when it's completed. The qualification audit is completed for each project before tax benefits are paid. They're performance based, but determine how much investment and employment growth has occurred, what credits they've earned, what's their first direct refund. There is some property tax exemption benefits, which I mentioned before, which are honored before the qualification audit for an aircraft or tier two LDC project. We're going to shift what we're going to talk about to the actual pages of the annual report, talk about the 2015 Nebraska Tax Incentives Annual Report. We're going to start with Nebraska Advantage Act, the largest program for expenditures in 2015. The statutory provisions of what we're to report are listed in pages 7 and 8 of the report. One of the items that we would list would be the signed agreements. We'll list what...the agreements signed in 2015 and all of the active agreements that still remain. If they withdrew from the program or if they've completed all potential participation in the program, that agreement is off the list. We'll have a summary of the qualified activities for the projects, the benefits they've received--and we'll discuss that slide in a minute--their investment and employment growth. We'll report in total and within the report it's summarized by industry group. If the industry group has fewer than three participants, we don't...we potentially have had ten industry groups that we're looking at reporting. In 2015, we've reported six, because we don't have enough in each of the ten industry groups to report them separately. We also have a summary report that lists the activity of all of the applicants that have signed agreements, so it includes the ones that have qualified but also the ones that are still reporting levels on their way to their qualification. And it provides certain information on the whole population. We have information in the report about project-specific information, so if I qualify...received a qualification letter for a project in 2014 and I received benefits in '14 and '15, so I have two years' worth of benefits, the report would include information that this company received this total amount of benefit. It would include their income tax, sales tax, withholding, benefits, real estate, benefits in total. It does not include any amount for the estimated personal property tax benefits, and it's not net of recapture. So this is the page that we looked at before, page 37 in the report. It's the summary for Nebraska Advantage. It lists the total credits earned, the credits used for each of the years. Two thousand and six through '11 are accumulated, then four separate years and then the total, the total tax credits outstanding, how much investment has been reported, the direct sales and use tax refunds, the amount of recapture paid. The property tax amount listed is the value of the property, not the tax exemption. And it lists the increase in jobs. The first line on the report, we look at (inaudible) in 2015, at that point in time we had 94 companies qualified. The last line of the report in regards to the numbers, the cumulative and the total column, we have 11,898 FTEs reported. The numbers in that line indicate in the year, if we had somebody qualify, it would be what they have as new FTEs from year of application to the year of qualification. In following years it would include the additional increase. So if they had gotten to 40 when they qualified and the next year they got to 47, it would include the 7. So, in summary, there are 310 signed agreements for

Nebraska Advantage. Fifty-nine were signed in 2015. There are 94 qualified projects. The reported investment was $5.9 billion for the projects that we've audited for their investment they recorded thus far. And the reported increase in employment is 11,898 FTEs. The direct refunds were $119 million; total credits earned, $676 million; and used credits, $276 million. The pie chart summarized the benefits by category. We did an estimate of the personal property tax using an average rate of 1.9 percent in order to include the number in the pie chart because otherwise we report value. And so the largest benefits used are the 27 percent for corporate income tax; then the direct refund at 25 percent. Withholding as a benefit was new in Nebraska Advantage; we didn't have it in LB775. And it represents 18 percent of the total.

SENATOR GLOOR: Senator Harr.

SENATOR HARR: Thank you, Mr. Chairman. Are those percentages pretty equal, are they stagnant from year to year, or is there wide variations?

MARY HUGO: I don't think...I think if we looked at last year's report there's not a significant change from last year. I don't think they change much.

SENATOR HARR: Okay. Thank you.

MARY HUGO: We do report information by (inaudible) maintain confidentiality. There has to be at least three of them. We've reported six this year and five last year, so we had a little more detail that we can disclose. Project-specific information under Nebraska Advantage, that information starts on page 47 of the report. And it would list the companies and the amounts that they received in that two-year period of time. Page 41 is actual summary of the 41 projects in total, what their investment growth has been, and then new FTEs for those 41 projects. And the total credits used is what they've used in that two-year period of time. Following that, starting on page 48, it lists the companies that are subject to this year's two-year reporting. It reports the 2014 and '15 benefits in total for each of the projects. The other things that are reported in the annual report would include the personal property tax that's been exempted. It's by type and by county, so we separate the aircraft from the manufacturing equipment by county; it's based on the value that's exempted. We have a page that summarizes the industry groups and which tiers have applied under those industries, the number of them. We'll talk a little more detail about the (inaudible) investment for (inaudible) signed agreements. Hoa Phu Tran will talk about the projected revenue gains in a few minutes. And there's also in the report a comparison of the Nebraska tax incentive programs to other states. On page 46 of the report there is a table that summarizes the information for all the companies that have signed agreements. So if they've qualified or not, if they filed a report in 2015, we use the most recent report we have to include them in this summary. Of the 310 companies with signed agreements, they aren't all required to file because they have a signed agreement in 2015 and they haven't had a tax year completed yet, for an example. We had 253 companies that reported out of the 310; 90 were qualified projects and 163 of them hadn't completed their qualification audit yet, so we used self-reported numbers. And I'm going to turn over the mike for Hoa Phu to talk about the projection.

HOA PHU TRAN: My name is Hoa Phu Tran, H-o-a P-h-u, last name Tran, T-r-a-n, and this is a step that we basically tried to look at the dynamic impact of the tax incentive program. So as you know, tax incentive have basically two different effect on the state tax revenue. The first part is the positive impact, meaning when the company get the tax incentive they will hire new people, increase investment, which lead to economic growth. And so the state will get tax revenue from the increase in those economic activity. On the other hand, you have foregone, basically, some part of the state revenue due to the company that directly taking the benefit of the tax incentive program. To do all this we utilize a dynamic program in which is a computer (inaudible) developed by one of our economists with the collaboration of the University of Nebraska. Basically, it's take a look at the interaction between the firm, the household, the government, how those entity interacted when one company get the benefit of a tax credit. So the first line there is the projected revenue gain and loss. Basically what we do there is we estimate how much revenue would bring in due to the tax credit compared to the baseline. And then we projected how many credit will be used for those ten-year period and then do the different so you see the revenue gain and loss. Basically you see a net loss throughout the horizon of this ten-year analysis. And basically it will continue until the program is ended. And then the second line there, we're basically trying to estimate a number of new job for qualifying businesses. The second line there is basically representing the number of FTE that the company in the tax incentive program reporting to get the credit. It's only for those company in the incentive program, so it basically does not take into account indirect job. So keep in mind that some of those number of job, due to the growth of the economy, would have been created anyway, with or without incentives. So the last line there, which is the estimated new job increase or decrease, is account for the interaction between firm B, which does not get the tax incentive, but due to firm A get incentive, increase investment economic activity derived from there. So you see it's basically a smaller number because the economy would have been...created jobs with or without incentive. So just because the incentive is there, it's not necessarily creating all the jobs that the company is reporting to the department to claim that tax credit. So you see a smaller number on the job increase there (inaudible) increase throughout the time the horizon just because the company get the incentive, meaning lower rate of capital, more investment, more hiring of people, thing like that. Anything?

SENATOR GLOOR: Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Senator Gloor. When you say net job increase, does that mean that what this particular business did, it increased its employees by whatever number, 2,600 in the first tier there? Does that take into account the fact that those...is that brand-new jobs or are those replacement jobs where somebody else has lost an employee? So what does net mean?

HOA PHU TRAN: So the second line, the number 2,674, let's take 2016, for example. The number 2,674, that is basically the number that projected the company will put on their return how many job they created to you to qualify for activity. So it doesn't include a job that company B might have credit as it's not in the incentive program.

SENATOR SCHUMACHER: But if they took a thousand of those 2,600 jobs from existing employees who are employed already, is that subtracted off there then? Is that net jobs, brand-new additional jobs?

HOA PHU TRAN: For that particular year. So the net job, you're talking about the 1,143, 1,143 net job there; that's basically the number of new job for 2016 compared to an economy without incentives. So those are new job, yes. And if I move on to, let's say, '17, that 1,535 number, that basically not including...so basically, what I'm trying to say is, those are one time period, so the year, a one-time period. So in '17, that 1,143 job may or may not exist. Some of them may experience this in '17; some of them may not. But when we look at the net job increase we look at the increase compared to the base without the tax incentive. It's the gap between the economy with incentive and estimated with no incentive.

SENATOR SCHUMACHER: So just so I'm clear, if I open a new business and I employ 100 people, that's brand-new.

HOA PHU TRAN: Yes.

SENATOR SCHUMACHER: But because I opened and I'm such a good competitor the business across the street in the same business, or any other business, closes down and lays off 100 employees, would that show up as a zero net or still as 100 net?

HOA PHU TRAN: It will show up as a zero net on the top row number, but it will show 100 in the second number because you are the company that apply for incentive and the company go under did not apply for incentive. So the top line basically the number...let's say the 1,143 is the one that will net you the zero number. The 2,674, which is reported by the company in the incentive program only, will report 100. Make sense?

SENATOR SCHUMACHER: Okay. So the number that's the important number here is the bottom line, the great line, the 1,100, the 1,500, the net.

HOA PHU TRAN: If I am to read that, yes.

SENATOR SCHUMACHER: Okay. Thank you.

SENATOR GLOOR: Senator Stinner.

SENATOR STINNER: I just have a short question. Is this a cumulative report or is this year by year by year based on what...

HOA PHU TRAN: This is year by year. Every year is a time frame...time period. Yes.

SENATOR STINNER: Do you have a cumulative report (inaudible).

HOA PHU TRAN: You can not add up the cumulative number of job. That's just not going to work, just because the way...that's what I'm trying to say. So 2016, let's say, 1,143; 2017, 1,535. You cannot add up two number and claim that over two year the economy add 2,600 job, just because some of the 1,143 job will have been gone by then, which is included in the 1,535. So it's a business of one time year period and you compare it in the two line; one is the base line, one is the projected.

SENATOR STINNER: But isn't there a continuing economic benefit for creating the 1,143 jobs?

HOA PHU TRAN: There is, but it's diminishing over time if you're keeping everything constant. So let's say 100 new investment in '16, we create X number of job in '17, we will create less than X number of job in '18 and that's...I mean that number tends to diminish. But at the same time, the economy grow. So the only thing you might be able to add is revenue gain and loss. You can add that up over the time frame of the period to see how much money is spending on the program, but the number of job is number of job per time period, because that job can stay or can...gone next year. That answer your question?

SENATOR GLOOR: While he's processing, Senator Schumacher and then Senator Brasch.

SENATOR SCHUMACHER: So the 1,143 jobs that's important now, on the chart we have no way of telling for sure--or do we--whether those jobs would have been created anyway in the economy?

HOA PHU TRAN: The best of our knowledge, that is basically contribute to the incentive program. You can think of it like that, but there's no way to prove it, no.

SENATOR SCHUMACHER: What mechanism does this big computer program use to try to divine between which ones would have been without and which ones...

HOA PHU TRAN: So what we did there is basically if you look at the federal government does--this is just an example--the federal government does a ten-year projection period. Let's say you projected for the next ten year the economy will have this number of job. You have a curve which is the baseline. If you do nothing, that's what happen. Then we estimate the tax credit that being used by this company in the tax incentive program. If you get the tax credit, the way we modeled that is a lower cost of capital. Your rental rate is cheaper. So what happen when you have a cheaper rental rate in economic period? That mean you're going to increase more investment, you're going to hire more people to run your investment, so that's basically pick up the labor demand. So basically you have a curve that is higher than the baseline if you do nothing. So we run two scenario--one is we do nothing, one is we lower the cost of capital by the estimated amount of the tax incentive credit--and then we take the difference.

SENATOR SCHUMACHER: But in this same time period as this is going on, do you calculate in that program the fact that interest rates, the cost of capital have been reduced to very, very historic lows? Is that offset in the program somewhere?

HOA PHU TRAN: We keep that constant in the program. The only change that we change is the cost of capital.

SENATOR SCHUMACHER: And you do calculate in the fact that cost of capital now is substantially less than it was when we were growing up?

HOA PHU TRAN: If you look at the gap, then those become important, because with both scenario we assume the same interest rate, so the only difference there is where the shock we apply to the economy. So let's say the economy assume lower capital, like you say. We assume low capital rental rate in both case, but under incentive we just lowered it for them.

SENATOR SCHUMACHER: Okay. Thank you.

SENATOR MELLO: Thank you, Senator Schumacher. Senator Brasch.

SENATOR BRASCH: Thank you, Senator Mello, and thank you, Mr. Tran. I'm just trying to get more information on how to visualize and approach this. And I know that through our census of the state of Nebraska we have had minimal population growth. The last ten years a little bit and then we're trying to measure economy growth as well, because you've been referring to economic growth, whether the jobs will increase or decrease. Did I hear that correctly? Where have we been economic growth? And am I correct that like 25 percent of all jobs or the state are tied to agriculture or is this a whole different section of...how do you base whether the growth would happen naturally or...is there a formula that you tie one to the other to say...

HOA PHU TRAN: You can't really have a discrete formula for predicting the future. It just does not exist, I mean.

SENATOR BRASCH: You can't...yeah, exactly.

HOA PHU TRAN: So the best you can do is you assume the normal growth rate, just like every model out there is you assume...you look at the history of how thing behave, then you try to build a model that relate all of that together. So that become our baseline model. Just a normal growth rate, let's just say the normal growth rate if you do nothing, we'll grow roughly 3 percent a year. And then to analyze incentive, we put a shock to economy, meaning all this tax revenue will go to company A and B and C, which lower the rate of capital. Then we do the same projection. So this is more of a comparison between projection versus a projection. It's two different scenarios, that's all it is,...

SENATOR BRASCH: Okay.

HOA PHU TRAN: ...because there's no real way to know for sure what the economic growth will be forever. It does not exist.

SENATOR BRASCH: Thank you.

SENATOR MELLO: Thank you, Senator Brasch. Senator Stinner.

SENATOR STINNER: I have just a really simplistic way of looking at this. We're going to spend $43 million...or $43,000, according to your...$43 million...

HOA PHU TRAN: Yes.

SENATOR STINNER: ...as a tax incentive to get us 1,143 jobs net. What's my break even? How long do I have to wait till I get that (inaudible)?

HOA PHU TRAN: That's one way you can look at it, how long will you have that back. I mean, you...just depend on what the...how long that job will last, which we didn't calculate on here. Those 1,143 jobs...

SENATOR STINNER: It will depend on the type of jobs that I've incented to bring in...right?

HOA PHU TRAN: That's correct.

SENATOR STINNER: ...how long they last, and what is the spin-off effect of that. Now on your econometric models,...

HOA PHU TRAN: Yes.

SENATOR STINNER: ...don't you have some kind of way of doing that?

HOA PHU TRAN: Those all carry into the next time period. So once that time period is end, let's say 2016 those are end, those become a new equilibrium. So you move the economy from that one equilibrium, which is 2016 to 2017. And then you measure the difference again. So everything in here is a time frame. Like that's 1,143 job. Maybe 1,000 of it is still in '17 and maybe 800 of it is still in '18 and maybe 19 of it will be in '20. You can't measure that.

SENATOR GLOOR: Senator Harr.

SENATOR HARR: Thank you. What percentage...let me ask you this. We're talking about the quantity of jobs. Let's talk about the quality of jobs. Do you have a way of determining how much these jobs pay, for instance? How many pay above the median income in Nebraska? Do you track that?

HOA PHU TRAN: I know there's an average wage label on...it just average wage to the worker, but I'm not so sure if we track and track the wage of this 1,143 job. I mean, the only way you can do that is to maybe possibly trying to measure personal income and divide it by the increase. But like I said, it's also...you can also draw a conclusion from...on the report it does provide some of the average salary per job that this company are reporting. So you can use those to...

SENATOR HARR: Average of the jobs created or average of the overall?

HOA PHU TRAN: Average of the jobs the company creating...reporting in...for how many FTE they (inaudible).

SENATOR HARR: So what is the overall average?

HOA PHU TRAN: For the job here? I don't have that number in my...

SENATOR HARR: Okay. Can you get us that information, too, so we can see if it's...

HOA PHU TRAN: I believe it's in the book somewhere.

MARY HUGO: This gives it to them by industry.

HOA PHU TRAN: So page 44 and 45 give you the average job per industry.

SENATOR HARR: Okay. And then the 1,143 jobs, that's the jobs created by Nebraska Advantage.

HOA PHU TRAN: That's both direct and indirect job.

SENATOR HARR: What's that?

HOA PHU TRAN: That's both direct and direct job.

SENATOR HARR: Okay. Can you explain that to us?

HOA PHU TRAN: Direct job is if company A gets a credit, they hire...let's say just because of credit they hire three new people. Because you have three new people, you have more machinery, you're going to buy more machinery for that three people; buy three more new computer for the three people to work. The company that build computer, manufacturer, they will be producing three more new computers. To produce that three new computer, they need another person. That new person is the indirect job.

SENATOR HARR: Okay. So that 1,143 is not the number of jobs created by individuals receiving Nebraska Advantage Act credits.

HOA PHU TRAN: That is correct.

SENATOR HARR: Okay. What is the number of jobs created directly for that $43 million?

HOA PHU TRAN: We do not know. And I don't think anybody can say that, because you have no idea on how...we don't have an economy...a Nebraska economy with no incentive. The only way you can do this, some analysis of this, is you get rid of incentive and then you wait another 50 years and then do a comparison of the economy 50 years from now to the one in today.

SENATOR HARR: Well, except that, I see on this...granted, this is the sales side, DED. You're the enforcement, this is the sales, but the sales says, hey, you got to create tier one, $1 million investment, create ten jobs. So don't they have to at some point say, hey, we created the ten jobs?

HOA PHU TRAN: But that ten job will be...part of that ten job will be created with or without the incentive.

SENATOR HARR: Yeah, I agree with that. But my...I guess I'm confused again. So these 1,143 jobs is created by those companies receiving the tax credits or is this, hey, I got a job...

HOA PHU TRAN: It's by the economy. It's by the Nebraska economy with incentive.

SENATOR HARR: Okay. So you can't tell me everyone who...gosh, we're having a...I'm not very articulate here...1,143 jobs. Are those people who...jobs created by companies that received the Nebraska Advantage Act tax credit or does that include the people who have those, I'll call them, secondary jobs of, hey, we have an extra 100 people in town so there's now a need for another gas station? Does that 1,143 include the gas station?

HOA PHU TRAN: Yes.

SENATOR HARR: Okay. And we don't have a requirement to say, how many jobs did you create, company receiving the Nebraska Advantage Act tax credit?

HOA PHU TRAN: That's what the second number is. That's what they say. And you can't prove that they will or will not do it without a tax incentive.

SENATOR HARR: That's the what number is?

HOA PHU TRAN: The second line number, the 2,674. That's how much...

SENATOR HARR: So that's that...1,143 is what those companies receiving the tax credit say they created?

HOA PHU TRAN: No. The 2,674, the second line; 2016, the second line, the 2,674, that's how many job that the company in the incentive program claiming that they're creating. It's what they claim.

SENATOR HARR: Okay. I think I...

HOA PHU TRAN: That's why the third line number is always smaller, because the second line number, some of that job in the second line, which is the estimate new jobs for qualifying tax credit, will be created with or without the tax...with or without incentive.

SENATOR HARR: Okay. All right. I think I understand that. Thank you.

SENATOR GLOOR: Senator Smith, then Senator Brasch.

SENATOR SMITH: Thank you, Senator Gloor. So you're going to follow up on what Senator Harr was asking and in your econometric modeling you probably have a multiplier that you assume that reflects the indirect jobs that are created. Do you have a rough idea of what that multiplier could be?

HOA PHU TRAN: It's...when you talk about multiplier, it's not just single multiplier. It's an elasticity of every industry tied to each other. So basically, if you have...for simplicity, if you consider the state with 10 industry, you will have 100 of them, elasticity coefficient, meaning you have industry one, the elasticity of that between the 10 industry, industry two with the 10, so you end up with a square matrix of 10 by 10, so you have 100 coefficient.

SENATOR SMITH: Correct. Do you think you have an average multiplier that that might be reflective of? Is it 0.1, 0.15, 0.2?

HOA PHU TRAN: To be honest with you, different...if you ask ten different economists, you will get 12 different multipliers.

SENATOR SMITH: Okay. All right. All right.

SENATOR GLOOR: Senator Brasch.

SENATOR BRASCH: We are constantly in a mode as a state to grow jobs, to grow opportunities, and we're going on trade missions and we're looking at trying to bring people here. And so we're also looking at the people here, seeing if we're giving away too much. We're challenging that. I just returned from a meeting that was in Seattle where we were at the corporate office of Amazon and they just opened a big company or branch in Iowa. Facebook I think went to Iowa. Do you cross over or should we be crossing over with Department of Economic Development, seeing why are we taking some losses and gaining companies. Amazon did say it was taxes is what drove them to Iowa, was an informal conversation that...and I guess you're here just to report the facts, but...and we're challenging what we have but yet people are choosing to go elsewhere for some tax incentives we don't have, apparently. Would you agree or disagree? Or do you...is that not part of your umbrella?

HOA PHU TRAN: If you look at the employment number we're doing pretty good, so I don't know. I have no comment.

SENATOR BRASCH: No comment. Okay.

HOA PHU TRAN: No...I don't know why company picking different state. I mean, tax might be important factor and that's up to you to decide.

SENATOR BRASCH: Thank you.

SENATOR GLOOR: Senator Cook.

SENATOR COOK: Thank you, Senator Gloor. And thank you for your testimony. I'm going to do a summary and a review of what the number 1,143 means for my own edification and for conversation at parties over the weekend.

HOA PHU TRAN: Perfect.

SENATOR COOK: What I understand is that you've adjusted between line 2, 2,674, between what a company might aspire to, using your models, to come up with 1,143, and that the 1,143 includes the job with a person sitting, say, in a cubicle. It also includes whoever sold that computer or monitor, even if that company is not a Nebraska-based company. That 1,143 includes both direct and indirect jobs created ostensibly by the incentive. Correct?

HOA PHU TRAN: Correct, but for the Nebraska. Those are increase in the job in Nebraska.

SENATOR COOK: Okay. So that computer monitor was sold by a Nebraska retailer or distributor, not off of Amazon or from another state.

HOA PHU TRAN: The best example you can come up with for that is, let's say a small town get incentive. They open a new factory. People move in. Then you have construction booming.

SENATOR COOK: Okay.

HOA PHU TRAN: Those construction are the indirect job of the tax incentive for that factory.

SENATOR COOK: Okay.

HOA PHU TRAN: Those construction worker do not work for the factory or the company that is receiving incentive.

SENATOR COOK: All right. But they go to restaurants.

HOA PHU TRAN: They go to restaurant.

SENATOR COOK: They go to the lumber yard. They go to...

HOA PHU TRAN: So you have a new restaurant, those employees would count as indirect job.

SENATOR COOK: Yes. They buy school clothes, things like that.

HOA PHU TRAN: Yes. Yes.

SENATOR COOK: Okay. Thank you.

SENATOR GLOOR: Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Senator Gloor. I did the math suggested by Senator Stinner. I took the $43 million and divided it by the 1,143 figure and came up with a little over $37,000 a job. Now that got us 1,143 direct and indirect jobs in the state. In the year 2016, how does that number compare with the number of new jobs overall in the state that we paid nothing extra for? In other words, how much job growth was there in the state in total in 2016 compared to 1,143?

HOA PHU TRAN: The 1,143 is the difference between the incentive versus the nonincentive.

SENATOR SCHUMACHER: In the whole economy?

HOA PHU TRAN: So in this case, you can assume zero job, because we're looking at the difference. So let's say in the economy without incentive it will create about a job, right? This case become with incentive we create roughly 2,143 job. The 1,143 is the difference between that 2,143 minus 1,000.

SENATOR SCHUMACHER: So in the whole Nebraska economy in 2016, total job increase was...how do I read this chart then? I mean, there was only 2,500 or 2,600 jobs...new jobs in Nebraska?

HOA PHU TRAN: Those are by the company in the incentive program. The 2,674 are reported by the roughly 60-some, 70-some companies reported in 2015. That's how many job they put on paper to get the credit.

SENATOR SCHUMACHER: So I think I'm heading down the right rabbit hole here. How many new jobs were created from whatever in Nebraska in the year 2016, and how does that compare to the 1,143 number?

HOA PHU TRAN: We do not...I don't know how many job. I don't have it in front of me. The projection economic growth I have, but the 1,143 is the gap. It's the difference between two scenario, meaning one scenario is with the Nebraska tax credit, the other scenario is no tax credit; 1,143 is the difference between that two scenario.

SENATOR SCHUMACHER: But that might be a 1 percent difference or it might be a 50 percent difference. How many new W-2 forms were filed in the state? That would be a good way to test it.

HOA PHU TRAN: How many W-2 form, I can't...

SENATOR SCHUMACHER: I'm just trying to get a general idea. Is this 1,100 most of our new employment in the state or is it a tiny fraction of our new employment in the state? That's all. If you don't know, you don't know.

HOA PHU TRAN: It's a population...if you assume unemployment rate remain the same, which pretty much it is in Nebraska, and if you assume population growth rate of 0.5 percent, then basically 0.5 percent in the employment number will be your number without the incentive, I suppose. But you can't measure that because we don't have an economy without incentive.

SENATOR SCHUMACHER: But we...my only question was, how many new jobs do we have in 2016 overall?

HOA PHU TRAN: I don't have that.

SENATOR SCHUMACHER: Employment in Nebraska 2016, employment 2015, subtract.

HOA PHU TRAN: I don't have it in front of me.

SENATOR SCHUMACHER: Then probably we're going to have to go.

SENATOR GLOOR: Senator Sullivan.

SENATOR SULLIVAN: Thank you, Senator Gloor. Yes, I realize we're asking you some questions that you either can't compute or don't have the information, but do you, as a department, communicate with some of the other agencies that might have that information that Senator Schumacher is trying to find, like with the Department of Labor?

HOA PHU TRAN: But his question is, how many new job without incentive we create? We just don't know, because we do not have an economy with no incentive.

SENATOR SULLIVAN: I realize that. But to his point, I mean, just how many new jobs did we have, incentives aside?

HOA PHU TRAN: The growth rate...you can look at the growth rate of employment, yes. I don't have that number in front of me. It's in the (inaudible) data set. There it exists. If you just look up the number of how many job created, the increase in employment in Nebraska from '15 to '16, '16 number doesn't exist yet, but when it exists you can do the subtraction--so the growth rate. But again, this is a projection so if you...you know, projection...by the time you make your projection, the projection is pretty much wrong; it's just how wrong.

SENATOR COOK: Exactly.

SENATOR GLOOR: Senator Watermeier, having given you a heads-up that I'd ask you this question, this might be a good opportunity for us to talk about...all of these questions are certainly germane, but we have Performance Audit looking at this information specifically. You might...I'd like you to visit just a little bit about Performance Audit and where we're headed with that.

SENATOR WATERMEIER: I can do it now?

SENATOR GLOOR: Yeah.

SENATOR WATERMEIER: Okay. I appreciate the work that you've done here and this is great. You've got to remember for the body here that they're just the keepers of the dollars. Some of the questions that we're asking them, really they're not looking at the numbers like what we are as far as an analysis. And we're trying to get to that. We're trying to look at what the cost of a job is; how many jobs actually are created that weren't sitting in another business that went bankrupt and stepped across the street, we're trying to get to that. We're trying to use some of the things that are confidential that we can put into a model and put into an analysis where we could come up with some numbers for us next year. But...and Senator Kuehn serves with me on this committee with me as well. It's really complicated and it's hard and we're taking baby steps in this first couple years. It was two years ago that we had LB444 (sic) or the LR444 that actually put it in place to start thinking about the metrics. So we're going to have to be patient in these analyses; we're going to have to be. But if you go to page 52 it might be a little bit better of an analysis of what Dr. Tran is trying to talk about here. And to me, I get it, but every time I hear a different paraphrase of these numbers you can talk yourself into a different way to look at it. I get that. So I think I would be mindful of the fact that the Department of Revenue is the keepers of the money. And they realize it's not their dollars. We created them. The state created them, but in some ways they're not charged with doing the analysis work that we want. We are going to be responsible to get to that analysis. Does that make sense? Maybe Commissioner Fulton would agree or disagree with that, but they're not charged with doing the analysis, but I think they're probably happy that they're not.

SENATOR GLOOR: Well, and I don't want committee members to leave with a sense of frustration thinking that there are a lot of stones that are unturned. There's a responsibility...a statutory responsibility to give us this report, but what happens with that information isn't necessarily something that we have to carry the load ourselves. And that's the reason we have Performance Audit and the reason I wanted Senator Watermeier to talk about the work that they're doing.

SENATOR WATERMEIER: And let me just add, too, what...the Department of Revenue has a modeling program that they do for these projections. That's their program on the executive branch of government. In the last year we've gotten our own modeling program, but it's going to be baby steps. We haven't even turned the switch on the thing yet. We're starting to input it, we're starting to load it, and we're starting to modify it. But it's going to be a big deal to get that modeling program to actually work.

SENATOR GLOOR: Senator Schumacher.

SENATOR SCHUMACHER: Just a point of information. Is the study or the report in which if any three of us have a question we can write it down and then the department has got like 30 days to answer? This is the report? Okay. Thank you.

SENATOR GLOOR: Is that built into the statute? We'll get (inaudible).

SENATOR SCHUMACHER: I thought it was, but I'm not sure.

SENATOR GLOOR: Okay. All right. Moving ahead, if you have anything further.

HOA PHU TRAN: I don't (inaudible) my presentation. If you don't have any questions I'm going to turn it back to Mary.

SENATOR GLOOR: Well, we clearly have a lot of questions but maybe...all right, we'll move on from there.

HOA PHU TRAN: Thank you.

TONY FULTON: I'm going to make an attempt to wrap it up. Mary did have some more to present, but it's short. I'll just say it this way. These are projections, so bear that in mind. And what I've learned through my work with Dr. Tran here, they're projections, they're predictions. So please don't confuse the measurements that we do to satisfy the statutes with respect to incentives to this projection that we've put forward. And that's probably a good way...Senator Watermeier is...they're working on their projecting model. It's math so there are some basic assumptions that are made and every economist out there is going to come up with his own projection. So hopefully Dr. Tran has communicated to you and made clear what it is that's being communicated in these projections. So I think that that could be a consideration. There was another question Senator Schumacher asked. I'm going to paraphrase it. If I'm wrong, then shut me up and otherwise I'll answer. What if the Supreme Court were to find the withholding credit to be unconstitutional as the withheld dollars are actually those of the employee? Is that pretty much what you were asking?

SENATOR SCHUMACHER: Pretty much, yeah.

TONY FULTON: And I want to just blurt out, well, if the Supreme Court found that then we would probably follow the Supreme Court.

SENATOR SCHUMACHER: Would you have to do a reassessment or are those taxes just gone (inaudible)?

TONY FULTON: That I don't know. That would be a question to answer down the road. But we would...yeah, if the Supreme Court found that were unconstitutional, then I will have been given a set of marching orders. So that's something that would have to be taken up then in the legislative branch. And this is an interesting interplay of the branches of government here. And then Senator Schumacher interjects the Supreme Court, too, so.

SENATOR SCHUMACHER: Why not?

TONY FULTON: But yeah, the Performance Audit...I can tell you when I've been here for seven months. January is when I first got into this position and one of the first questions that was before me as the Tax Commissioner is, what information can we share with Senator Watermeier's...with Performance Audit while still upholding the statute? And we spent some time at that. But I think we've accommodated in such a way as to allow the senator and his committee to be able to go forward, because frankly I'd like to know these answers too. I was in your shoes and voted on these things, too, and I remember what I was thinking back then. Well, let's see if what we were thinking back then is actually playing out in reality. So that's part of what's going on with this cooperation between the branches. Okay. Any questions?

SENATOR GLOOR: Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Senator...or Commissioner Fulton. You mentioned that, as all projections, it's based on certain assumptions. Is there...I haven't found it in here, but maybe I just haven't looked in the right spot. What are the assumptions behind this model? I seem to have a vague memory of something in our...what was it, LB424 or whatever that number of that committee from a couple of years ago, that there were some assumptions that sounded like good assumptions except you started thinking about them, then you'd begin to wonder about them. So is there a place, an academic document or something that says these are the ten assumptions that this model assumes?

TONY FULTON: There are certainly academic writings out there on the different assumptions. This is something else that I've watched from...between my time in the Legislature and my time at Department of Revenue. There are a number of assumptions that are made with respect to incentivizing work, because there's...

SENATOR SCHUMACHER: But somehow we plug this into this computer so it ends up spitting out those numbers. Somebody wrote a program or a protocol or something to run through there and said these are the assumptions; we're going to assume this, we're going to assume that, we're going to assume, you know...

TONY FULTON: There's one of the assumptions that came out that I know is projected differently by other economists is that the cost of capital, that capital which is saved by a decreasing cost of capital is reemployed into the economy. There are people who dispute how much of that capital is actually redeployed in the economy, so there could be a percentage of it that's redeployed in the economy. That's one example. There are numbers of others.

SENATOR SCHUMACHER: If those are documented anyplace they'd sure be interesting things to have.

TONY FULTON: Yeah. If you'd like, Dr. Tran can touch on that a little bit better I think.

HOA PHU TRAN: So if you...there's the report is electronically available. On the report there's a link...supposed to be a link to the specification of the TRAIN model that we use; a little bit more detail of that. If you recall two, three years ago I did a presentation on the specific model that we did here, which is called the TRAIN--the Tax Revenue Analysis in Nebraska. What I outlined back then, what the model basically contained, about 1,300 equation mathematically. So everything...there's correlation, there is the identity, the economy is make up of consumption, investment, all the assumption is out there. And we have also a very detailed function for the consumption, investment, population growth, wage rates, all those. I'm not sure if all that is in there, but there's a very detailed documentation of the TRAIN model out there. And I believe the TRAIN model start in the LFO so Mike might have some input on that. The TRAIN model that we have now start out with LFO, so you might have some input from Mike if you ask him, I suppose.

SENATOR SCHUMACHER: I think I dug deep into the cobwebs of my brain and remember one of our discussions in that committee. And one of the assumptions in one of these programs was an unlimited labor force. Is that an assumption in this program?

HOA PHU TRAN: The assumption in this one is you have...there's an assumption on the growth rate of population. There is an assumption on investment increase. You will have an increase in demand for labor. Increase in demand puts up the pressure on wages. So if you pay the wage, then people will come. So there's an upward pressure on the wage.

SENATOR SCHUMACHER: So one of the inherent assumptions that somehow clouds this is that there is an unlimited labor pool out there that these other forces can operate under. And we know that not to be the case.

HOA PHU TRAN: The supply of labor is not always unlimited. There's a demand curve and there's a supply curve. So if the wage rate go up, the supply of labor will increase, but also push back down the demand for labor. So the wage rate function will change when you put this parameter together.

SENATOR SCHUMACHER: But the assumption still is there's somebody out there that a higher wage will attract.

HOA PHU TRAN: Yes.

SENATOR SCHUMACHER: But if there's nobody out there, you could have a million dollars for the job and you couldn't attract them. So (inaudible)...

HOA PHU TRAN: If you pay a million bucks, I have some people will work for you.

SENATOR SCHUMACHER: But if there was nobody there to take the offer...

HOA PHU TRAN: If nobody there, there wouldn't be an economy with no people.

SENATOR SCHUMACHER: I just raise that because if that is buried in the assumptions on this program, that's going to influence all the numbers if you assume there's really an unlimited resource and an ample supply.

HOA PHU TRAN: That is true, but again all this is a projection. And those are based on very principled economic theory which say if you can't find people at 10 bucks, pay them 12 bucks, you will find somebody. And if you don't get 12 buck, you pay them $15. There will be people moving here just because for the wage rate.

SENATOR SCHUMACHER: The manufacturer in Columbus claims they can't find enough welders for what they want...

HOA PHU TRAN: Meaning they don't pay enough yet.

SENATOR GLOOR: Senator Kintner, did you have a question of the commissioner or Dr. Tran?

SENATOR KINTNER: The commissioner.

SENATOR GLOOR: Okay. Any further questions for Dr. Tran? Senator Watermeier, question?

SENATOR WATERMEIER: Yes. I think to kind of reiterate what Senator Schumacher is getting at, and you mentioned it, but if you did raise the wages high enough...it's not theoretically unlimited as we operate at a zero unemployment, but it does take in effect that curve, because if you do pay high enough you will get them to come in. But I do understand your concerns of it, and we had talked about that extensively. And I think I'm satisfied that it's not actually operating in that vacuum.

SENATOR GLOOR: We'll see if we can get the commissioner to come back up.

HOA PHU TRAN: Thank you.

SENATOR GLOOR: Go ahead, Senator Kintner.

SENATOR KINTNER: A year or so ago in my district an accountant came to me and bent my ear for a good five minutes about how difficult it was for a small client, once they apply for it, to go through the process to actually get their credits. Since you've been the director, have you actually...I mean, I know that we make...put some requirements and we created the program and you're implementing it. I'm assuming you get some flexibility on how you make sure those requirements are met. Have you looked at how it's being done, if there's easier, less intrusive ways that companies, especially on the small end, can qualify? Have you gone through and gave an audit of that?

TONY FULTON: The short answer is yes. I heard this...I'm echoing what you have heard, Senator. I heard it when I was a Senator. I've heard it outside. I've watched it. So we are looking for efficiencies. We're implementing efficiencies. We've got ideas about how we can make ourselves more efficient. That being said, the complexities that we are charged with are statutory. And so I'm going to take an opportunity here to...I read through the transcript of how this went down last year. I read through the transcript of this presentation last year; you can strike that colloquialism from the record. And there was a question that was being asked that was very difficult to answer and that is, how...what suggestions do you have to make this better? I'm going to tell you that this needs to be simplified. This is something that I'm asking the Legislature to look into. The Governor, you probably read the Governor's (inaudible). I look into this with Department of Economic Development, so we're working on this right now. But I can just tell you that, as the Tax Commissioner, this is...we are doing our job. This is the statute that we're enforcing and it's very complex. You've seen it. I mean, the way we present this to people in our documents to prospective companies in our documents, we have a number of tiers and we have a number of...it's complex and it needs to be simplified.

SENATOR KINTNER: That's good to hear. Thank you.

TONY FULTON: If I could take just a moment, this privilege. There...this...you can well imagine the amount of work that goes into preparing this. And while some of this is...was used from last year, there was a great deal of time and effort that went into this of Dr. Tran and Mary, and there are a number of other employees. Something I didn't fully appreciate--and this is why I'm asking for the privilege--when I was a senator, when we appropriated these dollars or passed these bills, is the people who are actually charged with making it all work. And I've got to tell you, since I've been there, the folks in the Department of Revenue, they're impressive people. And this type of presentation doesn't happen lightly, so yet another reason I implore you to let's simplify this law, make it more understandable to those who would use it, to the people of Nebraska who ultimately fund it, and to those of us who are charged with executing it.

SENATOR GLOOR: Good words. And our appreciation to you and the staff for the work that went into today's report. Senator Harr.

SENATOR HARR: Which leaves the question, are you properly staffed to get to implement this program?

TONY FULTON: I can answer that. Yes, we are. I will say that we're spread pretty thin though. The number that...well, I won't...that will be for the Appropriations Committee.

SENATOR HARR: Okay.

SENATOR GLOOR: Seeing no further questions and having met the requirements of 77-5731, that will end this meeting. Thanks again to you and your staff for your work. Thank you to the senators for taking time today to do this.