[]

The Committee on Appropriations and the Committee on Revenue met at met at 10:00 a.m. on Thursday, August 27, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of a briefing on the Annual Tax Incentive Report by the Nebraska Department of Revenue. Appropriations Committee senators present: Heath Mello, Chairperson; Robert Hilkemann, Vice Chairperson; Kate Bolz; Ken Haar; Bill Kintner; John Kuehn; John Stinner; and Dan Watermeier. Senators absent: None. Revenue Committee senators present: Mike Gloor, Chairperson; Paul Schumacher, Vice Chairperson; Lydia Brasch; Al Davis; Burke Harr; Jim Scheer; Jim Smith; and Kate Sullivan. Senators absent: None.

SENATOR GLOOR: We're going to get started. I'm Senator Mike Gloor and I'm the Chair of the Revenue Committee and will sort of chair this joint hearing of both the Appropriations and Revenue Committee today. According to state statute 77-5731, Tax Commissioner, in this case the acting Tax Commissioner, shall submit a Annual Tax Incentive Report to the Legislature no later than July 15 of each year. That's been submitted and sent out and you all will have had copies of that sent to you. Department of Revenue shall appear at a joint hearing of the Appropriations and Revenue Committees to present the Annual Tax Incentive Report on or before September 1, and that's the reason we're here today. With that, I'm going to ask the senators to introduce themselves. Senator Bolz, could we start with you, please?

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

SENATOR WATERMEIER: Senator Dan Watermeier, District 1 in southeast Nebraska.

SENATOR SULLIVAN: Kate Sullivan of Cedar Rapids, representing District 41, a nine-county area in central Nebraska.

SENATOR KINTNER: Bill Kintner, Legislative District 2, which is south Sarpy, Cass, and a little bit of Otoe County.

SENATOR SCHUMACHER: Paul Schumacher from Columbus, representing District 22.

SENATOR GLOOR: Committee Clerk Krissa Delka.

SENATOR MELLO: Heath Mello, District 5, south Omaha and parts of midtown.

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

SENATOR SCHEER: Jim Scheer, District 19, Madison County, a little bit of Stanton County. And my tee time is at 10:45 so we'll try to move this along. (Laughter)

SENATOR HAAR: Ken Haar, District 21, which is northwest Lincoln and northwest Lancaster County.

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

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

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

SENATOR GLOOR: Senator Davis.

SENATOR DAVIS: Al Davis, District 43, which is north-central and western Nebraska.

SENATOR GLOOR: And since Senator Scheer has another meeting shortly to follow, he is an aficionado of what's called speed golf I believe. (Laughter) Our pages today are Brandon and Ryan, who are here to help us and you, and we appreciate their help today. We'll probably have one more attendee, Senator Harr, who will be here shortly. I would have the general ground rules abbreviated today and that is, you know, you think you've got your cell phone turned off but you probably don't. So check it and make sure you have your cell phone turned off. And as a reminder, this is invited testimony only. There is not public testimony for today's hearing. And with that, we would ask Len Sloup, acting Commissioner, to give us the briefing if you would, please. [REPORT]

LEONARD SLOUP: (Exhibits 1) Good morning. I am Leonard J. Sloup, L-e-o-n-a-r-d J. S-l-o-u-p, acting Tax Commissioner. I would also like to introduce Mary Hugo, the incentives manager for tax incentives in the department and a subject matter expert on incentives; Hoa Phu Tran, our Revenue economist manager; and Deepa Buss, our communications manager. The basis for our appearing here is that the department shall, on or before September 1 of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present this report. Today we'll provide information on tax incentives for 2014 which include an overview of terminology, summary of program costs, and detailed information on the Nebraska Advantage Act, which includes summary of qualified project activity, approved benefits by industry, and project-specific tax incentives information and other required reporting. The incentive acts that will be covered today at the Nebraska Advantage Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Employment and Investment Growth Act--LB775, Invest Nebraska--LB620, and Quality Jobs Act--LB829. We have provided each of you with a copy of this presentation. It is based on the 2014 annual incentives report that we issued in July of 2015, which has also been provided to you. Before Mary begins her testimony on the data portion of this testimony, just wanted to kind of bring you up to speed on a project that we're embarking on in the incentives area and that basically is the revenue incentives qualification process review and is intended to improve that process. The revenue incentives qualification audit team is being chartered to use a customer-centered versus a producer-centered strategy to review the department's tax incentive qualification audit process. This is not intended to study the current tax incentives qualification requirements or the benefits that are being awarded but, rather, the qualification audit process that each applicant must go through and satisfactorily complete before they are able to obtain benefits. The methodology we use is based on a process improvement procedure called creating a customer-centered culture, leadership and quality, innovation and speed. The department has used this methodology in the past to study and implement changes to its sales and use tax education programs as well as the paper tax return processing system. Through internal and external focus groups and very specifically developed questions, the team will gather end user needs, desired attributes, and program suggestions. The feedback will then be prioritized, researched to form recommendations for the department to review and implement if found to be beneficial. We look at this as basically a process of continued process improvement. We will take questions as we go along, but I think we're on a fairly short or tight time frame and we do have 30-plus slides that Mary will be presenting. But again, thank you for your attention. Mary. [REPORT]

MARY HUGO: (Exhibits 2 and 3) Good morning. I'm Mary Hugo. We're going to start out with first some terminology that will be used, some general description about the various incentives that will be discussed this morning. First of all like a direct refund is a refund of the sales and use taxes paid on qualified property. Purchases generally have to be at the project as defined. There's a couple tiers under Nebraska Advantage where there would be refunds outside the project description. You don't have to use credits. So for a program that has a nonrefundable credit, you can use the credits for certain things we'll talk about, but, in addition, you can get a direct refund of sales and use taxes and it does not impact your credit balance. [REPORT]

SENATOR GLOOR: Yeah. Thank you, Mary. [REPORT]

MARY HUGO: So should I start over? [REPORT]

SENATOR GLOOR: I think you're okay. We're fine. [REPORT]

MARY HUGO: Okay. In regards to credits earned, the credits under the programs are earned either on investment, on compensation to new employees, in some cases on research expenditures. One of the programs you get a credit if you have an increase in repair expenses. Compensation across the programs are defined differently. In some cases it's wages subject to withholding, in some cases wages subject to Medicare tax. In one of the programs, it allows for the gross wages plus the health insurance costs of the employer. Certain other programs have refundable credits and other are nonrefundable credits. So under a refundable credit program, if you...we've determined that you've established a credit, you can request a payment on your income tax return and receive payment for the full value of the credit. On a nonrefundable credit program, you have to have a liability to apply those credits against for those credits to be of worth to you. The credits can be used for a number of things. Very consistently, the credits can be applied against your Nebraska income tax liability or against the sales and use tax liability. If the credits are earned by an applicant that is a flow-through entity, they have a manner in which they can distribute the credits to the owners of the flow-through entity in the same ratio as income. And at the level of the recipient of the distributed credits, the credits are always nonrefundable. So they have to be applied against the liability to be of benefit. The sales and use tax, and income tax manner of using credits is common across the programs. It's less common but occurs where you can use your credits to offset a portion of Nebraska payroll withholding taxes, and in certain instance to offset the real estate taxes paid to the local governments. The programs provide, in general, most of them provide for a recapture provision, not all of them. Not all tiers or levels are subject to it. But recapture in general means that you're expected to maintain a level of investment employment for a period of time and if you don't maintain those levels you lose a portion of your benefits, your availability of new benefits, and you have recapture or repayment of some of the prior benefits that you've already received. And for personal property tax exemption, it's an impact to the local government. The exemption applies across programs to certain types of property, maybe manufacturing equipment or aircraft. In a couple of the tiers under Nebraska Advantage, it can apply to all the property at the project. There are different time periods that will be used for terminology. The attainment period is the period for the program where you have from when you apply a certain number of years you have to reach the levels. The entitlement period is the year that you met the levels and the other years where you can earn additional credits and use credits during that life of that program. You also have a carryover period where you've established all the credits that you can but you have a period of time to try to consume the rest of the credits that you've built up. So if we go to slide 6, it's a summary of the program costs that were reported in the 2014 annual report. It lists each of the seven programs that were reported on. It indicates when the programs began, the first time they accepted applications, the oldest of which being the Employment and Investment Growth Act which it would be on page...it started in 1987 and it ceased taking applications in 2005. There are a couple other programs, Invest Nebraska and Quality Jobs, that no longer take new applications. But the Nebraska Advantage programs are all still active. The cost that's reported on this slide for a nonrefundable credit program, like the Employment and Investment Growth Act or Nebraska Advantage, it's the credits that are used, the direct refunds of sales and use taxes paid, minus the recapture that's been recovered from the companies. For a refundable tax program, it's the amount of money that we've paid out. There's a couple programs where we can't disclosure the information because we need to have enough people reporting in that year to protect the confidential information of the taxpayer. So if we have less than three filers that have reported, we're not able to report that information. So that would be true of a couple of the programs. And as you noted, in 2014 the program that cost the most was the Employment and Investment Growth Act. Even though the Nebraska Advantage Act has been around for a number of years, still in 2014 the expenditure on the Employment and Investment Growth Act was higher than Nebraska Advantage. The next slide will show you a line graph of how Nebraska Advantage has increased over the years and LB775 has decreased, even though there's been some up and downs in that pattern. And it will indicate we will still expect in 2015 that Nebraska Advantage would then cost more than the Employment and Investment Growth Act. At this point in time in the year that still seems likely, but we don't have...you know, we still have several months and a lot of the income tax filings come in, in the fall. If we go to the next slide, there's a comparison of the total costs, expenditures, for a three-year period of time for the seven programs, and the total is provided at the bottom of the slide in your presentation. And it would indicate that 2014 was less than 2013, and 2013 was higher than 2012. In regards to why the fluctuation would occur, there's a few possible reasons probable. Some impact by the economy, definitely that would impact what the corporate income tax liability is of the companies, would impact how much sales tax we're looking to get refunded because of how much they're spending and, therefore, incurring for sales tax. And it impacts that number of companies that attain levels, that they would be able to reach their levels. It also is impacted by the size of the newly qualified company. If you have a company that has, you know, qualified after three or four years and has a lot of investment, that first refund of the sales and use taxes paid on that qualified property in that attainment period is sometimes a very large number and has an impact on the numbers for the year. The numbers would also be impacted by the filing patterns of the companies. In some cases, they get a little behind and then they play catch up and we have filings for more than one year that all hit within a single calendar year. In regards to Nebraska Advantage Act, there's a summary of the Nebraska Advantage Act that's issued in the annual report on pages 9 through 16, and it's a narrative and it's a pretty good description of the program that you could use as a reference. This morning we're going to talk about the program a little bit by using the Department of Economic Development's brochure. It's the color brochure that would have been handed out to you this morning. If you open it up to the center, across the first two pages of it are the tiers of Nebraska Advantage in the blue and the first one in the yellow, and the last two columns represent the information for Nebraska Advantage Rural Development. As you look across the information that's there, it provides investment levels for the tiers. There's a lot of different numbers--$1 million, $37 million, $111 million--depending on the tier. It also talks about job creation. That varies by tier: 10 or 100 or 30. And job creation for this program is based on full-time equivalents. It's not a count of how many head...the head count, the number of bodies there. But we sum up the hours that have been worked and divide by 40, times the number of weeks in the year. So if you had two people that worked 20 hours a week for the year, they'd together be one FTE. If you had a person that worked 50 hours a week for the entire year, they'd be 1.2 FTEs, if I did the math right. If you had somebody that worked exactly half of the year, they would be .5 an FTE for that year. It also provides in here a list of the qualified businesses. If you look across, the depth of the list is not the same across the tiers. Tier one has a shorter list of qualified business activities. Tier six, even though it looks shorter, is broadly defined that it's any activity other than retail. It would list the investment credit level, that you'd earn the credit at 3 percent, maybe 10 percent, maybe 15 percent; would list the wage credits of 3 to 6 percent, depending on the tier; would indicate when they get a direct sales tax refund of 100 percent or 50 percent for tier one. Under "Other," it lists the property tax benefits if they're available for the tier. In some of the tiers, like tier two, you could have property tax benefits if you're a datacenter but not for other types of programs. It indicates the manner in which you can use credits. Sales tax, income tax withholding are common ways. In addition to that, for a tier two large datacenter and a tier six, you can use it to offset some of the real estate taxes that are paid. It also lists the attainment period, which range from five years to seven years. The entitlement period would range from potentially six years, depending, on a tier one, up to ten years for a tier six. So this brochure is used by the Department of Economic Development to help prospects get the basics of the program down so they can make a decision. In addition, on the back of the brochure it has some information about the Nebraska Advantage Research and Development Act as well as the Microenterprise Tax Credit Act. In regards to additional information on Nebraska Advantage tax benefits, the direct refund is of sales and use taxes for both the state and the local taxes paid. Within Nebraska Advantage, there are two types of delay in regards to impacting the local option taxes. The first one that was in the act is if you have a claim for over $25,000 in local option tax we would not refund it to the company until 6 up to 18 months later, depending on when they filed within the year. It would be held till November 15. In the meantime, we have a requirement to report it to the local communities to expect that that refund would be impacting their receipts. In addition, LB209 was passed and started in 2014 where under LB775 and Nebraska Advantage, for all cities other than Lincoln and Omaha, nonmetro cities, we delay the recovery of the tax from the cities. So we still pay the company in that case the refund of the state and the city tax. They're not waiting. But the state doesn't recover the money from the city for at least a year. And if that refund exceeds 25 percent of the receipts for that city, it's staggered over the next year after that. The investment credit depends on the tier that you're in, and compensation credits of 3 (percent), 4 (percent), 5 (percent), or 6 percent relate to tiers one through four. And again the percentage varies depending on how well you pay your employees, what the average wage of your new employees is. For personal property tax, it's generally limited to certain types of property, like distribution facility equipment and aircraft and manufacturing and computer systems. But it does...it has a broader definition for tier two, large datacenter in tier six. It's one of the only things that there's certain limited benefits for property tax that you can receive before you've attained your minimum levels. You can get an exemption on your aircraft before you've reached your $10 million and 100 level. And for a tier two large datacenter, they can elect to start taking their property tax benefits before they've reached their investment and employment levels. The credits can be used...now again, Nebraska Advantage is a nonrefundable credit program, so the credits themselves are not cash. They have to have a place, a liability, to apply them against. So the investment and the compensation credits can be used to offset the income tax liability of the applicant. If the applicant is a flow-through entity, they can distribute the credits and they can be applied against the income tax liability of the owners of the flow-through entity. You can get a refund of sales and use taxes paid. You can have a reimbursement of the real property taxes. In this case, the local governments still receive their payments but the refund is made out of credits and the refund is based...is paid from the state. In addition to that, the compensation credit has a...yes. [REPORT]

SENATOR SULLIVAN: Is there a prioritization on those credits or is it just a matter of the user just deciding which one works best for them? [REPORT]

MARY HUGO: In regards to that, the compensation credits can be used for withholding in addition to other types of benefits. We would have all other benefits going toward the investment credit first and the compensation credit would be reserved for them to use against withholding. Within the two pools of credits, you use the oldest credits first. [REPORT]

SENATOR SULLIVAN: Thank you. [REPORT]

MARY HUGO: Okay. So the compensation credit can be used to offset the withholding that's related to the new employees. It may not be all of their withholding taxes, but if their employment...the compensation increased by 15 percent, they could offset 15 percent of their withholding taxes. The steps in the process used for Nebraska Advantage is you submit an application. The application determines what your base year is for computing employment growth as the year prior to application. It determines what investment counts toward reaching a threshold for property placed in service after the date of your application. And so we review the application in a certain number of days and one of the first things we tell them is whether they have an application date or if they forgot to submit one of the items in the application process. We have a requirement to approve or deny the application within 180 days. The 180 days are tolled for the time that the applicant is working on a response to questions. After we have it approved or denied, we must mail it within 180 days and usually we're mailing it out at the same time as the approval. You file your Form 312N. After that, they're expected to file and show us what progress they have toward investment and employment levels. Once they attain the investment and employment levels, they request an audit. We determine whether they've met the levels and we issue them a qualification letter. With that qualification letter and via the first audit, they start filing for benefits. The first claim would probably be for the direct refund that's been reviewed during the audit of the sales and use taxes paid during that time period. In some cases, it's one of the largest claims, single claims we have. In application activity, from the application date to the time that they qualify may take a period of time for a number of reasons. First of all, they have five to seven years in order to attain levels and it may take them a while to get there. On average, it takes them two or three years to attain levels. There's definitely the full range of the seven years in which projects attain levels, but the most common is that they reach it in two or three years. We did some review of the first year of applications under Nebraska Advantage, the 2006 applications, to see if they were running about the pattern we had seen under LB775. And it's very close to the same that about half the companies...that half of the projects applied for qualify. And the other half of them withdraw or they don't attain levels. The qualification audit is completed before the benefits are received by the applicant, other than some limited property tax benefits which I've mentioned. So it's performance based. We ensure that they've attained levels. We provide some discussion through the qualification audit process so they know how to file in the future. And as the Tax Commissioner indicated, we're going to look for ways to make that an easier process, whether it's better education or different processes to be used as we go through the review process. The qualification audit would determine that they've attained levels; of the years that are audited, how many credits, both investment and compensation credits, they have; and what their first direct refund is. So now we're going to go on to the information that's disclosed within the annual report, which I believe you have a copy of. The Nebraska revenue (sic) statute 77-5731 lists what information is to be reported. So we address each of those items within the annual report and this morning we're going to highlight some of you for you. The list of signed agreements that would be in the report, we're going to talk about the summary of active or qualified projects, how much they have for investment and employment and FTE growth. We're going to provide the summary of investment and employment by industry, and some information on project-specific reporting. In regards to this slide, which is actually page 34, which might be easier for you to see in your materials, 34 of the annual report, this summary of qualified project activity includes the information for the companies that we've issued a qualification on it for and have confirmed that they've met levels. It shows you information by year for 2011 through '14, and a cumulative number, 2008 (sic--2006) through '10 are cumulated just for space. It indicates the credits that are earned. Well, that's not going to work. Will indicate the credits that are earned. It will indicate the credits that are used, outstanding; the amount of qualified investment; direct refund, what they've received for that; the recapture; the amount of property exempted for property tax purposes; and on...and also the number of FTEs that have been reported as growth. Now a couple things on this slide: As you look across the top line where it gives you the list of qualified companies, it would indicate that in 2013, as of that point, we had 57 companies that we qualified. The 73 includes the 57, so by the end of 2014 we have a total of 73 projects that have qualified. The bottom line of information on the FTEs would indicate in 2013 we have 2,199 FTEs reported for that year. And in addition to that, in 2014 for the new companies that qualified, they have new FTEs that were reported for the first time for their attainment period, and the people that had already been included in 2013 that showed new growth or decline. If the people that have qualified in 2013 said they increased by ten more or they had a decrease of two, that change would also be included in the number that's reported in 2014's column. Yeah. [REPORT]

SENATOR GLOOR: Question. [REPORT]

SENATOR SCHEER: A quick question: You talk about projects and companies. Can a company have several projects that would be qualified, or is a company just qualified and they can have as many different projects going? [REPORT]

MARY HUGO: You could have a company that would have more than one project. A common type of example would be if they had activities in two different communities in Nebraska. So if I pick on the towns that I've lived in, they had an activity in Lindsay and in Lincoln. They could have a project that was defined to be their activity in Lindsay and a different project defined to be their activity in Lincoln. [REPORT]

SENATOR SCHEER: And both also would have to qualify independently. [REPORT]

MARY HUGO: They would have to, in that case, if they had two projects, they'd have to qualify separately. And if they could define their projects, because they were the same taxpayer, and they had interdependence between those, there is a possibility they could define both those locations into a single project. But a single company could have more than one project going on. [REPORT]

SENATOR SCHEER: So the number of qualified projects does not necessarily indicate the number of businesses that would be participating, could be different. [REPORT]

MARY HUGO: Not necessarily. [REPORT]

SENATOR SCHEER: Okay. Thank you. [REPORT]

MARY HUGO: Okay. [REPORT]

SENATOR GLOOR: Senator Harr. [REPORT]

SENATOR HARR: How do you define interdependence? Do you do it or does the applicant? [REPORT]

MARY HUGO: It's probably a combination of that in that the statute provides some guidelines on interdependence in regards to what an administrative headquarters is deemed to be interdependent and then it looks for significant ties between the locations. And when the applicant files, there's a portion of the application where they indicate why they believe they're interdependent. It's reviewed within the department. And if we have questions, we would do other correspondence with the taxpayer. [REPORT]

SENATOR HARR: So what is interdependence then? [REPORT]

MARY HUGO: We're looking for a significant flow of information or product between locations. So an easier one would be, you know, I made a piece part here and I shipped it over here and had it painted and I shipped it over here for storage, that the product actually moved. In other cases we'd have maybe a financial institution that would gather depositor information about transactions and it would go to their datacenter. It's accumulated where all the different bank branches would be accumulated together at one center. We'd look at that as being interdependent. But I don't know if I can come up with just like a pure out definition of interdependence. I'm not sure I've answered your question. [REPORT]

SENATOR HARR: Yeah. Well, that's the issue. That's why I can't figure it out. [REPORT]

MARY HUGO: I don't... [REPORT]

SENATOR HARR: I mean if you can't come up with them how are we supposed to know, or an applicant for certainty, what is interdependence? [REPORT]

MARY HUGO: And I think we do correspondence with that even before they apply through the process as to how are they...how is one reliant on the other and does one location operate autonomously from the other. And in regards to if that's not the case, how much interaction is there? Now if it's just...doesn't hardly ever happen, that makes a difference as to whether it's on a recurring basis. [REPORT]

SENATOR HARR: Yeah, because we provide oversight and I guess we always want to know what should we be looking for or not looking for. And I'm still a little unclear what we should to say, yes, yeah, there's probably good interdependence, and that, well, they're stretching it, because sometimes they want interdependence so they can get the total amounts and then sometimes it might be the same situation. Might run into a situation where, no, we want a separate project for the Lindsay and the one for Lincoln. So how do we know to say, okay, this situation is, this situation isn't? [REPORT]

MARY HUGO: In regards to the situation where they would want them to be separate and they would select parts of it, they've been allowed to do that. Really, the manner in which we look at interdependence is if they want to bring them both together. [REPORT]

SENATOR HARR: So again, what am I looking for? [REPORT]

MARY HUGO: I don't know that I have a better answer for you than that... [REPORT]

SENATOR HARR: Okay. Okay. [REPORT]

MARY HUGO: ...and so we'd have to... [REPORT]

SENATOR HARR: Well, I think that answers it, yeah. [REPORT]

SENATOR GLOOR: Senator Haar, did you have a question? [REPORT]

SENATOR HAAR: Yes. Thank you. This is some real simple math. Tell me if it's too simple. Total tax credit earned, $592 million; jobs created, 10,523. So that's about $55,000 or $60,000 per FTE created, right? [REPORT]

MARY HUGO: And that's what the math...I didn't recalculate the math but I'm sure you had that right. [REPORT]

SENATOR HAAR: But I mean that would be one way to look at this. [REPORT]

MARY HUGO: I think it, you know, and I don't know that I'm in a position to make a judgment, but I think there's been different discussions about how to compute what the jobs cost and even some guidance that the Performance Audit Committee is going to study it more, how we should gather metrics and determine that. And so for what we've determined in the end report, we have no reporting section that we report the cost per job or anything that...so we haven't computed it. [REPORT]

SENATOR HAAR: So it depends on which figures we pick and...yeah. [REPORT]

MARY HUGO: And I think it would make a difference which factors you wanted to consider. And maybe there's more than one way to compute it. [REPORT]

SENATOR HAAR: Okay. Thank you. [REPORT]

SENATOR GLOOR: Senator Brasch, I believe you had a question. [REPORT]

SENATOR BRASCH: Thank you, Chairman Gloor. And I want to thank you both for your detail here. And this may be directed towards Mr. Sloup here. My recollection is that in 1987 when LB775 was passed, we were one of the last states to create a tax incentive program. Historically, the reason was some of our major employers were being enticed by other states which offered free, free this, free that, free. And so it was created with careful guidelines, knowing what the competition around us was. And that job market remains highly...or business market, highly competitive, or what we've created is based on what other states have offered. That's my understanding. And at one point every state had a tax incentive and I think just recently one state may have pulled their tax incentives. Are we still in the market? I know we are performance based where some other states aren't even performance based. They just have opened...you know, we're open for business, come to. [REPORT]

LEONARD SLOUP: Right. I mean we have very rigid requirements that the department operates under to basically administer this program. And as you can tell by looking at these slides that we're presenting, it is a very complex program. We get audited on this program through the EPA, and a very stringent audit I might add, and we come out very well on those audits. But, yeah, we're competitive. I think the programs, they're still growing. They're robust right now. If you look at first eight months of 2014 and you compare that to the first eight months in 2015, we had 18 applications from 1/01/14 to 8/31 or, well, almost the end of August, 18 applications. That was in 2014; 2015, we are at 40 applications for that same period. So it's a very robust response to our plans. And some...and I am not an expert on the investment incentive credit acts as Mary is, but our program is highly defined by performance measures that are audited. [REPORT]

SENATOR BRASCH: Correct. And some other states I understand are not. [REPORT]

LEONARD SLOUP: There are a variety of measures out there. [REPORT]

SENATOR BRASCH: Right. [REPORT]

LEONARD SLOUP: I think we do, in our annual reports, link to the various states and some of what their incentive programs are. [REPORT]

SENATOR BRASCH: And that's been important to Nebraska. But we're not unique in any other sense of jobs incentive programs, correct, and ours are based on historic facts, other programs? Or are we like a Unicameral and something is like none other? [REPORT]

LEONARD SLOUP: Well, and we, again, we administer the program based upon the regulations. What we're looking at, and we do that in all the department, we are consistently looking for process improvements to make it easier for the taxpayer and, frankly, make it easier for us to administer these complex programs. And that's, frankly, very difficult with programs of this size, magnitude, and complexity. But I can assure you, and I've been in the department a long time, that we are administering those programs as professionally as we can. I feel very comfortable about that. [REPORT]

SENATOR BRASCH: Absolutely. I commend you for that. Just curious if anything has changed over the years to make us question, which we are at this point. [REPORT]

LEONARD SLOUP: Well, not that's a topic of this report, I guess. [REPORT]

SENATOR BRASCH: Uh-huh. Uh-huh. [REPORT]

LEONARD SLOUP: This is basically history right now. [REPORT]

SENATOR BRASCH: Procedural. [REPORT]

LEONARD SLOUP: Right. [REPORT]

SENATOR BRASCH: Very good. Thank you. [REPORT]

SENATOR GLOOR: Senator... [REPORT]

SENATOR BRASCH: No other questions. [REPORT]

SENATOR GLOOR: Thank you. Senator Bolz. [REPORT]

SENATOR BOLZ: Thank you. I just want to build on what Senator Brasch was asking about. We are in a competitive global economy and I can imagine that there might be increased pressure on companies, increased challenges in attaining their levels that they have promised or reasons that they might want to go to another state because they think they're more competitive there. So I'm curious about your experience with the recapture provisions of the legislation and I guess specifically are you seeing any trends in recapture and are the statutes sufficient to recapture when that's necessary and appropriate? [REPORT]

MARY HUGO: In regards to recapture, you know, we've had a longer track record with LB775 so I know that probably about 25 percent of the projects had at least a single year that was in recapture if they had a seven-year entitlement period. And so it does definitely, in the years that the economy is not as good, we have more companies that have years of recapture within their seven years. In regards to enforcement, it's a matter of, you know, doing the filings and maintenance follow-up and review of what they file in conjunction with other filings with the state to make sure it's reasonable as well as (inaudible) field on it. So I think the provisions are there in regards to what the recapture is and I, as far as I know, I think, you know, we're applying them and it's having an impact on when they're not actually maintaining their minimum levels. Now in regards to...I'm not sure if I have totally addressed your question. [REPORT]

SENATOR BOLZ: The other part of the question was, and perhaps it's too soon to tell, but are you seeing any trends or are you seeing any increase in need for recapture in...for projects now? [REPORT]

MARY HUGO: In regards to the percentages, the trend is kind of the same in Nebraska Advantage. And so at this point in time I don't know that I see anything where we need other assistance in order to get to the recapture. [REPORT]

SENATOR BOLZ: Thank you. [REPORT]

SENATOR GLOOR: Senator Haar. [REPORT]

SENATOR HAAR: One other question: When, you know, hopefully, there's going to be sales tax paid on Internet sales and so on, so if a Nebraska company gets a sales tax refund, is that just on sales tax paid in Nebraska or would it be paid anywhere in the United States? [REPORT]

MARY HUGO: No. In regards to the sales tax refunds that are honored under here would be based on the purchases that they made. But if they made an Internet access, you know, if they made a purchase at the project by buying it over the Internet and paying tax on it, they could potentially get a refund of that. But it would only refund Nebraska taxes paid and local option taxes paid for items that are used at the project. [REPORT]

SENATOR HAAR: Okay. Thank you. [REPORT]

SENATOR GLOOR: Senator Davis. [REPORT]

SENATOR DAVIS: Thank you, Senator Gloor. You talk about the property tax benefits, one of which is the personal property value exempted. Is that...is it possible for us to see that done by county? [REPORT]

MARY HUGO: I think it is. Hold on a second. So I think if you go to page 35 of the annual report, maybe this isn't what you're asking for, but it gives information by year and then the types of property that's exempted. Well, there's ag or aircraft or computer systems or distribution facility. And then within that, each of the, you know, the sections for that type of property, it would list the counties. [REPORT]

SENATOR DAVIS: Okay. Great. That's what I was looking for. Thank you. [REPORT]

SENATOR GLOOR: When we...Senator Kintner. [REPORT]

SENATOR KINTNER: Thank you, Chairman Gloor. You know, I don't like complicated anything. Sometimes we have to be complicated. So I'm not going to ask you how well it's working or anything. I will ask the chamber there. They're out. They're on the front lines recruiting. I'll let them tell me that. How much effort in time and manpower does it take to implement this on your end compared to other things you do? I guess that is the best (inaudible). [REPORT]

LEONARD SLOUP: (Inaudible.) [REPORT]

MARY HUGO: I work in the incentive group that's in Lincoln and there's like ten people in my group, okay? And we work across the various number of incentives that we'll talk about this morning. There is an audit manager in the Omaha office that primarily spends her time on incentives and probably...there's one auditor that's probably almost exclusively and a couple that spends (inaudible). So probably two FTEs and auditors and so that would be the people that spend pretty much their full effort on incentives. [REPORT]

LEONARD SLOUP: So we're saying about 12 FTEs on that, in that neighborhood. [REPORT]

SENATOR KINTNER: Compared to other things you do, how much time is this effort as compared to some of the other things you do? [REPORT]

LEONARD SLOUP: Well, I'll tell you, the duties that we have and the tax programs that we administer are so wide, so broad and detailed, we in our personnel systems, you know, we break out the cost then for those programs. With 12 FTEs, that is...it's not a huge component of our cost for personnel, but it is probably one of the areas where that personnel cost is devoted to really, really highly trained staff that, you know, are professional accountants, attorneys and that, that are able to administer this program to the detail that we have to. So 12 people out of our staff size of 400-some, not huge but the impact is huge. [REPORT]

MARY HUGO: I didn't add in the attorneys. (Inaudible) an attorney. [REPORT]

LEONARD SLOUP: Yeah, right. I mean we're in the 13 range. [REPORT]

SENATOR KINTNER: If the Legislature asked you for ways to streamline it, make it easier to administer, still accomplish what we want to accomplish obviously, could you come up with those recommendations or... [REPORT]

LEONARD SLOUP: Well,... [REPORT]

SENATOR KINTNER: ...and because you're doing the work? So could you tell us how it could be done more efficiently, easier, things along that line? [REPORT]

LEONARD SLOUP: I guess I would address that from two standpoints. One, I think the new administration has been very emphasized or putting a large emphasis on process improvement in state government, which I think is...I don't how you argue with that. Secondarily, we in the Department of Revenue have always spent a lot of time on process improvement because these programs are growing. Our staff levels do not grow accordingly and so we have to find the best way to do that. I guess I feel very fortunate that the people in the Department of Revenue still maintain a customer-centered culture, that we want to provide a product and do it the best way that we can for a taxpayer. I don't think any of us have ever lost that caring to make sure that we...that we're easy to work with. You may have people complain about us, there's no doubt about that, because sometimes we have to take very difficult enforcement actions. But those enforcement actions are only taken after those individuals or companies have had every opportunity to rectify that, so. And that's, as I mentioned in my opening, that's why we're setting up that process review team for qualification on a process. Truthfully, we get some concerns and issues once in a while from companies on that. I get concerns from our staff: Is there a better way to do this; is there a more efficient way? So we have two customers for that project. That's the business community and us. And what we want to try to do is make that process as speedy as we can, as accurate as we can, and, frankly, as innovative as we can. Technology will be a big part of that. But when you see the number of applications that are coming in here, you know, at this rate, I've got a static number of people. So what we have to do is every time look at that incoming work flow to see do we have to pull somebody from another area of the department to address that growth. So it's...we're constantly fine-tuning how we assign resources to these tax programs. [REPORT]

SENATOR KINTNER: Has anyone ever asked you, from your point of view, the best way to accomplish what we're trying to accomplish? [REPORT]

LEONARD SLOUP: Well, I don't know of that specifically. I've met with a number of corporations lately. They give me what their concerns are. And again, I meet with our staff; they tell me what our concerns are. I think they expect us to create a process that's as good of a process as can be offered. So I don't know if I'm answering your question, Senator, or not, but we're going to try... [REPORT]

SENATOR KINTNER: I guess I'm trying to figure out is there anything that we can do to make the process easier to help you do your job, to give you whatever tools you need, whatever authority you need to move the deck chairs around a little bit? [REPORT]

LEONARD SLOUP: I guess what I would see in response to that, in response to these review groups that were going, I would presume at some point we're going to have suggestions to say, well, why don't you statutorily change this requirement. If that is the case and one of the recommendations to come out of those review teams then we would bring that forward, because that would be a potentially key piece to making this good. I mean it's not a bad process now. We want to make it better. But we would have a way to do that, yes. [REPORT]

SENATOR KINTNER: Well, I've eaten up enough time. Thank you very much for coming here today. Appreciate it. [REPORT]

LEONARD SLOUP: Sure. [REPORT]

SENATOR GLOOR: Thank you, Senator Kintner. I'm going to ask the senators to bear with me but we were scheduled from 10:00 to 11:00. That's not an absolute and I'll certainly be here past 11:00 to continue chairing. But why don't we meet the requirement of allowing you to finish up your report and then, once that's done, we can return to questions again. So knowing senators may have scheduled other appointments after 11:00, this at least gives us the opportunity to get through the report. Thank you. [REPORT]

MARY HUGO: Let's pass that one. Let's move past that slide I think. It would give you a cumulative summary for Nebraska Advantage 2014. We have 206...276 signed agreements, that means that are still active. So if they withdrew from the program, they're not listed in that 276. The statutory reporting requirement, the median days to complete it from date of application to date signed, is 360. It's down a little bit from 2013. And the summary numbers are there that we would have seen on the other slide. The next slide provides a pie chart to display the benefits that are paid and the proportion of each benefit to the total. In regards to the personal property tax portion of the pie that's listed there, we did an estimate of the property tax, the tax impact, because the value of the property tax is provided in the report and we used an average from the statewide average to provide an estimate of property tax amount to use for the pie chart. So as you see, the percentages by benefit vary. If you go to page...the next slide, we provide information by industry group. So page 37 of the report would give you the ten industry groups that we're hoping to report at this point in time, and it's the same industry groups as we used for LB775. But at this point in time, separate information is not reported for each industry group because we do not have enough filers in each of the ten industry groups to protect confidentiality. We need to have three filers in each group in order to report them separately. So at this point in time, you'd see similar industries reported together. And as more companies qualify, we will separate those numbers out as we go forward. In regards to page 42 through 44 of the incentive report, you'll have information on project-specific tax incentives. So it would name the company, the location of the project, and the payments that have been made to them in a two-year period of time. Each...when a company has qualified and has the year of qualification and the year after, they've had two years' worth of benefits, those numbers are cumulated and reported as a single number, a single amount that they used in total for corporate income tax benefits, sales tax refunds, withholding. It does not include a value for the property tax exemption and does not reflect any recapture. And a company would then be included every second year as they have additional two years' worth of benefits. The other reporting items that are included in the report, we have the personal property tax value exempted, which we referenced earlier; the industry sectors in there that list out the tiers there on page 37; a summary of investment employment by all applicants with signed agreements, which we'll talk a little bit more on the next slide. We have projected revenue gains and losses for tax years 2015 through '25. There's a comparison of the Nebraska tax incentive programs to similar incentives in other states, so the senator that asked about that before, there's several pages there and would provide you links to the other sources of information about those benefits. If we go to the next slide, there's a requirement to report the summary of activity by applicants with signed agreements. So this is not...it includes the companies that have qualified that were in the earlier table we discussed, but it also includes information from the companies that are working towards getting to levels. If they applied for a $3 million and 30 project and they are still at 20 FTEs, they're showing progress toward that, those numbers would be included in this table. So the 276 companies with signed agreements, 225 of them reported in 2014. Seventy-two of them were qualified projects. One of the qualified projects has already been completed so it had no reporting requirement. The other 153 would be included in here based on what they've self-reported. We've done no audit work on it and it potentially could be an estimate. And they may not reach levels in the long-run, but all those numbers are cumulated in here. So this table will give you different numbers in the first one, but it would include companies that haven't met levels yet. The next reporting requirement is on the projected revenue gains and losses, and I'm going to ask Hoa Phu Tran, the director of research for Department of Revenue, to address that. [REPORT]

HOA PHU TRAN: Well, good morning. Name is Hoa Phu Tran, H-o-a P-h-u, last name Tran, T-r-a-n. And in order to come up with the projected revenue gain and loss for this particular program, we used a dynamic analysis of economic impact on the program. So basically when you have an incentive program, there will be two effects on the state revenue. You have a positive effect on state revenue to begin with as you give (inaudible) company all the tax credit. The capital investment becomes cheaper. They will have more incentive to invest, hire people. And then those people will bring in more income tax, sales tax, personal income, things like that. So that's the positive effect to Nebraska net revenue due to enhanced economic growth due to the act. The second impact is the negative impact, because once we give this company the credit, basically we have foregone part of our tax revenue to get all those investment, all those employees. So in analyzing this we use basically the TRAIN, which is an economic model that include all the economic agents in the economy--the household, the firm, government, rest of the world--how they interact with each other with this new shock into the economy system, which is the incentive impact. So the first row here you have the revenue gain and loss, which is primarily a loss, which is computed by the new revenue generated by new economic activity. Subtract off all the credit that's been paid out to the company that received the credit. So you can see the number of applicants increasing until roughly 2023. That is because in 2017 the program is supposed to be sunset. So if you want to extend this or whatever the case may be, this number...let's say if the program extended, this number will continue to increase and it will not peak out in 2013 (sic--2023). The only reason it's peaked out in the loss is because this has a sunset, so no new applications after 2017. The second line is the estimated new jobs for qualified tax credits. This is basically the number...you can think of this as an accounting number so that the company used this number to qualify a project in terms of their level. Okay? Keep in mind that some of the jobs will be created regardless of incentive. You can have the incentive or not, meaning the economy will grow, population will increase. Therefore, the company will invest and hire people to meet the demand of their public (inaudible) customer (inaudible). So the last row is the estimated net job increase. This is where we analyze in the shock of the incentive, which is a smaller number than the second row, and it's supposed to be because, again, some of the jobs in the second row is created regardless of the incentive. So the third row is the net impact on jobs, on FTE or jobs, that the incentive created. And it does include both the direct and indirect impact on the jobs, meaning company A may be in an incentive program which has received tax credit, they increase investment, hiring, increased hiring and things (inaudible). But also company B, where they supply the material to company A, might not be in an incentive but they also increase in jobs in company B, which is the indirect job. Both are all in that (inaudible). And again, the number will start to increase (inaudible) with when the program getting bigger, and then it peaks out in a later year. And that is all I have on the revenue projection. No question, I will turn it back to Mary. [REPORT]

SENATOR GLOOR: There may be questions eventually, but let's go ahead and finish up on the remainder of the report. [REPORT]

HOA PHU TRAN: All right. [REPORT]

SENATOR GLOOR: And then if we need to, Mr. Tran, we'll call you back up. [REPORT]

HOA PHU TRAN: Thank you. [REPORT]

SENATOR GLOOR: Thank you. [REPORT]

MARY HUGO: Okay. So we're going to move to the incentive programs that are included in the report that are other than the Nebraska Advantage Act. First of all, we'll go to Nebraska Advantage Rural Development Act. It's a program with fixed funds, so this is one of the programs where we have an allocation and we accept applications based on first in, first out until all the funds are requested. In regards to it's a refundable tax credit program so if you earn a credit under this program, you would receive a payment. It does have recapture provisions. There's different levels, a level one or level two that in this program it varies about location. You have to be in a county of a certain small enough size or in a census tract that is distressed. Other than livestock modernization can occur in any county. This program cumulatively is reported, as reported on page 74, as the cumulative cost is $5.9 million in 2000 and...and the credits that once their refundable credit is distributed to the recipient, it's a nonrefundable credit. Let's go to Nebraska Advantage Microenterprise Tax Credit Program. It also has fixed funds. There's $2 million available a year. We accept the applications on a first in, first out basis. The application is filed by somebody who's actively involved in a microbusiness and in this case the FTE number is based on making sure they're small enough. They have to have five or fewer FTEs at the time of application. The applicant can earn a $10,000 refundable credit. That's a lifetime limit for the applicant and their related parties. So far for Nebraska Advantage Microenterprise $11.2 million has been spent cumulatively. Nebraska Advantage Research and Development Act is a credit that's based on a percentage of the R&D expenditures in Nebraska. It's a refundable credit. It piggybacks off the federal tax credit. It's 15 percent of the federal credit unless the activity occurs on the site of a campus or college in Nebraska. And therefore, at that point in time, the credit is at 35 percent. This program, if...you can participate in this program for 21 years and earn the credit. And thus far, we've spent $20.5 million on the Research and Development Program. The older incentive programs, and we use that term for programs that are no longer accepting new applications, they're still active because they, like Nebraska Advantage...I'm sorry, the Employment and Investment Growth Act can last 21 years, that project. Invest Nebraska potentially can last 24 years. So even though they're not accepting new applications, they're still active and have some participants. However, as they get older, like in the LB775 report, you'll see that we're consolidating industries because we're getting...we don't have enough filers in each of the ten industries to report those separately anymore. And in some cases, we don't...a couple of the programs we don't have enough filers in total to disclose because we don't have three filers. The Employment and Investment Growth Act, LB775, has a lot of similarities to LB312. It did have fewer types of projects. There weren't six tiers. You had fewer ways to use credits. There was no use for withholding or for real estate taxes. It was also still a nonrefundable tax credit program where you could use credits against income tax, sales and use tax. You did get a direct refund of the tax paid on qualified property. It lasts for 21 years and, as I stated earlier, still in 2014 it had the highest cost of the programs that we're monitoring. On the next page, it would show you the totals for LB775. There are still 173 remaining signed agreements, so they would come off the list if they've completed their project, they have no credits left, or...and had no activity. In total, we've reported 459 projects have qualified under this program. The qualified activity reported thus far is $25 billion and $90,000 (sic) in FTE since 1987. [REPORT]

LEONARD SLOUP: (Inaudible) 20. [REPORT]

MARY HUGO: Twenty-five billion. What did I say? [REPORT]

LEONARD SLOUP: Million. [REPORT]

MARY HUGO: Million? Okay. It's, sorry, $25 billion and 90,800 FTEs. In addition to that, the two other older programs that we have some activity in is the Invest Nebraska Act and the Quality Jobs Act. Invest Nebraska is also a nonrefundable tax credit program where you earned a wage benefit credit that you could, some cases, use to offset withholding. And depending on the election you made, you could only use it to offset income tax. Quality Jobs Act was older than that. It started before Invest Nebraska. It had a 14-year life, but we're still on the tail with some filers as you earned a wage benefit credit to offset withholding and you had some benefits that could be used against Nebraska income tax. There's too few programs...too few companies reporting in these programs to have specific information included in the report. That's my last slide. [REPORT]

SENATOR GLOOR: Thank you for the reports. Are there questions from senators? Senator Harr. [REPORT]

SENATOR HARR: I just want to kind of follow up on--first of all, thank you, Mr. Chairman, and thank you for coming--on Senator Kintner's last line of questioning. I guess my question is you're on the front line. You talk to businesses more than we do. Do you see a greater movement for having an effective and a marginal rate closer to each other, by that what I mean is elimination of some of the incentive programs but having more certainty with a lower effective rate? Or are they happy with the current structure as we have it? [REPORT]

LEONARD SLOUP: Not to evade the question, but that is a difficult one for me to answer because I don't have the answer for you at this point. What I have started doing is meeting with a number of corporations and businesses that operate in this venue and getting their input on what they feel are some of the best options for this program. As far as the tax rate structure changes and marginal rates, I'm not going to sit here and try to, you know, give you an answer that may not be correct totally. That is still being developed, I'm sure. [REPORT]

SENATOR HARR: Well, but you're going through the process of, right now, figuring out how to streamline the procedure and process. Is that correct? [REPORT]

LEONARD SLOUP: Yes. [REPORT]

SENATOR HARR: And you have 12 full-time employees, I think you said. [REPORT]

LEONARD SLOUP: In that neighborhood, right. It fluctuates. [REPORT]

SENATOR HARR: More or less, and I won't hold you to that number. [REPORT]

LEONARD SLOUP: Sure. [REPORT]

SENATOR HARR: But I guess the question is, maybe the better question, that is based on your experience, based on your knowledge, realizing that you aren't a policymaker but that you do inform the policymakers, what would you recommend? What do you think is the better policy? Is it lowering the effective or the effective rates with their closer, marginal effective or closer, i.e., elimination of some of these incentives, or the current process? [REPORT]

LEONARD SLOUP: Right. And again, not to duck the question, but I don't have enough information at this point to be able to answer that question accurately. [REPORT]

SENATOR HARR: Well, what's your job title? [REPORT]

LEONARD SLOUP: Acting Tax Commissioner. [REPORT]

SENATOR HARR: Okay. [REPORT]

LEONARD SLOUP: That information...the information that we're talking about here is tax policy and, in often cases, long-term tax policy. It's something that has to be formulated and gathered through a lot of different information processes. [REPORT]

SENATOR HARR: If you... [REPORT]

LEONARD SLOUP: So I have not...I have not made that determination. [REPORT]

SENATOR HARR: Okay. So the follow-up question would be, and not that you're ducking it, but how are we supposed to make policy decisions if a Tax Commissioner can't inform us on what to do? [REPORT]

LEONARD SLOUP: I guess in what regard, Senator? What are you wanting? [REPORT]

SENATOR HARR: I'm asking for your opinion, based on your experience and your knowledge, which do you feel is more important, and I...because you are the Tax Commissioner, you are the front line, you understand more than we do. And I'm just trying to get a feel, a lay for the land. And if you can't provide the answer, my question is, where can I go to find that answer? [REPORT]

LEONARD SLOUP: We...my answer to that would be after consultation with our staff and the information that we're currently gathering on these tax programs, at the point that that information is gathered and that I can make a sound recommendation to you, I would. [REPORT]

SENATOR HARR: And you will do that for me? [REPORT]

LEONARD SLOUP: Yes, if that's what's requested. [REPORT]

SENATOR HARR: Yeah. [REPORT]

LEONARD SLOUP: Yeah. [REPORT]

SENATOR HARR: I would, yeah. [REPORT]

LEONARD SLOUP: But again, I'm not going to sit here and try to, you know, again, not to duck the question, but what...very frankly, the way I operate and the way our department operates is I'm not going to try to put information out that is not verified, not certified, and not backed by the administration and the taxpayers. So I need to get a very comfortable understanding of what is happening out there before I even make that determination. [REPORT]

SENATOR HARR: And you understand where we're coming from too. [REPORT]

LEONARD SLOUP: Oh, definitely. [REPORT]

SENATOR HARR: Okay. Yeah, and I'm not looking. Yeah, I'm just trying to find ways to get new information to follow up on what Senator Kintner was asking, what is the best way to do this. [REPORT]

LEONARD SLOUP: Well, and that's what we're doing in those studies, frankly, is through the focus groups that will include not only internal staff but external staff, economic development and so forth, so we can get that 360-degree view of what is the wants or requirements or the things that we need to do to grow this state. [REPORT]

SENATOR HARR: Yeah. Okay. [REPORT]

LEONARD SLOUP: So it's a dynamic situation that we are taking very seriously. [REPORT]

SENATOR HARR: Right. Yeah. Okay. I appreciate that. Thank you for your candor. [REPORT]

LEONARD SLOUP: Thank you for the question. [REPORT]

SENATOR GLOOR: Senator Stinner, you had a question. [REPORT]

SENATOR STINNER: Yeah, I just need a little bit of help. What I'm interested in looking at was what type of jobs we're creating and what industries and what wage. And on page 114 you have, and this is the Employment and Investment Growth Act, you have it broken down--nondurable, durable, and nonmanufacturing--and you show the number of new FTEs that were created and what the wage was: the average wage $35,800, and then $50,000 in the durables. And on the next page over, is 115, I think is a cumulation, I believe, of the industries and what their average wage was. So I can compare this $33,364 in the durable and look at the $50,000 that we actually are attracting through this particular Employment and Investment Growth Act. Is that accurate to look at it that way? [REPORT]

MARY HUGO: In 2000, on page 114, it's... [REPORT]

SENATOR STINNER: Yes. Tell me how I interpret all of this. [REPORT]

MARY HUGO: On page 114 is the information for that specific year based on who has filed and who has positive FTE numbers, what we have reported as an average wage, and we compute an average for the industry. And the table on page 115 is for the same industries but cumulative from the sense when the program started. [REPORT]

SENATOR STINNER: Okay. Okay. [REPORT]

SENATOR BRASCH: They're all broken out in here. [REPORT]

SENATOR STINNER: Yeah, I got all of that. I was just trying to pull it all together so I can say I've created a $50,000... [REPORT]

MARY HUGO: So one is for the year and one... [REPORT]

SENATOR STINNER: ...this program is creating $50,000-jobs compared to the industry average of $35,000. [REPORT]

MARY HUGO: Certain industries are paying better than other industries, yeah. [REPORT]

SENATOR STINNER: Okay. [REPORT]

SENATOR GLOOR: Senator Brasch and then Senator Watermeier. [REPORT]

SENATOR BRASCH: Thank you, Chairman Gloor. And I wanted to, acting Director Sloup, I said Mr. previously but... [REPORT]

LEONARD SLOUP: I answer to a lot of different (inaudible). [REPORT]

SENATOR BRASCH: And at one point, as you know, I'm familiar with the Revenue Department. I spent over a decade there a long time ago. But there were...how many divisions are within Revenue? [REPORT]

LEONARD SLOUP: Well, basically, we have six main areas. The leadership team basically is comprised of six individuals and that's how the department is broken out. There is the Tax Commissioner and then we have the deputy commissioner who also has, under his or her auspices, tax policy and taxpayer assistance and research. Then we have the compliance area. Compliance area handles legal, incentives, collections, and tax discovery. Then we have operations and administrative services. That is the position that I was in--well, I'm still in it--prior to assuming this. And in that position, I have basically the information technology group, human resources, budgeting and finance, facilities management, and all the tax return processing operations, both paper and electronic. We also have the lottery underneath us, and the lottery operates--sort of segues to us--but they operate as the Lottery Division and as the Charitable Gaming Division. So we have basically six areas that all the different areas are concentrated into. [REPORT]

SENATOR BRASCH: And these new or new jobs created businesses, they pass through several...potentially, several of the divisions depending on what their nature of business is. [REPORT]

LEONARD SLOUP: Right. [REPORT]

SENATOR BRASCH: And so there are several pass-throughs before... [REPORT]

LEONARD SLOUP: I could touch on a little bit of process here,... [REPORT]

SENATOR BRASCH: Okay. [REPORT]

LEONARD SLOUP: ...and I don't want to... [REPORT]

SENATOR BRASCH: No. [REPORT]

LEONARD SLOUP: ...bore you, but when we go through and analyze best practices, you have to look at it in two ways. So when we're administering this program, we want to do it with as few people as we can. But we also want to do it in a manner that provides for checks and balances so that some individual in one area cannot make decisions that are not reviewable by another area. So we try to have it done by the fewest number of people we can, but with an adequate review process in place to keep any individual from having the ability to make a decision that's not questioned or a process that's not questioned. So incentives, we have, basically, we have analytical staff, we have IT staff involved. The IT requirements for this program are monstrous, frankly. And as you sat through and listed all this, the data that we capture, analyze, and use in our decisions, it's mammoth. And I'm not underestimating that or under exaggerating that. We have the IT areas. You have audit staff that's auditing companies. You have the collection staff in some cases where you get into a situation where we're in recapture. Sometimes people that owe us money don't necessarily give it to us voluntarily and we have to use an enforcement staff. So there are four to five different areas that are involved in administering this program with each of those individuals having different skill sets that would relate to what that function is. So again, it's...again, we look for the fewest number of people but we do it with the understanding that we're also reviewing it so it's done properly. [REPORT]

SENATOR BRASCH: And I have no doubt. I know you watch pennies, you follow the money. The diligence is there. My concern, if there is any, is our competitiveness to attract more businesses, particularly in the rural areas, you know, for jobs expansion. Do you interact with Economic Development? Is there...it's not solely focused through the Revenue Department. Am I correct? Do you... [REPORT]

MARY HUGO: We would interact with the Department of Economic Development, either in the cases they make phone calls to have us participate on conference calls with their clients. They might have a question. The Business Development people may have questions for us themselves. We'd have periodic meetings and whether it's in our office or, you know, at the company's offices, both. So we do work with Economic Development to try to assist any questions or address any questions that prospects might have. [REPORT]

SENATOR BRASCH: And if we do have questions, and this is my final question, on competitiveness, where is Nebraska potentially lacking, whether it's in telecommunications or another to move ahead, that would not be within the Revenue Department. That would be looking at Economic Development and why are people going elsewhere. Is that correct or is that any of your function? [REPORT]

LEONARD SLOUP: Well, what I can do on that, Senator, is basically visit with Brenda Hicks-Sorensen to make sure that we're adequately addressing that question for you and how you would get that answer. [REPORT]

SENATOR BRASCH: Okay. Very good. Thank you, both. No other questions. [REPORT]

SENATOR GLOOR: Senator Watermeier and then Senator Davis, I believe. [REPORT]

SENATOR WATERMEIER: Thank you, Chairman Gloor. I appreciated Commissioner Sloup being here today. This is a good report. And I do want to remind everybody this is kind of the beginning steps in the process of what we're doing here. And I think we tend to forget that the Department of Revenue is regulatory in nature and we sometimes ask the wrong questions of the department. And I think the key is maybe the Department of Economic Development and we may look at this in the future and adjust what we're asking you and have a combination. So if you could speak candidly about what you potentially would want to see from looking at it from the revenue side of things and how we can have a partnership with the DED on a report like this, I think it would be very helpful. But I just think we need to be mindful that your role is regulatory and sometimes we ask you the wrong questions... [REPORT]

LEONARD SLOUP: [REPORT]

SENATOR WATERMEIER: ...and...because we're so inquisitive. But you might just think candidly what you would, you know, how you would suggest a different approach to this report and what we could get to. [REPORT]

LEONARD SLOUP: Right. And I, again, like I said to Senator...is I can visit with Brenda Hicks-Sorensen, the administration, see how we structure that to see if under the statutory guidelines of what this meeting is, how that would be expanded. [REPORT]

SENATOR WATERMEIER: Right. That would be great. [REPORT]

SENATOR DAVIS: Thank you, Senator Gloor. Just a couple questions: You have two relatively small programs, the Rural Development and then the Microenterprise, and those are done on a first come, first served basis, as I understand it. So how many people are turned away with those two? [REPORT]

LEONARD SLOUP: Might add...Mary, you can kind of supplement me. On the Microenterprise Tax Credit, that one is not fully subscribed right now. And frankly, we are looking at...we're trying to determine why it's not fully subscribed, what causes that. But it is, I think it is first come, first served in most cases. [REPORT]

MARY HUGO: So say the Nebraska Advantage Rural Development, some years it had $4 million available and in the last few years it's had $1 million available. And so we've had allocations. In some years we had that requested in the first month. This year it went through the spring in 2015. But honestly, once we post that it's...there's no funds available, I don't know how many other people may have wanted to apply but didn't, because we don't see them. [REPORT]

SENATOR DAVIS: But it's not gone within the first weeks. I mean... [REPORT]

MARY HUGO: No, in general not. You know, I've had a case under like Nebraska Advantage Rural with $1 million available that maybe I had two applicants in the first month and then it was gone. Okay? But under Microenterprise (inaudible) it's, you know, like last year we didn't fully subscribe and we took applications through the end of October. And so in general, it's not gone right away. [REPORT]

SENATOR DAVIS: Okay. And then the other question is, once people move out of the program, is there any follow-up research being done to see if the jobs are maintained here or the investment stays in the state? [REPORT]

MARY HUGO: In regards to the Nebraska Advantage Rural, there is a recapture requirement that once they have to maintain their levels for three years after they've earned the credit, and so we do monitoring for that three-year period of time to see if there's any of those credits that should be paid back to the state. But after that, we don't monitor it. Under Nebraska Advantage Microenterprise, there's not a recapture provision. So once we've processed out what they believe they've earned for credits in that two-year period of time, within my group we haven't monitored past that. [REPORT]

SENATOR DAVIS: And with the Advantage Act in LB775, is there any follow-up that's done or was there... [REPORT]

MARY HUGO: Right. The Nebraska Advantage and Employment and Investment Growth Act have a seven-year entitlement period and during that period of time they have to maintain levels or they fall into recapture. So we closely monitor it during that period of time. But once they get into the carryover period and it wouldn't impact whether they had recapture owed or not, we don't look at it. [REPORT]

SENATOR DAVIS: Okay. Thank you. [REPORT]

SENATOR GLOOR: Senator Stinner. [REPORT]

SENATOR STINNER: Thank you, Senator Gloor. I want to follow up with what Senator Davis was talking about. On page 72, you have a schedule here that shows that we had, you know, up to $4 million available under this and then it went down to $1 million. My first question is who determined that to go down to $1 million from $4 (million)? [REPORT]

MARY HUGO: There was a legislative change. [REPORT]

SENATOR STINNER: There was? [REPORT]

MARY HUGO: I mean the amount that's available is per statute. And so there was a change as to how much was available. [REPORT]

SENATOR STINNER: Did the requirements also change? Because number of applications prior to that were double-digits. Now we're 7, 6, 2, 7 over the last couple of years. I mean what...tell me what the difference...what happened? [REPORT]

MARY HUGO: I think, in general, because there's less money available, we don't have as many funds available to take as many applicants. [REPORT]

SENATOR STINNER: So by us consciously changing legislation and taking this down to $1 million we've basically disincented people from applying in the program. Is that what you're telling me? [REPORT]

MARY HUGO: Well, we won't have an incentive to...after we get to the $1 million, whatever that's available, we don't...we can't accept any other applications. [REPORT]

SENATOR STINNER: Okay. Thank you. [REPORT]

SENATOR GLOOR: Senator Schumacher. [REPORT]

SENATOR SCHUMACHER: Thank you, Senator Gloor. And thank you for your testimony today. Referring to page 47 of the report, I think, yeah, it's some of the material that was on the board and I just want to make sure that I'm understanding the thing and we'll just look at 2023. In 2023 it says that we are going to lose $103 million in revenue on the revenue loss line. And then we go down to the employment line and it shows there that we have estimated new jobs of 7,351, estimated net new jobs of 3,506. Those 3,506 net new jobs, do they include the 3,344 net new jobs of the previous year? [REPORT]

HOA PHU TRAN: No. Those are on an annual basis. But you, on an annual basis, if I read ahead on your question, you can't take the job divided by the cost because the...so the direct answer to your question is no. If you want to do... [REPORT]

SENATOR SCHUMACHER: So the 3,506 jobs shown in 2023 are... [REPORT]

HOA PHU TRAN: For that calendar year. [REPORT]

SENATOR SCHUMACHER: ...jobs that didn't exist in 2022. [REPORT]

HOA PHU TRAN: That is correct, yes. [REPORT]

SENATOR SCHUMACHER: Okay. And let me ask a little bit about what capacity the department has to analyze it's data. Do you have the capacity to say to the big computer, sort our data and sort into one file all businesses/employers who are involved in these incentive programs, and sort into the other pile those who are not involved in the incentive programs? Do you have that capacity? [REPORT]

HOA PHU TRAN: We have the business name, the state ID, so we know who is in the incentive and we know who is not in the incentive. [REPORT]

SENATOR SCHUMACHER: Okay. So you can look at that. You've got a tax ID number,... [REPORT]

HOA PHU TRAN: We do. [REPORT]

SENATOR SCHUMACHER: ...so that first step is doable. [REPORT]

HOA PHU TRAN: In theory, yes. [REPORT]

SENATOR SCHUMACHER: Incentivized, nonincentivized, two worlds, two sets of data. [REPORT]

HOA PHU TRAN: In theory, yes. [REPORT]

SENATOR SCHUMACHER: Well, in theory,... [REPORT]

HOA PHU TRAN: Because I haven't done it yet. (Laugh) [REPORT]

SENATOR SCHUMACHER: ...what is different between theory and reality? [REPORT]

HOA PHU TRAN: (Laugh) Because I haven't done it yet so it's not reality. [REPORT]

SENATOR SCHUMACHER: Okay. Okay. Well, next thing, make some simple questions to each of those two piles of data. I think it would be interesting to just know the answers: What's the taxable income, both the total and the average taxable income of each pile; what's the number of employees total and average of each pile; what's the total wages paid; what's the average wage paid in each pile; and then just a big number, what's the gross income and average gross income of each pile. [REPORT]

HOA PHU TRAN: If they are not in the incentive program, I don't think we have the ability to ask for how many employees are employed in that particular company. [REPORT]

SENATOR SCHUMACHER: Well, sure you do because they all send in a W-2 form identifying an individual number and also identifying them. [REPORT]

HOA PHU TRAN: But at the same time you do that, let's say a restaurant company where you have a lot of turnover, so how do you...? We have the number of W-2. Doesn't mean that's how many employees is in that particular company. [REPORT]

SENATOR SCHUMACHER: Right. It won't be perfect, but it will give us an idea of where the wind is blowing. It would be interesting at the very least. Do you have the capacity? [REPORT]

HOA PHU TRAN: In theory, we can do some of that. [REPORT]

SENATOR SCHUMACHER: Okay. Thank you. [REPORT]

HOA PHU TRAN: But I don't know if we have the people (inaudible). [REPORT]

SENATOR GLOOR: Well, I don't see any further questions. And as a closing comment and a follow-up to Senator Watermeier's comment, we know we have passed legislation in the past that's affected the effective tax rate. And part of the transparency and part of the help in making future policy and perhaps extending the existing policy has been a statutory requirement that we have reports and we have reports from you on that. And we draw our own conclusions and move on from there. And we certainly have fulfilled that requirement and appreciate your help and thoroughness with the report and your willingness to answer questions. And the questions from this group, in my experience, usually are very challenging ones, which reflects their commitment to making good decisions on behalf of the state of Nebraska. So thank you very much. And with that, we will close this hearing. Thank you. Did you want to make a final comment? [REPORT]

LEONARD SLOUP: And I guess I would like to thank all the senators here for, you know, the healthy questions that we have. That helps us get better and develop better processes and understanding of what issues that you're faced with. So I appreciate that. I think that's what government is all about, being transparent in getting those questions out. I would want to thank my staff. This is a significant effort to put this report together along with the annual report, so. And Mary, Hoa Phu, and a number of our staff that spent a lot of time putting this together, I just want to publicly recognize what those efforts are to get you the information that you need. [REPORT]

SENATOR GLOOR: Thank you, and thanks to all the staff. Thank you. And with that, the hearing is closed. [REPORT]