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The Committee on Revenue and the Committee on Appropriations met at 10:00 a.m. on Friday, December 9, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for presentation of the 2016 Tax Incentive Performance Audit Report. Revenue Committee senators present: Mike Gloor, Chairperson; Paul Schumacher, Vice Chairperson; Lydia Brasch; Jim Scheer; and Jim Smith. Senators absent: Al Davis, Burke Harr, and Kate Sullivan. Appropriations Committee senators present: Heath Mello, Chairperson; Kate Bolz; Bill Kintner; Dan Watermeier. Senators absent: Robert Hilkemann, Vice Chairperson; Tanya Cook; Ken Haar; John Kuehn; and John Stinner.

SENATOR GLOOR: Good morning and welcome to the joint hearing of the Revenue and Appropriations Committees. I am Senator Mike Gloor from District 35, Grand Island, Chair of the Revenue Committee, and I'm chairing this hearing today. A reminder, although this is an experienced audience, as I look around, but please make sure that your cell phones are off or in a silent mode of some kind. The testimony today is by invitation only. I think we'll go ahead and start and ask senators to introduce themselves. Senator Watermeier, can we start with you, please?

SENATOR WATERMEIER: Senator Watermeier from District 1 in Syracuse, and I'm Chairman of Performance Audit. Can I introduce my staff now or later?

SENATOR GLOOR: Later. I'll call you out in a second.

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

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

SENATOR SCHUMACHER: Paul Schumacher, District 2, Platte and parts of Colfax and Stanton County.

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

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

SENATOR KINTNER: Bill Kintner, District 2.

SENATOR SCHEER: Jim Scheer, District 19, but those that are used to it, I am not on Appropriations. I still am on Revenue, just on this side of the table. (Laughter)

SENATOR GLOOR: Krissa Delka is clerk for us today. Our pages are Bri Hellstrom and Brenda Gallardo. We're having this hearing under a requirement under Nebraska Revised Statute Section 50-1211 which states: Each tax incentive performance audit report shall also be presented at a joint hearing of the Appropriations Committee and the Revenue Committee of the Legislature. That report has been issued. I know some of you have had a chance to review it--I know all the senators have--and was also issued by Senator Watermeier, as Chair of the Performance Committee, is here today to present that report. I'll turn it over to you, to Senator Watermeier, for either an intro or introduction of Anthony and Martha, and we'll go from there.

SENATOR WATERMEIER: Thank you, Chairman Gloor. I appreciate that. Yes. I'm Senator Watermeier, District 1, the Chairman of Performance Audit. I just have to start off with a thank you to the Performance Audit Committee and all the hard work and where we've gotten actually to this point from a year and a half worth of discussion. But with us today is director or Performance Auditor Martha Carter, Anthony, Craig, and Stephanie. I don't know if Fran is here yet or not or she's going to be here. But these five individuals have really put a lot of work into this. The state owes them a lot. And I know we're going to continue the work, but they've done great work.

SENATOR GLOOR: Okay. Martha.

MARTHA CARTER: (Exhibits 1, 2, and 3) Okay. Thank you, Chairman Gloor, Chairman Mello, and members of the Appropriations and Revenue Committees. For the record, my name is Martha Carter, M-a-r-t-h-a C-a-r-t-e-r. I'm the Legislative Auditor and I served as the lead auditor on this audit of the Nebraska Advantage Act. So just to briefly give you the time line for this project, and I've got a pointer here if it will work, on the far right-hand side of the slide you see that the audit that we've conducted is the first under 2015 legislation that requires performance audits of all tax incentive programs. And on the far left of the slide you'll see that the Advantage Act was created just about ten years ago. So the good news I guess is that we had a lot of data on the program. The little bit more challenging news is that since these measures of effectiveness that we were looking at were selected so far after the bill was created, we did have some difficulties matching up the data with the newer metrics. To give you a little bit of an idea of the projects that we looked at in this audit, so we looked at all of the projects, so what companies that were participating that have received a benefit from the program from the program's creation in 2006 until the end of 2014, which was the most recently or the most verified data available when we started the audit. So of those 79 projects, you can see the pie on the left shows that over half of them were in Tier 2, and followed by Tier 4...I'm sorry, Tier 1 and Tier 4. And the pie on the right shows the industries represented...the manufacturing represented a little more than half, followed by finance and insurance. To talk a little bit about the benefits that the companies had earned by the end of 2014, so we'll talk a little bit more about the difference between "earned" and "used," but this is just looking at "earned." So one technical correction. The total is actually $736 million. That was a rounding error on my part. So the number in the report is correct in that the numbers do add up to $737, but it's technically $736. So these companies, the 79 projects, companies affiliated with those had earned about 65 percent of benefits earned were in investment credits, another 16 percent in compensation credits, and lesser amounts in terms of direct sales tax refunds and property tax exemptions. And these are not final numbers for those projects because most of them, at the time we were looking at them, would still have had time to earn some additional benefits. So there will be some increases, but then they may not use all of the credits they've earned either. So this is a point-in-time view of these projects. So the issue of "earned" versus "used" is applicable to those investment and compensation credits, so you see that the pie on the left side of the slide shows you that...so the total amount represented by this pie is about $592 million. And as of the end of 2014, about $223 million, which is about 40 percent, had been used. We would certainly expect that many more of those credits will be used as the projects continue. The slide on the right shows you that of this blue pie slice over here, the "used" credits, shows you what they were used on. And so the majority, about half, went for...to offset corporate income tax. That was followed by the employee wage withholding and then lesser amounts for the other two options. So before we talk about the specific metrics or measures that we looked at, we'd like to just give you the big picture of what the Audit Committee recommended, and then that will, I think, give you a little more context as we talk about the individual measures. So the first thing the Audit Committee recommended is that they want to consult with the Revenue Committee on the program costs and the complexity of the Advantage Act. And the program cost issue is primarily related to, we'll discuss a little bit later, the finding that the program has, in at least one year, exceeded the cost that the Legislature expected at the time the bill was passed. And the concern about complexity was raised by the Tax Commissioner in his written response to the draft audit report and he expressed concerns about the complexity related to the application process and verifying agency's qualifications and how that impacts the administration. The second broad recommendation is to clarify the goals of the program. The bill that was passed in 2015 that requires these performance audits includes some goals related to the tax incentive programs, but they cover a variety of things. And so as we go through the metrics, you'll see this a little bit more. But so on the one hand, maybe you have...are the companies new to Nebraska? Well, if that's going to be one of your goals, it's going to take certain strategies to meet that goal. Another set of metrics relates to whether or not newly hired employees have filed unemployment insurance claims. Well, that's going to take a different kind of strategy. And so the idea is, I believe it's been discussed in the press, that there's some consideration of making changes to this program in the next session. So clarifying the goals is one of the recommendations that the committee believes would be helpful. The third recommendation is to pursue economic modeling for use in these evaluations. We were unable to look at some of the metrics that the committee was most interested in because we ran into a data access problem for using the economic modeling software. So the Fiscal Office, Legislative Fiscal Office, has the economic modeling software. It's called REMI. And we worked with them to get them the data they would need to address the metrics that the committee was interested in. Problem is that the level of data that they need, they don't need confidential data in the sense of they don't need company names or anybody's individual Social Security numbers or those kind of things. But they do need data that's aggregated in a way that sometimes it only includes fewer than three participating companies, and that is not allowed under state law. It comes from a federal requirement. But in any event, we could not get them the level of data they needed to use the economic modeling software. So Mike Calvert, the director of the Fiscal Office, is...has been working with us and we've been working with the Revenue Department to see if we can find a way to resolve that problem. So our office, the Audit Office, has access to that level of confidential information, but the Fiscal Office doesn't. So that's the issue. And Mike has been working with the economic modeling software program folks to see if we can come up with a way that Fiscal would be able to do what we've done for this audit, which is to have an office at the Department of Revenue and use their hardware but have the Legislature's REMI license on their hardware. So we are continuing to work on that, and that is something the committee is very interested in our doing. The fourth recommendation is to create definitions for key terms and benchmarks. So again, as we go through the individual metrics, we will give you examples of where those kinds of things would be helpful. And the final recommendation is to have an interim study to resolve data issues. We ran into a number of problems. I should say first that we had tremendous cooperation from the Revenue Department, the Labor Department, and the Economic Development Department in doing this audit. So when we talk about data problems, we're not talking about anything that has to do with our not getting things that we have a legal right to look at. That issue is well resolved. What we're talking about is that for some of the metrics, in particular where we needed to match data from two agencies, it was very, very difficult to do in some cases. So there again, that piece of it, if you think of it in terms of narrowing the goals, developing the benchmarks and the definitions, and then identifying what data you need in order to look at those things, and that interim study committee would be there to resolve data access issues. So with that, I'm going to turn it over to Anthony to go through some of the individual metrics for you.

ANTHONY CIRCO: Okay. For the record, Anthony Circo, A-n-t-h-o-n-y C-i-r-c-o. I'm the legislative performance auditor specifically assigned to tax incentives. What we have in front of you is Metric 1, and the question was: Was there an increase in full-time workers at incentivized projects? Now for the first five metrics here, we used Department of Labor data and that's where some of the matching issues occurred. So we're going to caution that any data that we have here, especially with the jobs, that we don't compare them with FTEs. When we're talking about FTEs, that is a measurement specifically for the number of hours in a year that are increased at a company. We were trying to look at, because LR444 and the Performance Audit Committee were trying to find full-time workers, actual people. And so there's a difference between those two and so we caution a comparison of those two. So we were able to match data for 69 of 79 projects and for those projects we did see that, on the whole, yes, there was an increase in full-time workers. But we cannot say how many because some of the projects were not included--as you see 69 of the 79--and we couldn't completely limit the analysis to just project employees. The way the data is handled just did not allow that the way the data is accumulated. Not all companies that receive benefits maintain higher employment through their entire evaluation period. That is something that you should be aware of as well. Let's see, and then...so this is the first of the metrics where a little bit of benchmarking may assist us. If you want us to continue looking at people as full-time workers the way it's defined in our report, then a benchmark of how many, either per company or for the total of the program, how many workers you want to see increased over a period of time, it would help us with the evaluation and we'd be able to say, yes or no, it is meeting these goals or not. And then one final thing to be aware of is causation. Neither us in the Legislative Audit Office nor the Department of Revenue asserts that the results of this or any of the next few metrics are necessarily attributable to the Advantage Act. We don't say that the Advantage Act caused an increase in full-time workers, only that the companies that participated did increase full-time workers. There's more detail on this in all of our metrics in the full report as well. All right, Metric 2: Increase of full-time workers at incentivized projects compared to statewide industry sectors. Again, using Labor data for these 69 projects we were able to match, in most sectors Advantage Act companies--as you can see Advantage Act companies are in blue, statewide industry is in the red...or the orange--the Advantage Act companies did increase their employment at a higher rate from 2008 to 2014. We would expect this because companies that participate in the Advantage Act may already be looking to expand. And, yeah, I think that is it for that one. Metric 3: Average wages at incentivized projects compared to average wages of all jobs in statewide industry sectors. Again, Labor data using 69 out of our 79 projects, and again for most sectors Advantage Act projects paid higher wages to their employees than their statewide counterparts. We don't have a slide for this, but in the report you will find that in most sectors, Advantage Act projects also had a higher proportion of workers earning above average wage than their statewide counterparts. So a company has a certain number of workers that are making over the average, and a certain number that are making under the average. And Advantage Act companies tended to have more people making over the average. This is another metric where benchmarking would help and allow us to inform the Legislature better. And again, causation, the Legislative Audit Office and Revenue office or Revenue Department also caution that wages may have been higher at companies before they participated in the act. We can't say whether or not the act actually made wages go up. The next slide is Metric 4: Prior unemployment insurance filing by new full-time workers. And so what we looked at here was in the year before being hired, the Labor Department was able to find whether or not individual people had filed for unemployment in that year previous. And what we found was that in about half, maybe a little more than half of the project sectors, Advantage Act companies in those project sectors did hire more people at a higher rate than their...more people off that had filed for unemployment at a higher rate than their statewide sectors. And so if the goal is to hire people that were previously unemployed to affect unemployment, certain sectors seem to be better at that than others. And so if you're trying to tweak the design of the program, that's something you may want to be aware of. Again, benchmarking and causation. Oh, yes, yes. There is an asterisk on I think four of these because those are fewer than three projects were included in that sector and so...and this was on the previous slides as well. With such a small number there could be...if we're talking about rates and percentages, that may not be completely representative. But we had a small number and so take that into account. Metric 5: so similar to Metric 4, but we looked at full-time workers in the two years after they were hired to an incentivized project, whether or not they filed for unemployment insurance. And again, similar results: about half of the Advantage Act project sectors had a lower rate of workers filing for unemployment benefits, so presumably good. So if you think a goal should be stable jobs, jobs that people stay at, then you may want to look at these industries where people are filing at a lower rate than others. Let's see. And sort of a note about this and the previous metric on unemployment filings: If you look at the full reports, you'll see that certain statewide industry sectors are higher than others in both of these categories, both of these metrics, so that gives you a look as to which industries have a natural higher turnover rate. So again, if you're looking to tweak the program or try to incentivize something along the lines of unemployment, be aware that certain industries just naturally have a higher rate of turnover. And then benchmarking and causation on this as well, if you have a specific amount that you would like, that would be great. And we caution that the Advantage Act may not have caused those results. Metric 6: or incentivized companies new to Nebraska. And so, as you can see here in the blue, we identified 9 companies that were new to Nebraska and the other 69 were existing companies. And so we looked at whether or not they had paid wages or had earnings in the state the two years before they applied to the act. If evidence was found of activity more than two years before their application, then we said that they were not new and that they were expanding. The Advantage Act goal does have goals of attracting new and expanding existing businesses, so all of these did meet one of those two goals. Let's see. And the relatively few companies that were new is consistent with the expectations from the economic development literature from the research. The research shows that when looking to expand or relocate, businesses weigh other factors more highly than state and local tax incentives, things like the availability of skilled labor, labor costs, accessibility to markets, quality of life, those sort of things. And so if the Legislature does want to attract new businesses, we suggest it may be better done by focusing on economic fundamentals. If, however, you do want to measure the Advantage Act by the number of participants that are new, a benchmark of how many new per year or for the life of the program would help us evaluate that. And again, one more caution about causation. We only looked at which companies were new. We did not make a determination as to why they were newly formed or why they were attracted to the state. And those are my metrics.

MARTHA CARTER: Yep. So just before we move off of Metric 6, I'd just add that that is a definition question as well.

ANTHONY CIRCO: Yes.

MARTHA CARTER: We started with some of these somewhat naively I guess thinking, well, is it new to the state or not? That's got to be pretty obvious when a company is new. And, you know, it's not as obvious as you might think. And so we used the standard of looking back a couple of years to see if they had certain types of activity. We also had input from some stakeholders who were concerned that that definition might exclude a company that, for example, had a single individual maybe being paid in the state for a number of years but then the number increased dramatically when they started participating in the Advantage Act. We did not find that that was true, that there were very many like that, looking at the Labor Department data. However, one of the problems that also needs to be discussed in terms of the data is that while there are things we can use the Labor data for that Revenue does not have data for, currently the Labor data only goes back to 2008. So if in the future the Legislature wants us to use the Labor Department data, part of that interim study that I mentioned may want to look at what are those...what are the restrictions on when Labor gets rid of data, if you will, and whether we can maintain it longer so that we would have more of that information. So Metric 7 looks at whether incentivized project locations were in distressed areas of the state. So again, the Advantage Act does not define "distressed areas of the state." So we looked at two definitions, one that is from two other incentive acts, and that's the pie on the left that is almost entirely all blue, which means that almost all of the project locations were in distressed areas of the state. That's because distressed areas are defined very broadly in those acts, and so almost the entire state is considered distressed. The other definition that we used for a comparison, on the right side of the slide, is areas of substantial unemployment. That's a Labor Department measure that is much more specific. And for that measure we found that about 35 percent of the project locations were in distressed areas using that definition. And we're not advocating one definition or another. It's just an example of...that it is important to know what the Legislature means when you say "distressed." The other thing is, it's one more data issue, is that for projects that are in...that are parts of companies that are large and have multiple locations, we ran into some challenges identifying which of the project locations the Advantage Act project employees worked at. And so we weren't always able to make a determination. That's another one of those issues that we would like to get resolved with the interim study. Metric 8 asked us to look at the cost to administer and promote the Advantage Act. What we found is that neither the Department of Revenue, that administers the program, nor the Department of Economic Development, which promotes it, specifies how it spends its money on just a single program. So the money...so what we ended up with was almost $17 million over the course of 2006 to 2014 for those two agencies to administer and promote all tax incentive programs. So just sort of the caveat, especially with the Department of Revenue, is that while the Advantage Act is currently the largest incentive program, this period of time also includes the previous large incentive program, LB775. So it's very hard to specify what is spent specifically on this program. Metric 9 is looking at the cost per full-time equivalent, and I'm going to tell you that the next couple of slides are a little bit hard to see on the screen. So if you're interested in looking more closely at the graphics, they are on...in the front part of the hard copy of the report on pages N and O. So we're talking here about FTEs. We're not talking about positions. We're talking about FTEs. That's the way a job is described or defined in the Advantage Act. So let me tell you how we approached this question. So we looked at the goals of the program, which are creating FTEs and encouraging additional investment. The question that we had is, is investment a totally separate goal from FTE creation or is investment a strategy in the broader goal of FTE creation? And the legislative history emphasizes the FTE creation, and so that's where that question came up. And the way that we looked at it is if investment is a totally separate goal, then you would only use a minimum amount of benefits in calculating your costs per FTE. But if investment is part of the larger FTE creation goal, then you would include all the benefits. So the first thing that we looked at was the minimum...what we call the minimum estimate, and that is the top...well, it is what is on your screen now. It uses...what we use in that calculation are all of the compensation credits, and I should say this is just for 31 of the 79 companies because ideally you would wait until all of your companies were done and then you could actually do...calculate the precise cost per FTE. But that will not happen for many years. And so we estimated, based on a subgroup of projects that had all earned as many tax credits as they were eligible to earn, and then made some assumptions about how many of those they would actually use. So all compensation credits that they had earned; a minimum amount of the investment credits they'd earned because, arguably, some of the equipment and things that are used for those investment credits are related to FTEs; and then we just put half of the property tax and sales tax exemption into that calculation. And to be sure that we were getting the right number of FTEs, what we actually did was did this calculation for each of the 31 companies for each year that they receive compensation credits. So because the number of FTEs can change from year to year, we didn't want to just take one end and the other end. So we actually calculated a per year and then multiplied it up by the number six, which is the average number of years that they had received compensation credits, to get these numbers. So using that minimum calculation, you end up with an average FTE of $24,500. The second estimate, using the maximum, goes up to about an average of about $80,000. So if...what this says is if investment is not a completely separate goal, it's part of your job creation goal, then your average goes up quite a lot, because, as we mentioned earlier in the introduction, the investment credits make up a much larger portion of the benefits that companies are earning than the compensation credits. So the next consideration was how many of the new FTEs can you really attribute to participation in the Advantage Act. So the way we looked at this was we did two other estimates: one saying, well, if you give the Advantage Act credit for creating all the FTEs, here's what it will look like; and if you give the Advantage Act credit for only creating 25 percent of those, here's what it would look like. And the 25 percent we selected, we're not saying that 25 percent is the precise number that should be used for the Nebraska Advantage Act. We selected it based on other studies, and it's in the range of results from other studies. So if you do that, if you say only 25 percent of the FTEs are attributable to the Advantage Act, what that does is increases your average again. You go up to $98,100. So that calculation is based on that minimum amount of benefits, but instead of using 100 percent of FTEs, you only get credit for

25 percent. And we did the same thing with our maximum, so if you use all of the program benefits that these particular projects had received and you only attribute 25 percent, your number goes up again and that's where you get the average of about $320,000. So to wrap up I think from...on that metric, I think the point that we are trying to make is that going forward it would really help the evaluation if we understood better how you see the specific goals. That comes back to that goal question again because, as you can see, it makes a huge difference which benefits you include. And whether or not you agree with the 25 percent, there is pretty broad agreement that some of the FTEs would have been created even without participation in the act. I mean, the Department of Revenue says that in their annual report. They don't give a percentage but they acknowledge that. So that just has to be part of the discussion going forward. Metric 10 looks at other state benefits received by the companies that were participating in the Advantage Act. There are just under 75 of...the 75 percent of the projects that we were looking at, those companies had received another benefit. This is, again, a goal question: Is that a problem? That's a...it's a difficult call to make. It's without any clear intent about this. Because, so you see on this next slide the dollar amount of benefits, the programs that were administered, we look at four programs at the Department of Economic Development and four at Revenue, and the DED programs had much smaller dollar amounts and customized job program...I'm sorry, customized job training was the program that the most of our Advantage Act companies have participated in. Of the Revenue programs, the LB775 was the larger...the largest program that these companies had participated in. Most of the benefits that the companies had received from LB775 were prior to their participation in the Advantage Act. So that's, I think, important to note so that then that raises the question for you of is that a problem if the benefits from other programs were received for other economic activity. You know, it's not, in that case, not an overlap. In some cases there may be overlap with another program, in which case that raises your question again about if you're participating in two programs, which one really gets the...to which one do you attribute any benefits that are gained. Metric 11 asked us to look at the adequacy of fiscal protections for the Advantage Act. So the first thing that we want to say is that the Advantage Act does have some protections build into it. You have got to qualify. You know, Revenue Department confirms that you have met the agreement of your contract before you get any benefits. And the program also has recapture provisions so that if you default on part of your agreement, that comes back to the state. But in terms of the big picture kinds of protections on whether or not the program could exceed what the original expectations were, there are not those kind of protections. So that

would be something like either a program cap or having the funds for the program go through the Appropriations process in some way so that there was some legislative authority exerted there. And essentially what we found in the data was that the discussion on the legislative floor at the time the bill was passed talked about an annual expenditure of up to $60 million per year. And there was at least...there's been at least one year where...and that's shown on the slide where the amount exceeded that and several other years where it got to be close to that. Also, the Revenue Department does a projection in its annual report of what the costs for the program would be in ten years, so the bottom number on the slide, the $925 million, that's the number if the program continues the way it is and projects are added, that would be the potential liability in ten years. Then we asked them to also do that projection for just the 79 projects that we reviewed for this audit and that is...that gets us $473 million. Those are economic modeling estimates they used. So the final two metrics that we looked at address the programs' impact on local governments. And the first one is the impact of sales tax refunds. This is just the part of the sales tax related to the local entity. Fifty-eight of the 78 companies received about $14.5 million in sales tax refunds, and that impacted 142 cities. But what we found was most of the amounts for the individual cities were quite low, less than $5,000 for that whole 2006 to 2014 period. So...and we compared those to the receipts that cities brought in during those times and, again, those proportions were relatively low. But they're increasing the longer the program goes along, and a few cities lost much more. Omaha was the hardest hit. And again, this comes back to a benchmarking question: What do you view as being too much of an impact on the local subdivisions? And similarly with the last metric, which is the impact of the property tax exemption, 17 of the 78 companies received about $57.6 million in benefits. That impacted seven counties. And again, on the whole, relatively small amounts compared to their collections but some large variations. And Platte County was the hardest hit. School districts had about 60 percent of the impact from the property tax. Again, that is...there's a benchmarking question there and it's also important to note that with property tax that will get...there are ways that that's addressed through, like with the school districts, through the state aid formula and those kind of things. So that's our last metric and we'd be happy to answer questions.

SENATOR GLOOR: From a process standpoint, let me ask this question of Senator Watermeier. There are clearly some recommendations here that staff can continue to work on, whether it's Audit or Fiscal, definitions, there are things in here that lend themselves to the continuity being moved forward or the process continuing to be addressed with these recommendations through our staff. But then there are issues like the caps, which are going to have to be addressed in legislation. Where do you see that legislation coming from? Where do you see that bill introduction coming from?

SENATOR WATERMEIER: Well, I think this is the hand-off that we talked about last year and in 2015 where we hand this off to the Revenue Committee and you guys make those decisions about caps, sunset dates, amounts, what the policy really needs to be. But to answer your first question about continuing to look at this, we actually need to write another scope statement if we're going to continue to work on this Advantage Act, because we need to move on to our next rotation in our three-year process. We need to move on to the next audit of the next group. So we've talked about this quite a bit with Martha, her and I have, of how do we continue to look at this, because we're going to have interest in it. But we're going to have to actually write another scope statement if we want to continue to look at it because our scope statement ends today when we hand this off, and yet there's a lot of unanswered questions here that we have to look at as well. So it's a little bit of some gray area where the Performance Audit has continued to look at this and how we'll do it.

SENATOR GLOOR: Well, my concern obviously is in terms of that handout. If there's some immediacy here, somebody needs to scope some degree of prioritization on this so that somebody is at work developing bills for introduction, because I'm not going to be here, Senator Mello is not going to be here. There's going to be a new Chair of the committee. Right now Senator Smith is the only person who's thrown his hat in the ring.

SENATOR WATERMEIER: Uh-huh. Let me answer that then. As far as working on bills to take care of the data collection, how we need to clean up those things, I think that will come from an individual member out of the Performance Audit or the committee itself. But I still believe the policy decisions that we want to make as far as tax incentives, and we had this discussion quite a bit on the floor that a lot of this work, you know, should have been deciding even the sunset dates should have come from Revenue. So I think to keep it very clear, defined boundaries, that that's something that needs to come out the Revenue. Certainly we'll be there for reference, individual members or the committee as a whole, but there needs to be a hand-off there I think there to the Revenue Committee.

SENATOR GLOOR: I agree where it falls. I don't think that's my question.

SENATOR WATERMEIER: Okay.

SENATOR GLOOR: My question more is who is going to introduce those bills? Are they going to be committee bills? Are there individual members of the Audit Committee who might be already looking at introducing bills that would find their way via referencing to the Revenue Committee?

SENATOR WATERMEIER: I think most of the bills that I'm thinking of and envisioning today will just come from individual members from the Performance Audit as far as getting the collection and that. And maybe that's not addressing your question properly.

SENATOR GLOOR: No, I think that that's...

SENATOR WATERMEIER: But I think there's going to be a collaboration here, but formality-wise I think it's important that we distinguish this hand-off. But I certainly want to, you know, still become involved in the discussion of it, so.

SENATOR GLOOR: Certainly.

SENATOR WATERMEIER: Yeah.

SENATOR GLOOR: Certainly. Other questions? Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Senator Gloor. On I guess page 5 of the handout, I got a question with regard do those...that graph was generated on the basis of percentages and not the basis of numbers. And so from a numbers perspective, how many new jobs, or I guess you're using FTEs, did you look at that are coming from incentivized businesses in the state versus nonincentivized businesses? Do we have that number?

ANTHONY CIRCO: Are you talking about Metric 1 or Metric 2?

SENATOR SCHUMACHER: The top graph, Metric 2. Do we know the translator fact? Because you can have two fiddle makers to begin with and four to end with and you can say that's a 400 percent increase but it doesn't amount to beans. So, I mean, in the big picture, are these incentivized businesses producing the job growth in the economy, or is it the guy who's making up for the incentive and paying the tax?

ANTHONY CIRCO: Well, for the companies we were able to analyze and the federal IDs we were...that we focused on, there...did we want to...on Metric 1 in the report...yeah, in the report, Metric 1 shows we found a total increase of 2,968 full-time workers in the federal IDs that we were able to match. For the overall economy, that was larger. But we did not have...we did not look at the...well, we did look at the specific numbers but I don't have those. We've reported the percentages and, as you can see, there was an 11 percent increase on page 22 in our...the full report. The Advantage Act companies had an 11 percent increase in their workers for the IDs we were able to identify. The overall statewide economy had a 4 percent increase. Now as far as what percentage of the overall state increase the actual workers were in the incentivized companies, we did not make that...we did not make that subtraction.

SENATOR SCHUMACHER: So the question, 11 percent of what and 4 percent of what?

ANTHONY CIRCO: Eleven percent of their original employment (inaudible)...

SENATOR SCHUMACHER: Okay. So...

ANTHONY CIRCO: ...in 2008.

SENATOR SCHUMACHER: But...and the 4 percent amounts now how many new souls workings?

ANTHONY CIRCO: The 4 percent is the increase in the overall statewide full-time workers from 2008 to 2014.

SENATOR SCHUMACHER: So we're talking about 2,000 new employees versus gosh knows how many employees. And that's my question.

ANTHONY CIRCO: Right. []

SENATOR SCHUMACHER: What is "gosh knows how many" employees in the state economy generally created by nonincentivized businesses?

ANTHONY CIRCO: Right.

SENATOR SCHUMACHER: I mean I'm asking the question I think I asked before, and that is how many souls did the preacher get into heaven? And we may not know an answer for that, but we can get a guesstimate at least from that comparison. And tell me, my impression is just completely off in never-never land, and it might be. But most of our economic activity, most of our growth does not get a smell of those $400 to $900 million.

ANTHONY CIRCO: Since we did not specifically look at that, I can't give a valuation judgment on that.

SENATOR SCHUMACHER: Thank you.

SENATOR GLOOR: Senator Smith.

SENATOR SMITH: Before I ask my question, I'm just going to follow up. I think what your question is, Senator Schumacher, is the base on which that percentage is calculated. It's a...it's not kind of an apple-to-apple comparison.

SENATOR SCHUMACHER: Exactly.

SENATOR SMITH: Right?

SENATOR SCHUMACHER: Exactly.

SENATOR SMITH: So the unincentivized sectors may be creating, you know, many, many more jobs, but the percentage shows...reflects less (inaudible).

SENATOR SCHUMACHER: Well, the unincentivized businesses, they may be in the same sector.

SENATOR SMITH: Right.

SENATOR SCHUMACHER: But the unincentivized gals and guys are creating a lot more jobs than the incentivized, but they don't get the incentive.

SENATOR SMITH: Okay. My question is about Metric 10. And if I go to the book, now this is on page 11, and you talk about other state benefits and dollar amounts. And if I go to the book, you make a reference here. Do you...can you give me examples of other Revenue Department programs just...and maybe which of those programs contribute the greatest dollar amount toward that nearly half a billion dollars?

MARTHA CARTER: Absolutely, Senator Smith. If you look at page 47, there's a table at the top of that page that shows the four Revenue Department projects, I'm sorry, programs that we looked at.

SENATOR SMITH: Okay.

MARTHA CARTER: And the vast majority of the funds were related, you know, almost...well, more than 99 percent were the LB775 funds. So...and but then the point that we made earlier, if you look further down on the page, you see that of those LB775 funds that these companies received, 92 percent of those funds were received before they were participating in the Advantage Act. So we just feel like that's important to make that click.

SENATOR SMITH: Okay. Thank you.

SENATOR GLOOR: Senator Brasch.

SENATOR BRASCH: Thank you, Chairman Gloor. And thank you. This is a wonderful report. And I don't know if my question would be to you or to Senator Watermeier. But am I correct in understanding that this is a review basically of the history up until the present? It's...and my concern is that part of the history, when I was out in my district, Washington County, for example, one of the past recipients, in 2006 the economy took a dip. This company is sold to Wisconsin, to OshKosh, rather than being...you know, the economy is not guaranteed to keep creating jobs. That, you know, if we're looking at legislation, are we looking at something with an elastic factor, growth and shrinkage? And I know it's all performance-based. But if we're looking at are we giving too much, what about when they have to lay off employees, when they have to, you know, do any...they go into survival mode? You know, when the farm economy went down, so did manufacturing in certain areas. So do we look at, you know, it's not all success stories and ribbon cuttings. It's a matter of moving forward. So we're examining these incentives. What about the "what if" factor?

SENATOR WATERMEIER: Let me just jump in and remind everybody where we're at. This is the first time we've done it and, because of that, we're going to have to create a benchmark in that itself. And so, as we go on with time, we're going to have a chance to create and define, really get down to the nitty-gritty on this. But to also answer your question, you were talking about something that happened in 2006. That was LB775 which we really didn't study. This was specifically to the Advantage Act.

SENATOR BRASCH: LB775 was back in '89 (inaudible).

SENATOR WATERMEIER: Right. And so but this perform...

SENATOR BRASCH: But 2006 there was a major...that's when the ARRA funds came. You know, the whole nation went into a recessionary mode, and so did Nebraska at that point.

SENATOR WATERMEIER: Uh-huh. So I guess I'm not exactly sure where you're at with that question...

SENATOR BRASCH: Okay. All right.

SENATOR WATERMEIER: ...but so to answer your question is that keep in mind we had to start a benchmark in some point in time with even starting these audits, and doesn't look like we're producing, if you don't think we're producing good enough now.

SENATOR BRASCH: So we're doing forensics basically with this, correct?

SENATOR WATERMEIER: Well, we're doing...I wouldn't call it forensics. We're going back and looking at how. We're just trying to look at the data that we've gotten since Advantage Act was born.

SENATOR BRASCH: Uh-huh.

SENATOR WATERMEIER: And that's as clean as I can describe it to you I think.

SENATOR BRASCH: It's just a biopsy of some sort or, you know. And the purpose is to make sure that, as Senator Schumacher, is he's asking how much of this is too much and what is not enough? Is that accurate? I guess I...

SENATOR SCHUMACHER: I just want to know how many people the preacher got into heaven. (Laughter)

SENATOR GLOOR: Senator Bolz.

SENATOR BOLZ: I have a related question to Senator Brasch's question. Did the fiscal analysis that you did include calculation of any dollars that were clawed back, any dollars that were brought back because a company defaulted or didn't meet their expectations?

MARTHA CARTER: Well, two points about that: When we did calculations, we did take that into account if there was an amount that had been recaptured. That would have been taken out of any of the calculations that we did. We didn't have a specific analysis that looked at that, but I think that that information is reported in the Revenue Department annual reports. I think they have a line in their report that shows the amount that has been recaptured.

SENATOR BOLZ: I just...I think that might be a helpful number for us to have in front of us in terms of how many projects were successful versus how many projects we got a clawback from. And I'm curious, can you tell me more about...and forgive me, I'm just not as familiar with the policy. What are some of the reasons why we might clawback or have a default? What are some of those examples?

MARTHA CARTER: So I think what often happens is that a company has been meeting the required levels for their contract and then they have a year where they don't. So you can think of the recapture in two ways. One is if you do have a company that fails, then you may be recapturing. But you also have companies, and we saw this in the data that we looked at, where there's just a year that was in recapture and so credits or benefits are withheld. But if the company gets back to meeting the levels, they can continue in the program. So recapture isn't always a complete failure. It may just be a bad year for a company.

SENATOR BOLZ: Uh-huh. Uh-huh. And what if a company leaves the state entirely? And I guess maybe to put a name on it, the Good Jobs First reported that ConAgra had $160 million in incentives and now has left the state. So do our clawback or default provisions include the circumstance in which a company who has previously gotten incentives leaves our state entirely?

MARTHA CARTER: Gosh, I don't know that I know the answer to that.

ANTHONY CIRCO: I think the recapture only applies while you're participating in the program. Once you're finished with the program, then you're free to do what you want.

SENATOR BOLZ: Uh-huh. Okay. Thank you. One more question, and I realize this might be a difficult question to answer but I'm still curious to get your thoughts. Your report references that it's difficult or you can't necessarily articulate the fiscal impact of the multiplier effect. If you have a pharmacist who hires an administrative assistant, you can't necessarily analyze that. It occurs to me that the opposite is probably also true. If we're incentivizing a business that displaces a local business because they're better able to compete because of our incentives, we can't capture that either. And I'm just curious, particularly for the loss of local businesses or the loss of existing jobs, are any other states doing any better job analyzing the ripple effects of their incentive programs?

MARTHA CARTER: I don't know that we know the answer to that. We could certainly participate in a roundtable of other states that are doing this kind of evaluation. We could certainly look into that.

SENATOR BOLZ: Uh-huh.

MARTHA CARTER: Do you...?

ANTHONY CIRCO: Some of that would also be reflected in a REMI analysis and economic modeling. Other states have done economic modeling in their evaluations.

SENATOR BOLZ: Uh-huh.

ANTHONY CIRCO: I don't know to what extent. I'm not a professional in that. But some of those side effects or induced jobs or displacements are captured, from my understanding, in an economic analysis.

SENATOR BOLZ: Well, that's helpful. That reinforces the importance of that recommendation then. Thank you. Appreciate it.

SENATOR GLOOR: I'm going to ask one last question, just again my concern is, moving into the future, who does this, how does this happen? And it has to do with the Governor's Office. My recollection is that LB312, which started this back in 2005, was championed by the Governor's Office, embraced by the Legislature, and we have Nebraska Advantage. But have there been...clearly, we've gotten cooperation, you stated that, from DED, and Revenue, and we've had a lot of assistance from the executive side of things. Has there been any action or reaction from the Governor's Office about Nebraska Advantage is still a keystone to development? And I'm thinking from the standpoint of some impassioned senator who, in the next session, says I don't think we ought to be picking winners and losers; I think we ought take these dollars and roll them into addressing the budget shortfall or lowering the corporate tax rate and get out of the business and let the market pick, through a variety of ways, expansion in there. I mean and if they do that, is there a knock at the door and DED says, what are you doing; Nebraska Advantage is a fair-haired child of ours and we need it in place.

MARTHA CARTER: I can just give you a little information. I have not had any direct contact from the Governor's Office. But the Department of Economic Development did contract for a study with SRI that was released earlier this year that made some recommendations about changes to the Advantage Act. And so my assumption, just based on things that I've seen referenced in the newspapers, is that there is some interest in pursuing some of the recommendations from that SRI report.

SENATOR GLOOR: Okay. Okay. Senator Watermeier, any...?

SENATOR WATERMEIER: Well, you know, I haven't had direct contact with the Governor's Office either, but you know I was...I would reiterate as well how much cooperation we had gotten from the Department of Revenue. And I think it even speaks highly that the department would give us some recommendations to clean this up, because they see that...how cumbersome it is, how long it is. And I guess that's where I hope that there's going to be a big push this next year to clean it up, make it more...not necessarily transparent but just make it either easier to qualify or not, because having six tiers with all these different...makes it difficult to know what you're even applying for as well.

SENATOR GLOOR: Well, I think part of the issue for me here is, are we going to use this as an opportunity to say it's worth doing with tightening up, or is this the time that somebody calls the question and says let's get out of the business of picking winners and losers and let the market work on tax reductions in a variety of arenas and let the market make those decisions for us? It's really what I'm asking.

SENATOR WATERMEIER: And I guess I felt my role as Performance Audit was, if we're going to continue to go forward, we're going to need to be able to be asking these questions, reporting mechanisms so we can get to all the things that we don't have answers for today. And I'm reminded by, this is the first jump into the water to get this, you know, started, and it's just going to be a long process. We had even debated at the beginning doing this of not doing the Advantage Act first, picking one of the smaller programs and then waiting three years.

SENATOR GLOOR: Yeah.

SENATOR WATERMEIER: But I think it's an advantage to Nebraska that we started looking at this, sooner the better, so the next time it comes around we'll be more prepared, and certainly if we make changes to the Advantage Act, what kind of questions we ought to have for reporting mechanisms.

SENATOR GLOOR: Okay. Was there a question down here? Senator Kintner and then Senator Schumacher.

SENATOR KINTNER: Thank you, Chairman Gloor. You know, I think there's a number of us that are trying to figure out, are we better off having the Nebraska Advantage Act where we incent companies to come here or we incent companies to stay here, or are we better off just having lower income tax rates and corporate tax rates. And I didn't hear anything that defines that for me. But going forward, I think you started to...I heard a couple things in there which might address this, but is there any...what can we specifically do with these programs that we can make it easier to have benchmarks so as we go forward in two years and four years, when you all look at these things again, these programs are easier for you to get a handle on and figure out exactly what information you need. I think if we know it up-front and we adjust these programs with the right benchmarks in there, I think it will be easier to do your job. Have you identified those things?

MARTHA CARTER: Senator Kintner, I think you're absolutely right and, yes, we have to some extent. And I think...I mean we're trying not to burden you all with too much of that detail, but we are happy to talk about it.

SENATOR KINTNER: Burden Senator Watermeier. He's (inaudible).

MARTHA CARTER: Okay. Yeah, he's used to us burdening him. But really going back to those committee recommendations that we talked about, you have to know what your goals are specifically. And this is not just Nebraska, let me say that. All of the states...or not all...many states are struggling with these same questions. It sounds good to say you want to create jobs. Well, what does that mean exactly? How many do you think you want to be creating? Is investment an equal goal to job creation? Is it a different kind of goal? Once you have your goals...I mean let's just use the relatively easy example of distressed areas. Do you want the program to require that businesses have locations in distressed areas? If you do, what do you mean by "distressed"? And how much...how many of the project locations do you expect to be in those areas? I mean it's kind of just a logic model almost of being just much more specific about what you hope to accomplish and how much progress you hope to see.

SENATOR KINTNER: Okay. So something will be forthcoming, I hope, from you or through Senator Watermeier, some report or something saying in the future do this, this, this, including some of the things you said and probably other things, right?

MARTHA CARTER: Yes. And I think a lot of it is in here, but we can certainly pull that piece out for, you know, so people can focus on that a little bit more as...I mean I guess our hope, as your auditors, is to see more of that built into whatever changes are made to the program and along with working out some of the data challenges so that when we come back to this we can give you better answers than what we're able to right now.

SENATOR KINTNER: That would help. If you think about it, I have a stack of reports that probably sits about this high off the table, so if you could highlight the important things,...

MARTHA CARTER: Right.

SENATOR KINTNER: ...it would really help. Thank you very much for coming. Thank you for your hard work. I appreciate it.

ANTHONY CIRCO: And if I may, some of it is also...we would like to know a little bit more from the Legislature and from senators as well what exactly you would want to see. What does it mean to be successful in...if we're talking about distressed areas? Does it mean a lower unemployment rate? Does it mean a higher per capita income? Does it mean more family household formations? You know, those sorts of things, those are the specifics that would help for benchmarking. If somebody were to tell us, you know, we think that X, Y, and Z is representative of helping the economy in this area; now go look at X, Y, and Z, and we think an X percentage increase in X, Y, and Z is a success, those sorts of things.

SENATOR GLOOR: Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Senator Gloor. Picking up just a bit on what Senator Gloor said and Senator Watermeier said and seeing the quandary maybe we're in, the meter is running on this program. And it would appear that the study is inconclusive enough that we need a more defined way and more data to study, which means a long process during which the meter runs. So I kind of agree with Senator Gloor a little bit that, you know, is this a call for any more...for more immediate action to fine-tune it, to terminate it, or can we afford and is it a good idea just to coast along and two years from now somebody else gets to make the judgment rather than me and Senator Smith and Senator Brasch (laugh) and the rest of the folks? Well, the rest of the folks will be here to be stuck with it. But...you know, and that's part of what really faces us a bit. Getting to a data question, yet while I still have the floor for a second, page 5 of the handout, Metric 3, we talk in terms of average wages in the incentivized project compared to basically the state as a whole. And one would expect them to pay average wages because the other guy has got to pay taxes, well, they get to pay...should be paying some of the wages. But looking, like, the first one, gee, that looks pretty good. That number looks like about $29,000 or so. But do we have the distribution of those wages? Let's pretend that we had only four wholesaling companies in the state and we had the four owners each making a million dollars a year and we have the worker bees making the, what is it, $11.30 an hour running around with forklifts. And we would come out with a pretty good average wage by averaging that all together. But if we were to graph those out using another graphing system, we would see a bunch of worker bees at $11 an hour and then we'd see some unreal, real high spike that went off the graph. Do we have that kind of data available? How is this distributed? Is this a program for the worker bees or a program for the elite?

MARTHA CARTER: Let me start. First of all, to get compensation credits, wages have to be at least 60 percent of the Nebraska average wage. So there is a floor, you know, above which the salaries have to be.

SENATOR SCHUMACHER: Is that the $11.30 number that's been tossed around from time to time?

MARTHA CARTER: I don't know. []

SENATOR SCHUMACHER: That's a pretty low number. I mean it's nothing that it's a "oh wow" number.

MARTHA CARTER: And we have a table in the report that shows there's a range, so the higher your wages are the additional percent of credits that you get. So I don't know if that dollar number is the low end or the high end. But in any event, I'm just saying there is at least a floor below which you don't receive credits. And the other thing is, our other measure that Anthony mentioned of the number of people earning above the average wage, it doesn't get at what you're talking about specifically but it suggests that there are more bodies receiving those higher salaries. It's not a complete mismatch of just one or two people at the top.

SENATOR SCHUMACHER: Do we have a graph of that?

MARTHA CARTER: No.

SENATOR SCHUMACHER: Or do we have the data to generate such a graph?

MARTHA CARTER: I don't know if we have. I mean if we...that would be Labor?

ANTHONY CIRCO: Yeah. The Department of Labor did a lot of work in developing software to help us find some of these things. And in the process of that, I believe that they could do some sort of...I don't want to speak for them, but we asked them to do things along those lines: if you could tell us how many people made above or below a certain amount. And so my guess is, if you go to them with this newly developed software, you can ask them how many people made above this, how many people made below this, you may be able to come up with it.

SENATOR SCHUMACHER: That...I mean, you know, the median, what you just were talking about or the average, very rudimentary statistics that don't tell you very much compared to a wage distribution graph that shows the not only mean but standard deviation, the skew, all that other stuff that statisticians have fun with. So an average does not tell us much. It tells us a very, very rough thing. And of course, we get back to the problem that Senator Watermeier raised because to generate these other numbers, these other graphs, are time-consuming with the debate about what...how you should do it and where. And back to Senator Gloor, well, maybe we're just running a meter while we shouldn't be running a meter. And maybe there's a quicker way out, just an overall look at the tax rate on corporations and business. So I'm...but I guess the question: We might be able to generate a more detailed statistical analysis but we don't know.

MARTHA CARTER: Right. The short answer would be that we don't have that data right now. We would have to work with Labor and see if we could do that.

SENATOR SCHUMACHER: Thank you.

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

SENATOR SCHEER: Well, very quickly, I just wanted to note that a lot of the questions we don't have answers to. And it's not because the staff hasn't been...

SENATOR SCHUMACHER: No.

SENATOR SCHEER: ...hard at work trying to find that. But one of the things that the committee found was that we didn't have access to a lot of the material because of different departments and privacy. And because in some cases some of the businesses or industries were so few in number that if you used it, it was quite obvious who was receiving the benefits and it was supposed not to be public information. So I think what...at least one of the things that I gleaned as a committee member, and I'm sure that the staff has, is that we need to start looking at how we can share material and information and between different agencies. And I don't want to say you want to circumvent privacy because that's not what I'm trying to imply, but in order to get a realistic look at some of the questions even, for example, that Paul...is it all $11 jobs and the president is making $4 million and so it makes it look like we've got a tremendous increase. Some of those things we don't have the availability and so some of the legislation that Senator Gloor might be talking about is things to change the statutes that allow us to take a better look. Some of them may be as simplistic as changing the application form to allow us to utilize that information as well. So I want to just commend the staff as well, but this is, if everyone recalls, this is the first one. And we've had to feel our way through and ran into several roadblocks. And I'd compliment Senator Watermeier and Martha in working with the different divisions to get just this much information put together in the form that it is. And I think it can be...obviously, it can be improved on, but we have to have different access to different information in order to answer some of the questions that have been posed today.

SENATOR GLOOR: And I think those are wise words to wrap up today's hearings. Senator Watermeier, thank you for your leadership on this issue, (inaudible) a lot of work, a lot of time, and for your committee members. Martha, you and your staff, thank you also.

MARTHA CARTER: Thank you.

SENATOR GLOOR: And with that, we will end this hearing. Thank you all and happy holiday.