Revenue Committee and Appropriations Committee August 25, 2017 Room 1113

SMITH: [00:00:00] Everyone, this is a public hearing, but testimony is limited to the presentation of the annual report by the Department of Revenue and there will not be any public testimony today. This joint hearing is required to be held each year pursuant to Section 77-5542 under the Nebraska Advantage Act. I would ask everyone to please turn off your cell phones or mute them to vibrate so that we do not interrupt those that are presenting today or with the Q and A that takes place. I'm going to at this point allow the senators to introduce themselves, and I'm going to start with Senator Clements on the end and work our way around the room.

CLEMENTS: [00:00:45] I'm Rob Clements from Elmwood: Cass County, District 2.

VARGAS: [00:00:53] Tony Vargas, District 7, representing downtown and south Omaha.

McDONNELL: [00:00:57] Mike McDonnell LD5: south Omaha.

KUEHN: [00:01:00] John Kuehn, district 38: south central Nebraska.

WATERMEIER: [00:01:02] Dan Watermeier, District 1 in Syracuse.

BOLZ: [00:01:04] Senator Kate Bolz, District 29: south central Lincoln.

STINNER: [00:01:07] Senator John Stinner from District 48: Scotts Bluff County.

SMITH: [00:01:11] Jim Smith, District 14 in Sarpy County.

FRIESEN: [00:01:14] Curt Friesen, District 34, from Henderson: Hamilton, Merrick, Nance, and Hall County.

HARR: [00:01:19] Burke Harr, Legislative District 8, representing Benson, Dundee, parts of Keystone, and your Junior Jays.

BRASCH: [00:01:37] Senator Lydia Brasch, District 16: Cuming county, Burt County, Washington County.

SCHUMACHER: [00:01:43] Paul Schumacher, District 22: that's Platte, and parts of Colfax and Stanton County.

LINDSTROM: [00:01:49] Brett Lindstrom, District 18: northwest Omaha.

GROENE: [00:01:53] Mike Groene.

SMITH: [00:01:55] Senator Wishart.

WISHART: [00:01:59] This is Senator Wishart from District 27 in Lincoln.

SMITH: [00:02:01] All right, and we have Senator Larson that will be joining us in a few minutes and he will be here. I do not have the names of our pages today, so I'm just going to ask them to introduce themselves, please.

JOE GRUBER: [00:02:14] I'm Joe from central Lincoln.

KAYLEE HARTMAN: [00:02:14] I'm Kaylee from Syracuse.

SMITH: [00:02:17] All right, thanks for working with us today. And Krissa Delka is to my left, and Krissa is the committee clerk for the Revenue Committee. And again, this is a joint hearing and we're going to welcome Commissioner Bolton. But before you begin your remarks I wanted to hand it over to my colleague, Senator Stinner. He wanted to make a couple brief remarks first.

STINNER: [00:02:39] I do want to thank the commissioner and his people for preparation of the report and being here today. Pretty comprehensive stuff in here. We on the appropriations side have to react to what you do on the revenue side. So if you paid attention last year, things got a little rugged and it doesn't look like it's improving. So we have tough times so report such as this we're going to take a harder look at, scrutinize a little tighter, a little closer, and try to get some answers. But I do come from the business side, the business sector. So when I look at tax policy, I look for fairness and balance, but I also look for a pro-growth type of strategy. And I think the incentives fit into that strategy very well. So I'm not opposed at all to any incentives. You know, depending, but I do believe that we have to, and our job is, to kind of measure outcomes of what we've done. I think everybody has looked at the report that saw a $700 million impact on revenue on legislation we passed the last 10 years. And so with revenue being short that would be something that we really need to pay attention to. That said, I try to always keep a sense of balance. And I understand that, based on what the economists from the state of Nebraska say, the two economists say, that we're going to have some growth. Actually one said we will have rapid growth. The economists nationally across the globe say that we're having a recovery worldwide. So maybe our revenue will start to straighten out, things will be good again. You know, the other things that I do look at, the positive things from the incentive side, is that I noticed in March we actually got the Governor's Cup from the Site Selection magazine. We've attracted Facebook. I'm hoping that we can do something proactive for our Sydney location with Cabela's. So those, I think, incentives play into those, those successes. I just saw a report from May to June we had-- we were third in the nation with the highest growth in employment in nonfarm employment, basically coming from the leisure, hospitality, and business services. So, you know, some green shoots. But when I sit back and I take a look at the budget and things that we have to contend with, I look at your report that you give me on a on a monthly basis on the incentives and the projections and it's now projected a $120 million deduct from revenue. And I think when I started it about $70. So that's growing. I'm looking toward can we predict this a little bit better in terms of refunds and what happens credit-wise to our-- to our revenue flow so the we're better with the budgeting part of this thing, we can anticipate some things. So those are the things that I see and I'm trying to keep a sense of balance. I'm also trying to take a look at it, and I think that ongoing we need to continue to look at some of the things that we have passed from a legislative standpoint. So thank you for being here. That concludes my comments.

SMITH: [00:05:54] And good points that you made. And I'll just remind a couple of my colleagues that are near the end of these tables, you may have to share the mike down there, you may not have a mike in front of you. So if you're asking a question, make certain you get to that mike so we can get it into the record. With that, we welcome Commissioner Fulton. Thank you for being here today. And it's all yours.

TONY FULTON: [00:06:17] Okay. Thank you to the members of both Revenue and Appropriations Committee, Senator Smith and-- Chair Smith and Chairman Stinner. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I am to Nebraska's Tax Commissioner and head the Department of Revenue. We have as our statutory charge to present to you the 2016 Nebraska Tax Incentives Annual Report, quite comprehensive. And for that reason we have put together this PowerPoint presentation. The slides have a lot of information on it. We've brought our best experts from the department, and if you've worked with them before, Doctor Hoa Phu Tran and Mary Hugo, you know they're very competent. And so we endeavored to provide you with the information you need to make wise policy decisions on behalf of the state of Nebraska. And for those who are watching, wise decisions get made in the state of Nebraska. I'm very comfortable being here in front of your committees. The order here, I'm going to-- I'm kicking it off. Mary will really touch on the meat and potatoes in the presentation, she's an expert at this. Then Dr. Tran will talk about our projections as Chairman Stinner alluded to. And then I'll come back up to answer questions. Part of my responsibility here is to answer your questions, to provide that information and insight that I can. And hopefully you've come to know me well enough to know that you ask and I'll answer. And if I can't, I'll tell you I can't. So with that, I'm going to turn this over to Mary Hugo, and thank you very much for your attention.

MARY HUGO: [00:08:22] Good morning. My name is Mary Hugo. For the record, it's M-a-r-y H-u-g-o. I am an audit manager, I work specifically with incentives for the Nebraska Department of Revenue. You should have available to you a copy of a brochure that's issued by the Department of Economic Development, a copy of the slides that we're going to go through this morning. And we had heard that some of you would already have copies of the report itself. If somebody wanted a copy of the report, we have some extras. We have-- some of you had heard this report in a similar outline to the last couple of years. We changed the outline up a little bit, kind of because the timeframe that was scheduled and also because of some of the discussion this year about some of the smaller programs in incentives and whether what to do with them. And so we decided to bring them a little-- bring them earlier in the program so we could talk about them. Sometimes we never got to them before. We're not going to spend as much time on just defining terms. And so if you have questions about some of the terms that I'm using, I'd take that question, whatever other questions you have, and try to address them as best as I can. Smaller programs, so we're going to talk about what's disclosed and what's not disclosed, we're going to talk about the smaller programs, then we're going to go to the Nebraska Advantage Act which is our larger program, and some of the older incentive programs in which there are still benefits being paid out against but we're not receiving any new applications. The incentives that we're talking about this morning are listed on the screen, the various ones that are called the Nebraska Advantage Act and micro, rural, and research and development. And I won't say Nebraska Advantage in front of all of them because I would just get kind of tongue-tied about saying Nebraska Advantage Microenterprise Tax Credit through the morning. We will discuss the Employment Investment Growth Act, Invest Nebraska in quality jobs. These are all the programs that the department is responsible for reporting on by July 15th. You may have noticed that the Nebraska Historic Tax Credit, the Main Street revital-- Job Creation and Main Street Revitalization Program is not on the list because reporting requirements for that are that we are to report on it by December 31st. And so we'll create that information this fall. We won't create it, we will gather the information from what's been issued and report that this fall. The statutory requirements for each program differ. So if you look through the report and look at the different programs you don't always have the same information. But we go down the statutory requirements, and if it says we should report employment investment we summarize that. Sometimes it's in total, sometimes it's by industry. The research and development credit won't have an employment investment among listed because it's based on a percentage of expenditures. We'll talk about the benefits for each of the-- for the calendar year. Now, I wanted to comment that this year is the first year that we're going to have to create a footnote to the Comprehensive Annual Financial Report that the state issues. There's a Governmental Auditing Standards Board that said we have to footnote for each incentive program the total amount as a gross number on accrual basis. And so it will run on a fiscal year basis, we'll report as of June 30th. It will be one general number but it will be on a different time period, and it will also be on accrual basis where what we're reporting in the incentive report is what's been approved. And there's no reflection of like things that might have been filed with the department for not paid out yet, okay? So if you tried to compare that they'll be on two different timeframes and different basis, so they won't be totally comparable. I wanted to at least mention that we're working on that as well. For a couple of the programs it says we should list they have to sign agreements are in the report, and there is some project-specific reporting for a couple of the programs: Nebraska Advantage Act and the Nebraska Advantage Rural Development Act. What's not disclosed, there's a limitation in each of the statutory programs that says "no information shall be provided in the report that is protected by state and federal confidentiality laws." The department uses the IRS statistical standards and tries to ensure that with any number that's reported there's at least 3 companies represented if it's reported on a statewide basis. If the data is on for a subsection of the state, it should include 10 companies. We'll start out with the summary of the programs and the activity for the year. Each of the programs that's in the report is listed on the slide. It indicates the year that we began accepting applications and also the year that we would expect to stop taking applications. In some cases, it's a when it will sunset in the future. And for the three programs listed at the bottom of the list, we're no longer receiving new applications but they're still having expenditures because of the length of the program that you've committed to when you started. For example, Nebraska-- the Employment Investment Growth Act could potentially last 21 years. So we still have a fair amount of expenditure, and actually, if you look at the number, it's just slightly less than Nebraska Advantage for 2016. This gives you a comparison for three years with all the same programs, what the expenditures were. And definitely as you look at the total across the bottom, the amount that was expended in 2016 was much higher than the two years before. In fact, it's-- 2013 was a very high year but it might be slightly higher than that as well. Each of the programs had an increase in what the expenditures were. We did some graphing to show, now the red line that's on the top of the graph and the blue line that starts on the bottom. The red line is the Employment Investment Growth Act, which is the predecessor to Nebraska Advantage, has been around since 1987. And the Nebraska Advantage started in 2006. But Nebraska Advantage when it came in it said we'll no longer take any applications under 775, and so it was kind of a replacement even though it did change, you know, a number of provisions. So the graph would show you that Nebraska Advantage is increasing, you, know as we get more companies qualified the total expenditures in that program is increasing. 775 is going up and down, but generally as a pattern downward, and we would expect them to continue to decrease because there's fewer companies that are still within their period of time that they can claim benefits. So the program took no applications in 2005 but because it was such a long window there are still filers. We actually, we had a fairly significant spike, as you can see, in 2016 in activity and in 775. This graph, even though maybe there's too many lines on it if we can look at the colors. I want to start with the kind of brown line that starts at about $7 million and moves across, it's the income tax withholding line. And it's increasing, we're getting more companies involved in the program so there's a general increase. But it's not as erratic as a couple of the other benefits that we're going to look at, it's more flat. In regards to the sales and use tax refund using credits, which starts out at zero there on this graph, it's fairly flat and took a spike in 2016. We see situations where companies file a lot of-- a lot of years at once and it will cause a spike. In regards to the direct sales tax refunds, which is the purple, which starts at about the 13 and goes up and down, if a direct refund relates to the taxes paid on a qualified investment-- so if you have a project that applied and they're working for four or five years to get qualified, they're paying taxes that whole period of time. And once they have their qualification approved they're filing a refund for the taxes paid in that four or five period-- four or five-year period of time, and so it costs us a significant amount at once and would cause the directory funds to spike in certain periods of time, especially if you have large projects or a number of projects qualifying in a year. In regards to the corporate income tax, which is the red line, it is also very erratic in regards to its up and down. It depends on the liability of the taxpayers and also depends on how many, you know, if they amend a number of years at a time or file certain years together we have more than one year in a cycle. This is the same type of information but for LB775. And as you see, there's one less line. There's no withholding tax benefits under LB775, so that line is not reflected here. The purple line which is the direct sales tax refund starts at about 20 and it kind of tailing down. Since the direct sales tax refund relates to qualified investment made during the early part of your project during your attainment period or the period when your-- in your entitlement where you're earning and using but you don't have direct refunds in the carry-over period, just because of the age of the program the directory fund should be declining. In regards to corporate income tax, the red line, it's very up and down depending on the liability of the companies that are filing and the number of years filed within the period. In regards to the blue line, the sales and use tax refunds using credits, as more and more projects under LB775, it's to the end of the point where they can't use the credits anymore. There is a limit to them, you can't carry it forward forever, and they can't use them. They're either done using them and they just expire or they have fewer of them left. And since there's fewer qualified companies, the credit refunds should be declining as well. So the next thing we're going to talk about is the smaller programs under Nebraska Advantage. These are active programs taking new applications and some of the smaller programs we discussed in this session so we thought we would bring them forward, because sometimes we don't get them to them at all. Now, in regards to-- the Legislative Audit Office is looking at each of these three programs this year. And so at the end of the year there should be report from their analysis as to these three programs. We're going to start with Nebraska Advantage Microenterprise. Microenterprise has a $2 million allocation per year. But we started out in 2017 with $4 million available for people that wanted to apply because there's a provision to carry the credits forward and they hadn't been utilized. So in this in 2017 we could take a lot more applications than the $2 million. Under microenterprise applicant is-- that application is filed by a person who is actively involved in the microbusiness. The microbusiness is limited in size, it has to be five or fewer full-time equivalents. And full-time equivalents is determined based on the number of hours worked divided by 40 hours a week. They have to, in 2016 there's still the definition of a distressed area. This legislative session change it for future purposes, but you had to be within a certain census you could-- you could be within the whole state other than certain census tracks that met the definition of distressed area, and they were in Buffalo, Cheyenne, and Washington County so most of the state was eligible other than certain portions of the state. And there was a law change effective yesterday. Under this program nearly all types of businesses qualify. So as we talk about the other programs that have to be involved in this activity or that, this, it's mostly everything other than there's a limit that was implemented on the net worth of a farmer that could apply for those limitation on the farmers. Microenterprise is a refundable tax credit so even if the person that applies that earns the credit doesn't have a liability in Nebraska they could get a refund. So if I filed my income tax return and have no liability but I earn a $5,000 credit I could get a $5,000 payment. The credit under microenterprise is computed based on 20 percent of the increase in new employment and new investment. In this year-- in the year of application or the year after, as compared to the year before you applied which we call the base year. This program new employment equals an increase in compensation and employer healthcare costs. It's the only program that we have that doesn't require an increase in number of employees. This doesn't require a new job. New Investment equals the increase in expenditures on purchases of depreciable assets other than motor vehicles, repairs, advertising, legal, and other professional services. A person is limited to a lifetime limit of $10,000 for them and their related parties. This graph shows you that in all the way through 2013 all $2 million was requested by the people that were trying to participate in the program. Starting in 2014 and since then we haven't had full subscription to a number of people applying in order to request the $2 million. And the red line that was added to the graph shows you the urgency of applying. So in the first year, in 2006, we had a hard time getting anybody to apply, you know, trying to educate people on it and the applications continued through 12/31. In 2007, the $2 million was spoken for by 2/20, February 20th. In 2008, we had everything spoken for on the first day we could accept applications and everybody got prorated funds, they got about 50 cents of what they asked for, 50 cents on the dollar, 50 percent. There was a law change that said that farmers couldn't apply after that point in time. And then we had fewer people in the pool that were applying, and as we go through the years the applications didn't consume the $2 million until later and later in the year. And starting-- and there also there was a law change that said we won't take applications after November 1. So starting in 2014, like I said, we don't have all the money spoken for, and each of the years coming up that it's later and later in the year until somebody asked for the money. Now the numbers that we're talking about are just the people that applied, you know, it's a matter of how-- how many are asking to get in the program. Of the people that applied, just like every other program, not everybody is going to do what their plans were and therefore they may not get a credit off of it, you know, depending on what they're-- what they actually end up doing. In this slide it will give you a summary of like through 2006 to 2016 there are about 2,700 applications that were received to participate in microenterprise. 79 counties had representation in those applications, some of them only had 1, you know, there's a range, and 14 counties that are listed there represent 70 percent of the people that applied. And if you look at the counties in some cases they're the counties that have the most population. Maybe the most businesses. But in other cases, we think it's because in certain counties, even though they might be lesser-populated, they had preparers in that county that were very active in microenterprise. They were looking for a way to get their customers or clients to be able to participate in this program. Though some of the counties that you see are because there were just people very interested in filing on behalf of their clientele. This slide would give you an idea of across what industry groups the applications were filed. And so in the first years through 2008, when there was no limitation on the net worth of the farmers, the ag industry represented a fairly high percentage of the total that we received. So and you earned your credit based on 20 percent, so if you had a $50,000 and investment you took 10 to 20 percent, you get $10,000. So if you're buying, you know, a large piece of farm equipment you might meet that with a purchase. The other industries are listed there. You know, after we get past 2008 and the ag is not such a high percentage, the highest percentage is coming from information and professional services-type jobs, type businesses. In regards to administrative things for the Department of Revenue, most of the incentives have a limitation section so you're not going to get benefits for acquiring a business or moving a business or leasing from related parties. And so that's causes some struggle to just use the intent of the law that says you're supposed to have rolls and investment employment in the area and not have the limitations to fall back on. There's also, because it's a program where you earn it based on compensation, in some cases you-- in many it's not uncommon to see where somebody that's applying is increasing their wage to themselves. And maybe they're doing it by the change in the type of business, looking at compensation differently. There was a law change in 2008 that did limit that if you made over 150 percent of the Nebraska average weekly wage you couldn't have an increase in your own wage anymore. But those types of things are things that are causing us review time. We're going to go on to Nebraska Advantage Rural Development. It is also a program that has a fixed amount of funds available for each year, and it makes a difference what part of the state that your business is in to see whether you can qualify and what you're eligible for. In 2016, there is $1.5 Million available, half a million was available for people involved in livestock modernization programs and the other $1 million was available for what we call level one or level two projects. So if you look at the brochure from DED and you look at the far right side of the inside panel where it says Nebraska Advantage rural Level 1 and level 2, it will give you the list of the types of businesses that could apply under this program. It's not as broad as micro, where it's basically any, you know, type of business could apply. But there is a list of what you can be involved in and apply for this program. The tax benefits available for this program are refundable income tax credit and you could also use the credits against sales tax. As of yet, because it's a refundable credit, we haven't had anybody used the sales tax option because it's actually a little more work to put the documentation together to get the sales tax refund. So a refundable credit whether you have a liability or not you can receive a payment for the credits that you've established. There's two types of projects under rural livestock modernization. The maximum amount of credit for that was increased in 2016 to $150,000, before that it was $30,000. It relates to livestock housing and waste-type things and it can be in any county. You earn your credit based on 10 percent of your new investment, there's no employment requirement. Level one, level two projects, I'll note that there is something omitted from the slide that I'll speak but it's not on there. You do have both an investment and an employment requirement, and we just noted on the slide the employment side of it, so I'll try to clarify that. A level one project must be located in a county of less than 15,000 in population based on the census, the every ten-year census, or it can be located in a distressed census tract. You have to add two

FTEs, you have to have an increase of two full-time equivalence, and have to have an increase of at least $125,000 to an investment. A Level two project must below-- paid in a county with less than 25,000 in population, and you have to have a growth of five full time equivalent employees, and you have to have an increase of $250,000 dollars in investment. So it is both an investment and employment requirement. For each new FTE you earn $1,500 and for each increment of $50,000 of new investment, and it's net new investment, so if you have something you buy and something you retire, you net the value. For each increase-- net new investment of $50,000 you earn $2,750. In regards to, you know, the demand for the applications that are received for rural development, in 2010 and 2011 there was an available $4 million that we could have accepted applications for. But we didn't receive applications to the full amount. In each year we were below, you know, below $2.5 million. The amount of money available for applicants changed in 2012 to $1 million. And in those years, other than 2015, which had just a little bit left, we had full subscription and application for the funds. In 2016, the amount of the funds increased slightly and all that was requested. The same type of thing on the dating, you know. So for the first years where we didn't have everybody filing, we didn't have it by the end of the year. In 2012, 2013, and 2014, we had the million dollars spoken for within the first couple of weeks of the year. In 2015, we had funds of some, you know, some funds left until June; and in 2016, they were spoken for in May. And this year, we're about the same: May and June. In regards to the amount of credits that were refunded or used under rural development, it's changed. And the first years that are listed there, like 2009 and 2010, in those years we had more funds available, so not really totally comparable to the other years because the amount that we could accept went down. And in the presentation-- I'm sorry, in the annual report that you would have, there were some information about project-specific benefits, you know, like in 2016 it would list certain taxpayers and how much money they received in 2016. It's a one-year reporting from livestock modernization, the amount reported for 2016 would been two years of activity that were involved in level 1 or level 2 activities. Nebraska Advantage Research and Development Act, any business firm that has RND expenditures in Nebraska could claim this credit.

We piggyback off the federal credit. So if you earn a federal credit and the portion of the work is done in Nebraska, apportion it to Nebraska based on actual expenditures or an average of your property and payroll factors. And the credit is based on 15 percent of your federal credit you would earn a credit in Nebraska. If you have your business-- activities actually conducted on a campus or a college, or a college university campus, you can earn a 35 percent credit. And these credits are refundable, so you can earn the credit and get a refund. In more cases in this program than some of the other than the-- than rural, we do see the companies distributing the credits to their shareholders or members in the same ratio as income. Once the recipient of the credit is received it's a non-refundable credit, so the recipient would have to be able to use it in the year that they receive the credit. And it's not-- if their liability was not as high as the credit they received, they wouldn't be able to use the full amount. In regards to the research and development credit, started in 2006. And this graph would indicate that there's an increasing general trend upward is what's used, and in this year, in 2016, was the most money that we paid out for Research and Development Act credits. So now we're going to go on to Nebraska Advantage, the larger program that's accepting applications. And it's summarized, and we'll probably refer to it a couple of times in the first couple panels of the DED brochure in the blue columns. We're going to talk about things that were ensured and talk about the applicant's process that they go through in order to get the-- to make a decision and also to get the funds. The tax benefits that they receive vary by tiers. We'll try to address that and then we'll discuss the slide related to the amount of money that was paid out by the different types of tax categories. So for this program and statewide there's no limitation about what county you're in, a distressed area. You could-- if you're located in and doing business in state in Nebraska there's no geographic restrictions. There's not a cap on the amount of funds. So if-- it's not like if we have applications up to a certain dollar amount then we tell the next applicant they can't file. We take the applicants that file in and that would meet the statutory requirement. Now, if you are a company looking to apply under Nebraska Advantage, you'd have to make sure that you meet the requirements. You'd have to be an eligible taxpayer, so you have to be subject to sales tax and withholding. And they definitely would know that, and most companies are subject to sales tax and withholding. They cannot be a political subdivision or an entity exempt under 501 (a) of the Internal Revenue Code. You could be, include in your application more than one entity. So if you were had entities you owned at least 50 percent and you're unitary in filing on that basis in Nebraska, or if you had two different types returns, a corporation and a partnership, if you met them, the ownership of the unitary ties, you could still include more than one entity in your application. So as a company trying to decide what to do, you'd have to look at what you have in Nebraska and which entities you want to can see, including your application. You don't have to include them all, so you could make a choice about which entities were growing and which entities were declining. The company would have to look at whether they're involved in a qualified business activity. So in the brochure from the Department of Economic Development, it starts out with Tier One to the left-hand side and it moves across through Tier Six. I guess that goes on to the third panel. Tier One has a shorter list of what the qualified business activities are. If you go on to Tiers Two through Five, the list is longer and more types of businesses could participate. The Tier One is limited to research and development, manufacturing, and certain exported software development-type services. Tier Six, which is on the far right, is broader because it requires a higher wage level. It's like you can be involved in basically any kind of business activity under the-- other than retail, and if you meet requirements of the investment in the higher-wage jobs you could participate in Tier Six. And in the middle, you're looking at different combinations of employment investment and the types of jobs related to those business activities. Whether they're involved in a qualified business activity is a fairly common question from the taxpayer. And actually, how it fits into what they can include also because the question that we address in the application process early often. Oftentimes they have qualified and nonqualified activity. So then through the application process we're working through them trying to get to an understanding of what portion of their business would be qualified and not, and how we'd be able to audit that at a later date. The project locations that they can include, so if they had multiple locations within the state of Nebraska they don't have to include all of them. If they wanted to include more than one they would have to be interdependent. It says that the headquarters is deemed to be interdependent. And otherwise we're looking for a material flow of goods or information between the locations. So if you're a company trying to make an application to be looking at, okay, what entities are active in Nebraska that I think are going to grow that I want to include, are they performing a qualified business activity. If they are performing a qualified business activity, is each of the locations expected to grow and do we want to include them in the project, and how to describe that in your application. Now, once you have that sense, you're then going to try to look at the tiers that are available under Nebraska Advantage. And the time periods for the tiers, the benefits, and how you can move among the tiers changes based on where you start at. So this slide is a different summary of the tiers that are available. So if you were cut me and you had an idea what your investment employment growth worth, if you didn't expect any employment growth and you expected only to grow in investment, the only tiers that available are Tier Five. Investment only, and it-- it still says you should maintain employment or have some risk recapture. But if you don't have employment growth there's limited tiers are available, but the amount of investment has to be pretty big. A Tier Five already means a renewable energy project, you'd have to have a growth of $20 million. And the other general type of business activities are listed in the brochure. You still have to have a $36 million growth if you're going to apply under Tier Five. So for many companies that would be a big number. If you didn't expect to have at least $1 million in investment over a five or seven-year period of time, but you expected to have employment growth, you could maybe look at Tier Three because it's employment only and there's no requirement of investment growth. You'd have to grow by 30 FTEs, which, you know, might be more than you expect. In regards to if you had other growth that you expected, you know, if you're not a data center then the ones that say Tier Two web portal data center or Tier Two large data center, Tier Five say major. If you're not a data center, they don't apply to you. If you're not renewable energy, you can't do that type. If Tier Six, the wage requirement is listed on the far right of the slide, for every county a Tier Six applicant would be expected to have a new job, new wage paid of $61,776 if you applied in 2016. And that's the state-- that's required for every county in the state. Some of the other counties in the state that have a higher county average the amount would be up into the $90,000s that a new job would have to pay the new employee. The other tiers, there is a wage requirement that's listed there. In 2016, they had to pay $24,711 in Medicare wages. So if you're thinking about, you know, I'm going to have a project that's $13 million and, you know, 75 new employees. Well, I could be Tier One, 2, Tier 4, Tier Six, maybe I'm not going to pay the $61,776 for my new job. So I'm considering Tier One, Tier Two, Tier Four. It might factor in how long you have to reach your level. So the attainment period until you meet the minimum levels varies by tier. So Tier One, I have to have only $1 million investment but I have to get there in five years. Tiers Two, seven years; Tier Four, seven years. The length of the project, you know, maybe I don't have a large demand for my credit so I want the credits to hopefully last 15 years instead of 10 years so that I can use more of them up. So there's a fair number of factors that they have to consider in regards to whether they can meet the levels based on their investment employment plans. And the tiers that they select would also impact what they could get out of the program. So if you are a Tier One project you'd have a direct refund of half of the taxes you pay on your qualified investment, where the other tiers-- on the Tier Three, you could get a 100 percent of that refund without having to use up credits. You could earn an investment and compensation credit for the tiers other than Tier Five. And there's no investment credit in Tier Three because you don't have to have investment growth. So there's a fair amount of factors up they're trying to consider what would be their best advantage. In some of the programs you are eligible for personal property tax exemption. And depending on what type of program it is sometimes personal property tax exemptions only on computers versus all the property at your project. So they're like, okay, Tier One, you know, I only get half. If we think we're going to have $13 million in investment and 75 employees I want to get my full direct refunds. Maybe I'm going to limit, instead of Tier One, 2, and 4, I'm going to look at 2 and 4. Now in that case, Tier Four incorporates the fact that once you reach the Tier Two levels you get the benefits of Tier Two, and if you get to the property tax levels of, you know, you get to

100 FTEs and the higher investment then you would get the property tax benefits. Now, it costs you a little higher application fee but you'd have to just consider whether you're going to recover anything for the personal property tax benefits. Do I have equipment used to process in agricultural products? So if I'm a manufacturing company manufacturing metal products I don't use corn or, you know, an agricultural product as my raw materials so I wouldn't be eligible for that. Do I have an aircraft? Maybe not. Do I have computer systems? Maybe as a manufacturing, not a lot of computer systems in an environmentally controlled area. I might have some distribution facility, storage facility equipment, so maybe the property tax benefit is worth something to me or not. Is it worth the extra application fee? Maybe. But if you apply at Tier Two and later decide you should have applied for Tier Four, there's a limitation that you can only amend to a tier with lesser benefits. So you can't jump up to Tier Four from Tier Two. So if you want to keep it open, you should apply at Tier Four and see what, and it costs you a little higher application fee. Now, the companies that are falling in between Tier One and Tier Two, where it's $1 million in investment and 10 FTEs, compared to $3 million investment and 30 FTEs. If they're in the middle kind of close, like I think you're going to have 25 employees, you know. And I would get more benefits that's under Tier Two. Well you can't amend to a higher level in any case, and because of the difference in business activities there's a ruling that says you can't demand from Tier Two to Tier One. So they have to be careful about where they're at. Otherwise, if they apply a Tier Two and they never get to the 30 FTEs, they don't get anything. So they have to make a decision about what they want to do. In the audit and review process before a company receives benefits other than there is some property tax benefits you can claim before you become-- meet your minimal levels. But if you don't ever reach them, you have to give them back. But other than that you're not, you know, you go through the application process, you get your agreement signed. We have to look at the application in 180 days, it's told when we're waiting on a taxpayer. They get an agreement and then they're making their investment employment and they should file with us and showed what their growth is. But they're kind of waiting until they get any recovery from this. Once they think they met levels, they contact

the department, we do a qualification audit to verify the amount of-- that they met the levels, the amount of investment credit they would earn, the employment credit, the number of FTEs. And we would look at the first direct refund, the refund of the taxes paid on that investment we're reviewing. The audits that are submitted to us, 10 to 15 percent of them, after we do some initial review, they don't meet levels for the year that they thought they did. You know, there's a calculation error and misunderstanding about how the law applies. And probably a majority of the audits that we look at there is some adjustment to what they thought they were going to get. Oh, sorry, I want to go back. There we go. In addition to the qualification audit there's also a verification process for the benefits that they file for. So if they file for a sales and use tax refund, we look for copies of invoices and proof of tax paid. That was at the project that they defined, not at a location maybe they excluded and do that kind of work. We look at the ratio that they can offset their withholding for to make sure that it doesn't exceed the ratio for the new employees. And we also review their filings to determine whether they have recaptured benefits, meaning they fall below the levels in the later year and they owe a percentage of them back. So in regards to the audit and review process, the pro and con of it, it does confirm that they met levels. We look at how much money they should get, try to look at it fairly detailed. And but at taxpayer's comment is probably that it's burdensome. Application activity, since 2006 until the end of '16 under Nebraska Advantage, we had 630 applications. Not all the projects qualify. Based on their track record through LB775 and thus far through LB312, about half of them will come forward and actually meet the levels that they expected. Plans didn't go as they thought. The average time to get to levels is two or three years. They state amount of planned investment and employment in the application when they file it, but they only receive benefits based on what they actually do. Sometimes when people apply they state the minimums, even though they might think they're going to get higher than that and sometimes they state an amount that they don't reach. But as long as they reach-- attain the minimums, they get some benefits. When you look at the list of agreements that are signed, the amounts are listed in the report, it would state what the plan, and that might not be close or that accurate as to what they actually did. This page is the main summary of the moneys paid out under Nebraska Advantage, it's page 38 in the report. In regards to the number of qualified projects increased this year to 114 from 94. So we had 20 new projects. There was an increase, definite increase in the number of credits earned, if a large project qualified within that group of 20. There was an increase in the benefits that have been used, for example the sales and use tax refunds. We did have a large filer that filed for several years that impacted that as well, but there's more companies filing and so the credit refunds increased. Across the bottom of this slide, you'll see the number of new jobs. That's for 2016, the 2,095 number that's on the slide represents the people that qualified for the first time and they had a three-year attainment team period in the year we audited compared to their base year, their growth during that three-year period of time. The number would also include somebody that had qualified in an earlier year but they had incremental growth, they had grown by 100 the year before, now they have 10 more. We would have accrued the increase of the 10 in that 2000 number that's on the bottom of the column listed is 2016. And thus far through the program the amount of jobs created is 13,993. The chart we just looked at only includes companies that we've had a qualification on it performed on, it does show you the four years and the accumulative, and I think I addressed the other item. In the report it would list the number of active signed agreements of 353. There's-- if somebody had signed an agreement and then withdrew, is not on the list anymore, so there's active agreements of 353. 50 agreements are signed in 2016. With 114 companies that have qualified thus far, they've reported new investment of $7 billion, direct refunds have been paid out of $159 million. The total credits earned were $842 million, they've used credits, there's been some recapture, and the total outstanding credits are $473 million. And the number of jobs reported are 13,993. The pie chart is a little bit different depiction of kind of the numbers that we've been looking at. The personal property tax exemption that's one of the pieces of the pie here is actually an estimate. The property is exempted and in the annual report we list the value by county that's been exempted. And so we used an average to estimate the tax so that the items in the pie would all be representing tax instead of one being a value and the rest being tax numbers. In regards to, if you looked at this pie chart versus the one that we brought to the presentation last year, the numbers are not-- the ratio is not much different between maybe a percentage or so, other than the credit refunds has increased like 4 percent. And part of that's because there's more companies involved, but also a company that had a project under LB775 and those credits are no longer available because the carryover period expired, they're moving to LB312 and starting to use more credits under Nebraska Advantage. To maintain confidentiality we do have information here by industry. You'd have a page that summarizes manufacturing, it splits it manufacturing and nonmanufacturing, and then there would be further detail behind those two subcategories within the report. Similar industries are summarized together to get to the 10 that we would before. Eventually, we hope to report 10 but we don't have enough needs of the industry groups to report so right now we've reported seven. Which is one more industry group than we reported last year. There is project-specific information provided in the annual report for Nebraska Advantage. It's on pages 52 to 54 of the report. It list 47 projects in 2016. You have to have qualified and had two years' worth of benefits before you reported the first time, and then your project is reported every other year. So in 2016, the reported projects that initially had qualification audits completed in 2009, 2011, 2013, and 2015. Projects with qualification later than 2016 wouldn't have two years' worth of activity until next year and they would be in the report in the following year. The report on project-specific information is like what they use against income tax, withholding, sales tax. It does not include any recapture that they paid. It's a gross number, and it does not include an estimate for what they receive for property tax benefits. And the report would show you the aggregate of all those 47 companies, it would add them up. Other things that you'd find in the annual report are the personal property value that is exempted by county, it would be on page 39. So it would list aircraft, agricultural equipment, computers, distribution facility equipment, and other for the ones that can get all property exempted. The industry sectors information was on page 40 to 41, it would tell you, you know, of the different industries what kind of applications are filed. If we're in manufacturing, are we-- what kind of-- are we getting Tier Six, Tier Twos, you know, what kind of tiers are applying for the different sectors. There's also a summary of the investment employment for all applicants, that's in the report. It's on page 49 to 50 of your report. And that report includes information not just from the companies that we have done qualification audits on but anybody that has a signed agreement that it has filed. We had 353 signed agreements. Not everybody would be expected to file because they just signed in 2016, their return wouldn't have been in yet. But 300 of them did provide filing and for us to look at. So we summarize them, within the 300 there's 108 of them that are the qualified companies. 192 of the companies included in that report we have not done any verification on. So there is a fairly good percentage of those numbers that are reported numbers that haven't had any verification. So now I'm going to turn it over to Hoa Phu to talk about the--

HOA PHU TRAN: [00:52:39] All right. My name is Hoa Phu Tran, H-o-a P-h-u, last name, Tran, T-r-a-n. And I will do the next two slides that appear with the Board of Revenue projections for the intended program. So why exactly do we have tax incentives? Tax incentives have-- affect Nebraska tax revenue in kind of both ways. First, it's have a positive effect, meaning when you provide incentive to company which basically lower a cost of capital or hiring people it, that's incentivize them to hire more people, do more investment, which basically enhance economic growth. So you get better revenue. However, there's a negative side effect, which is the direct full on part of the tax revenue that you are supposed to collect from that particular business. Now you don't get that benefit anymore. So that's the negative effect. What we generate here is the project of revenue gain and loss. We do it through what we call a dynamic, a dynamic fiscal impact, basically dynamic analysis, which is basically a computable general equilibrium model. In that, basically, we allow for the firm, the household, the government, and the rest of the world to interact together, rather than just look at directly at just the firm who receiving the tax credit. So here, revenue gained and lost, if you look at '17 and '18, roughly you see a $50 million and a $49 million dollar loss for that two particular year. That number is basically the drive as the economic-- the positive economic impact generated from the enhanced economic growth, which is bringing new revenue to the government. Subtract off all the tax increase-- the tax credit that we paid to those company or offset in through sales tax withholding or directly fund to help the company. So in '17 and '18 fiscal-- officially what it's saying is your net benefit when you do a dynamic impact is roughly $50 million or $47 respectively. And this is for actually for every [INAUDIBLE] which is the program. And if you look through across time, you've-- the cost will increase until the program is basically running out. And keep in mind this number are not cumulative, those are yearly, independent number. The second row we have is the estimated new job for qualified tax credit. That number, basically what Mary just told you, you sum it up to 13,000-some jobs over the-- of the 114 companies that qualify. So those are basically the job that the company reporting to get the credit. How much increase in the FTE they provided. But, however, as we all know, the economy grows regardless of tax incentive or not. So some of that job might be created regardless of that percentage. Which brings us to the third row here, which is the estimated net job increase or decrease, meaning that number can basically can be contribute to the result of the tax incentive. So let's say in '17 what we projected here is 2,867 new employees that the company will claim on their return for the tax incentive credit to qualify for the credit. Of that 2,867, roughly 1,000 of that is due to the incentive tax credit. Or another way of saying this is the number is basically you subtract off the two number, roughly leave you with 1,700 jobs will get created by itself through the growth of the economy without incentivizing. And that's why the third row is actually smaller than the second row, just because the economy will grow. Some job will get created regardless of the incentive.

SMITH: [00:57:06] Just a moment. Senator Watermeier.

WATERMEIER: [00:57:06] Is it okay to interrupt now, Chairman?

SMITH: [00:57:08] Yeah.

WATERMEIER: [00:57:09] Thank you, Chairman Smith. Mr. Tran, I appreciate that. And I've seen these numbers before, but I've always forgotten, do you have a little methodology you can share with how you come up with the difference in the number? Obviously some jobs are going to be created without the incentive and some need the incentive. But the first year was 38 percent of them, the second year was 50 percent. Was that-- did that get pitched out on a model somehow, or how was that?

HOA PHU TRAN: [00:57:30] I think what you're referring to is how companies qualify.

WATERMEIER: [00:57:36] No, the difference between-- you're stating that in 2017 this is estimated, I mean, obviously, that 1,100 of them are going to be the net.

HOA PHU TRAN: [00:57:45] No, I just took the simple math here.

WATERMEIER: [00:57:48] OK.

HOA PHU TRAN: [00:57:50] So 2,800 minus 1,000 is roughly 1,800.

WATERMEIER: [00:57:56] Right.

HOA PHU TRAN: [00:57:56] So that is basically, I think the company would have created by itself anyway. That's basically what the number is telling us.

WATERMEIER: [00:58:03] That's what the numbers are telling you that? I mean, clearly that math is, but how is the methodology to guess that.

HOA PHU TRAN: [00:58:10] OK. So the second line, to get that second line we do a projection. We do a projection on basically historical data of every between LB312 and every LB775, which is the Growth Investment Act. And then we project that basically how many of that job the company will create it. That's what we call the, so basically it does not involve dynamic analysis. Not just the direct impact, like a Company A, Company B, Company C filed for the tax incentive, they write on their return how many jobs they created and things like that. So some of those jobs might not even get, you know, those the company grow. They need the people regardless of the incentive or not. So maybe not all of them, but they will likely hire some of them. To get the dynamic impact what we did is, so we took-- we also estimate the amount of tax credit use, which is on the table. Full detail on that table, I can't remember the page on the booklet. But we estimate the total credit earned and how much investment that we will-- we will do for the next 10 years. That's outside of the dynamic scoring. Then what we did, we took that number, we-- basically, when you give a company a tax credit it's nothing more than lowering the cost of the capital. So we lowered the cost of capital, we run the model again, and we see the difference of the new model versus the baseline. That's how we came up with that number right there.

WATERMEIER: [00:59:45] Okay. I may follow up with you on that some other day. Thank you.

SMITH: [00:59:50] Senator Groene.

GROENE: [00:59:51] Just for clarification. The revenue gained, is that just the tax credit or does that include the property tax exemption? And does it include just the local sales tax loss?

HOA PHU TRAN: [01:00:04] I believe this is just the state number.

GROENE: [01:00:06] That's just the state number?

HOA PHU TRAN: [01:00:09] Yeah, that's just the state number, yes.

GROENE: [01:00:10] It doesn't include the local property taxes or the local sales taxes?

HOA PHU TRAN: [01:00:16] The sales tax law, the state portion, we do include it.

GROENE: [01:00:19] Yeah, but you also take it away from the local, so it's a zero sum.

HOA PHU TRAN: [01:00:23] The local is not included in the--

GROENE: [01:00:25] To the state it's a zero sum on the local sales tax.

HOA PHU TRAN: [01:00:35] The local-- basically the local gets like 1.5 percent of that tax lost. We don't have that number in there.

GROENE: [01:00:41] It's not in there, and neither is the property? All right, thank you.

HOA PHU TRAN: [01:00:47] Any other questions?

SMITH: [01:00:50] Please continue.

HOA PHU TRAN: [01:00:52] And here is for LB775, again, the program ended in 2005. We don't get much revenue gain or loss that you still do in '17 [INAUDIBLE] companies still in the process of using that credit. So the effect of you're not going to get much on the economic impact but you still [INAUDIBLE]. If you look out in 2025, that's when the program is supposed to be end, we can be running about their million dollar loss with no new job and no new-- basically nobody filed for job to qualify for the credit. But some of jobs still exist because they want to make an investment, they can't just shut it off the next day. So those jobs will get carried out until the company does-- or does what they trying to do and then apply the project. Any questions? If not, I'm going to turn it back to Mary.

SMITH: [01:02:07] Thank you.

MARY HUGO: [01:02:07] So there's other incentive programs we haven't talked about yet. They're still active, they're not accepting new applications under this program. But there would still be companies participating and receiving benefits. They're the Employment Investment Growth Act, Invest Nebraska Act, and the Quality Jobs Act. There is still activity in these programs because, due to their length of their toll of the attainment, entitlement, and carryover periods. For example, LB775 had a 21-year life. However, as we get later and later in the program, as you see some of the things that are reported, there are certain numbers that we're not reporting this year other than in combination, because as we have fewer companies involving-- involved, there's more issues about confidentiality. So we're trying to combine industries so that we can report the numbers, combine years. The Employment Investment Growth Act LB775 is a predecessor to Nebraska Advantage. It had three application options, one was investment only, the other two had employment investment very similar to what the levels are for Tier Two and Tier Four. We have no new applications since 2005. Still active, but it is aging. There are a fewer companies that are remaining active, but we've combined administrative groups, tax credits recaptured were combined with what was expired, the direct sales tax refunds on aircraft were not separately listed but they were put with the other direct refunds so that we could report them. We still have enough companies represented to keep that confidential. Next year's report, based on what we looked in this year's who is reporting investment employment and still in their entitlement period, we think they'll be no industry split for like investment, investment credit employment, direct refund, and new jobs. They'll be reported in total but less industry information. Though the numbers that reported for LB775, the number of new credits, you know, established at $3 million. It's definitely a lower number than we had in earlier years, but we have fewer companies that are in their entitlement period where we can salvage new credits. The amount of credits used actually had an increase, and you can see that that increase a lot of it was related to corporate income tax or we had filers that had large liabilities. The direct refunds are low, and as we age, and you only get the direct refund in the first part of the program in your entitlement period, and you don't get a direct refund in the carryover period. The direct refund should decline. There are still 135 remaining signed agreements that are active. We had even initially-- over the life of the program thus far we've had 459 companies' projects qualify. The activity through '88, from 1988 to 2016, reported new investment of $25 million-- I'm sorry, $25 billion. The direct refunds, $841 million. Total credits earned, $2.8 billion. And our outstanding credits, $364,000-- six hundred. $364 million, I'm not doing very well on my commas and decimal places. Reported increase in employment thus far is 90,951 FTEs. The other two programs that are reported are at Invest Nebraska and the Quality Jobs Act. There's been no new applications for Invest Nebraska since 2005. There are six remaining agreements. We combined years because then we had at least three companies represented and we had $42 million paid out in those three years. The Quality Jobs Act, there's only one remaining agreement and not sufficient information to issue a report on the activity. That's all I have.

SMITH: [01:05:42] Very good. Thank you. We now open it up to questions, and lot of information there for us all. So questions from the committee? Senator Harr.

HARR: [01:05:56] Thank you. I'm going to started with you, Ms. Hugo. Thank you. And I just have clarification questions more than anything. You early on gave a program summary of use of programs and their cost.

MARY HUGO: [01:06:14] Okay.

HARR: [01:06:14] I'm not an auditor. We always joke in law school, I go to law school because I'm not good at math. But I did add up your numbers.

MARY HUGO: [01:06:24] I hope they footed.

HARR: [01:06:24] But it didn't work out. So my question is--

MARY HUGO: [01:06:29] [INAUDIBLE]

HARR: [01:06:30] Well, because you leave out a number. Your numbers come up to $295, but I have a cost being $295.5. So my question is does this program here, Quality Job Act, actually donate or contribute to our budget?

MARY HUGO: [01:06:52] No. That would be footing error in regards to the fact when I-- in the review of the slides at one point in time I know we changed a number, and we must not have changed the total. The other 0.5 does not represent anything for Quality Jobs Act. It doesn't--

HARR: [01:07:05] So you rounded down instead of up.

MARY HUGO: [01:07:07] I think we just didn't refoot it after we changed the number higher in the slide.

HARR: [01:07:11] Okay. So then the Job Quality Act, I get that you can't give the number. But as I as a policy maker, if I'm to decide how to do, make policy, I got to have not a specific number, a round number. So is that seven figures, nine figures? How much money are we spending on that in round numbers? Is it more or less than a million?

MARY HUGO: [01:07:36] I don't know that I know it really off the top of my head, and I'm not sure that I could disclose it because there's-- there's not enough companies involved in it for us to disclose. And I don't think I could-- they don't have enough activity in the types of credits. There was never that many participants.

HARR: [01:07:53] So you're the head of audits, right?

MARY HUGO: [01:07:57] Say that again.

HARR: [01:07:57] You're head of audits for the Department of Revenue?

MARY HUGO: [01:07:59] Well, not for the whole Department of Revenue.

HARR: [01:08:01] Well for the incentive programs, correct?

MARY HUGO: [01:08:03] Actually, I work-- there's a person then a manager in Omaha that does a lot more audits than I do. But I work in an audit area for incentives in Lincoln.

HARR: [01:08:12] I guess I would ask if you can get us a number within a million dollars, I don't need to know. But I do need to know where our money is going. Is that too much to ask? Can I have a follow up on that?

MARY HUGO: [01:08:25] OK. And I think there-- it's not that we wouldn't have the number, it's a matter of whether it would meet the confidentiality guidelines as to whether we can disclose it. There is an ability from this hearing--

HARR: [01:08:35] I can't-- I'm sorry, I can't hear you.

MARY HUGO: [01:08:36] I'm talking to Tony again. There is an ability from this hearing for you to request a number, but I'm not-- and so we could look at it. But I would have to work with others to know whether we could release it because of confidentiality.

HARR: [01:08:46] I'm not asking for a specific number, right. What I'm asking for is to me, a million dollars is a lot of money. So I'm asking for within a million dollars where we are, if it's this program is costing us, you know, you have numbers in here $1.3, $1.1, $5.6, $120.8. Is this more in the realm of $1.1 or is this more of the realm of $120 million? That's all I'm asking. Given the small number, I think that's reasonable because I don't want-- at the same time I don't want, if it's a small number and they're getting $120 million. That's a red flag that maybe we need to go back and look at. That's all I'm asking. So if you can give me seven figures, I'm cool with that.

TONY FULTON: [01:09:32] Yeah, that's a little bit different request. And what we'll do is we'll look at that request and determine if we can provide it while still adhering to the statute with respect to confidentiality. But with a range--

HARR: [01:09:48] Of a million bucks, I don't think that's giving away a lot.

TONY FULTON: [01:09:52] Yeah, not knowing what the number is, we'll have to look at that and we'll respond to you, Senator.

HARR: [01:09:57] OK. Well, and if you can't tell me, I would ask that you tell--

TONY FULTON: [01:10:01] I would tell you that.

HARR: [01:10:02] OK.

TONY FULTON: [01:10:03] But at this point I'm not certain.

HARR: [01:10:04] But on to page 28, where you talk about LB775, do you see a large, in light of recent Supreme Court decisions, a large change in the cost to LB775?

MARY HUGO: [01:10:18] OK, what Supreme Court decision are you referring to?

HARR: [01:10:20] Well, so the Department of Revenue without a rule or rag or law had determined that there had to be a holding period of one year for employees before they would qualify for the tax exemption, capital gains tax exemption on LB775 transactions. The Supreme Court then turned around and said no, we can't do that. And I think-- so with these numbers, and that occurred last year. And while, so it's going to take a while for that to work through the system, I would think. Do you foresee an increase in the costs of LB775 based on that court ruling?

MARY HUGO: [01:11:02] To the best of my knowledge, I don't think so.

HARR: [01:11:06] Not to your knowledge?

MARY HUGO: [01:11:07] I don't think that would impact that. It's not reported, it's not-- I don't think it would impact-- the decision on the capital gains I don't think would impact the types of numbers we're, are in this report.

HARR: [01:11:18] OK. So do you know the cost of that capital gains exemption?

MARY HUGO: [01:11:22] I don't work with that at all, so I don't.

HARR: [01:11:24] OK. Do you know, Commissioner Fulton?

TONY FULTON: [01:11:26] I don't. But we'll get you an answer.

HARR: [01:11:30] Okay, that's all I had. Thank you for coming here today.

TONY FULTON: [01:11:32] Say that again, you want the amount of that capital gains exemption?

HARR: [01:11:35] No, I just wanted to know if, and maybe this better job question for your economist, if there is predicted increase in cost. And if so, how much. That's it.

TONY FULTON: [01:11:45] Okay, fair enough.

HARR: [01:11:46] Yeah. You know, and by the way, I'm not looking to change that at all. I just, as we go forward and make a budget I think it's important that we look at what are the new costs out there that may or may not affect our budgetary process so that the Economic Forecasting Board can make a proper decision so we aren't, as we've seen in the last couple of years, unfortunately forecasting has been a little low. That's all I'm asking for. I want to thank you guys for coming today. And I just want to say, Ms. Hugo, you are you're not as scary as half the Omaha business community says you are. So thank you.

SMITH: [01:12:26] Senator Bolz.

BOLZ: [01:12:27] Thank you. Along the same lines of Senator Harr, when I look at this serving on the Appropriations Committee I think about the volatility and the potential impacts on our budget and how we can predict and plan and manage our costs. So I have a couple of questions along those lines. The first question is it looks to me is the corporate income tax credits under LB775 increased pretty significantly from 2015 to 2016 from $14 million, $14.5 million, to $94.7 million. Can you help me understand what the driver of that change might have been?

MARY HUGO: [01:13:07] There's a number of things that would drive a change like that, and I can't address any specific situation. But it could be a matter of income tax liabilities of the companies may have increased. It would be a situation where you had somebody that met qualification levels and amended more than one year at a time, you know. So it's got more than one year's worth of tax responsibility being recognized under this report in a single year. Or a company that amended returns that for more than one year at once. Sometimes it's just certain companies got a lot of increase in liability or you have new companies that are coming in, and sometimes it's a matter of more than one year being reflected in the [INAUDIBLE] that's reported.

BOLZ: [01:13:50] That's logical. Are there strategies that other states use to manage the volatility of incentives like this?

MARY HUGO: [01:13:57] I don't know an answer to that question.

TONY FULTON: [01:14:05] There are. I admit that there are just-- there are so many different, I mean, every state has its own. These are the incubators of ideas, and so each of these states has their own idea as to how, how one distributes their incentives. Some states just have a pot of money and just write a check to a company to come. You know, that would be-- that would be a way of controlling volatility because you're, you know, if you put X number of dollars into this pot and say this pot is for attracting companies, well yeah, you'd get rid of volatility. But, you know, there are other issues associated with that. So there are-- that's an extreme example, but that exists. Some states do that. Yeah, that the predictive, yeah, that's just the way that our statute is written. There has to be room for some prediction.

BOLZ: [01:14:57] Sort of along similar lines, it surprises me every time I look at this number when we're looking at the annual net revenue loss of $50.7 million. So as I'm understanding that, and I always have to look at it again every year as, you know, this is taking into account the impact of business investment and job creation and nonetheless we have this loss, which is always hard for me to think about when I think about it is an economic incentive program. The question I'm leading up to is is that what was predicted in the original fiscal note? These, these numbers that we're seeing in reality, how close or how far are they from what was actually projected in the original fiscal notes? Are we where we expected to be and this is the cost that we, that the policymakers who passed this legislation intended? Or are we off-base of where we projected this initiative to be?

TONY FULTON: [01:15:57] Yeah. Dr. Tran, you listen to what I'm saying. And if I'm wrong, give me the hook. The fiscal note is different than a dynamic analysis. Fiscal notes are not done dynamically, they're done with respect to hard figures. That being said, I think it's probably accurate to say that there are other theories and other calculations that would be put forward as to what the economic advantage is to a given state. There are intangibles that simply can't numerically be accounted for with respect to the attraction of jobs. One of the things that was put forth in the study, I think it was the SRS study here just recently, is the recognition that there is a need for Nebraska to attract higher-paying jobs. And you worked on that as a matter of policy. There are a number of intangibles I think that go into that that just can't be quantified. So if one has a higher-paying job there's a-- there's a standard of living that he or she is able to enjoy that's different from one who has a lesser-paying job. That's not quantified in economic activity. One who has a job paying, you know, 75-- one who has a job paying $100,000 a year versus one who has a job paying $45,000 a year has time to be creative. And if that person isn't involved in a creative endeavor that starts another company, that's not something that can be quantified. I've read economic papers on how that could be quantified and good luck on quantifying something like that. Though those are numbers that aren't going to show up in any dynamic model, certainly wouldn't show up in any fiscal note that would've been considered in the past. But in terms of fiscal impact, those fiscal notes are a different beast than what a dynamic model would put forward.

MARY HUGO: [01:18:00] Stinner Watermeier would probably know, but I think the Legislative Audit Office looked at Nebraska Advantage last year, did some review of whether they thought it was more or less than what initially was expected when the program was passed. Is that correct?

WATERMEIER: [01:18:18] We touched on it. And I'll turn it over to Chairman Kuehn on that.

MARY HUGO: [01:18:25] I think there might be something they addressed in that report.

BOLZ: [01:18:29] OK. Well I appreciate that. I can revisit the good work of the committee and the analysis done there. It just makes me wonder whether or not we're on track for our goals and visions for economic incentives when the trend over time seems to be overall loss, at least according to the reports and the analysis. I'll give others an opportunity to ask questions. Those were those were my two top concerns.

SMITH: [01:18:57] Senator Schumacher.

SCHUMACHER: [01:18:59] Thank you, Chairman Smith. Thank you for helping us try to understand this. And that being said, since I'm term limited, I don't have to pretend I understand it. And I'm free to ask-- I'm free to ask some questions. So if you bear with me a second, I want to see how close I am to guessing what the answers are. Let's just say that I'm interested in playing the game and I look at this chart here and it says to do the Tier Six. And that's the big game, why play with a small fry if you can play the big game? I either have to do $10 million in investment and 75 employees at $61,000 a year for a total payroll of about $4.5 million a year, or I've got to do $100 million in investment and 50 employees or about $3 million a year in payroll. Am I right yet? Okay. So really for a fairly small amount of investment I get to play the game. I mean, it's on the 10 million that's only a section of land at $15,000 an acre and on the $100 million that's less than a third of the township of land. So it shouldn't be too hard to come up that kind of money. Lots and lots of that out there. Now, when I have to look at my payroll here, that's the average payroll.

MARY HUGO: [01:20:39] No, that's by a person.

SCHUMACHER: [01:20:41] By person?

MARY HUGO: [01:20:42] Yeah. So, and it was like we stated earlier, it would vary by county. But depending-- every county has to have at least this, but certain counties the number is much higher. But it-- we would look at whether with the 50 FTEs, we look at whether Joe made this wage. And if so, then his hours count toward reaching the 50 FTEs.

SCHUMACHER: [01:21:00] So if I pay anybody less than $61,000, I don't get to claim them, their FTEs?

MARY HUGO: [01:21:08] They don't count to help you reach the 50 FTE or the 75 FTE growth.

SCHUMACHER: [01:21:13] So I've got to have at least the 50 employees and I have to pay each of the 50 at least $61,000 a year?

MARY HUGO: [01:21:23] Right.

SCHUMACHER: [01:21:24] And that's all counties, or is it different figures for different counties?

MARY HUGO: [01:21:29] It's different figures for different counties. It would be on the Web site. Some of the counties are upper like $95,000 and we only-- and I don't honestly have the full list of the counties.

SCHUMACHER: [01:21:39] And so if I pay somebody $40,000 that doesn't count?

MARY HUGO: [01:21:43] It doesn't help you reach the 50 or the 75 FTEs.

SCHUMACHER: [01:21:47] And that's FTEs year after year? I can't just do that one year and say I did it?

MARY HUGO: [01:21:54] If you-- if in one year you reach the 50 or the 75 FTEs, in the next year you'd still have to have either the same people or replacement other people if one of those moved on in the state and you had to replace them with somebody else that made that much money.

SCHUMACHER: [01:22:09] And that's not average. So I'm actually going to write checks.

MARY HUGO: [01:22:14] It's not an average. It's not like you can pay one person $5 million dollars and everybody else not very much and do an average.

SCHUMACHER: [01:22:21] Well, that's what I was planning on doing. I was going to be the one person. Okay, the next thing then, you mentioned that when I-- if I build toward this over a number of five years or so to get my qualification, to get to that level, then once I get there I can go back and get refunds for the taxes I've paid?

MARY HUGO: [01:22:49] For refunds of the taxes paid on the qualified investment since the date of application, yes.

SCHUMACHER: [01:22:55] And I can get, I can reclaim the employee withholding I withheld from my employees during that five-year period while I was building up?

MARY HUGO: [01:23:03] No, the investment-- it just reads different. So the direct refund there's a provision that you go back to the date of application. But once you earn credits, so in a year, in year five when you meet levels, you earn your investment and your compensation credit. And that's the first year you have compensation credit to offset against withholding. So you earn it in year 5 and you can use your compensation credit to offset withholding in the following year.

SCHUMACHER: [01:23:27] Okay, so I can't go back and get my on-- get my employees' withholding back, but I can get my employees' withholding in the future?

MARY HUGO: [01:23:36] Right.

SCHUMACHER: [01:23:36] OK. And now my income taxes, can I carry them back and grab a refund? Claim my income taxes?

MARY HUGO: [01:23:45] For income tax you can only use the credits in the year that you earn it and forward. And the reason why I said before sometimes we have them filing for more than one year is that they don't always come forward right away and have you do the audit. So we might be auditing year five and in year 7 they then go back and amend five and six and claim the income tax. But the credits earned in year five in my example for investment or compensation credits can use against income tax in that year and only forward, but not backward.

SCHUMACHER: [01:24:11] So when you talked in terms of being able to go backwards that's just on sales tax credits then?

MARY HUGO: [01:24:19] That's-- prior to the year of qualification you can go back and get your direct refund of the sales tax paid on your qualified investment. But you couldn't use your credits and go back and get a refund of the taxes paid on your utilities. They have to be undepreciable assets.

SCHUMACHER: [01:24:36] Okay. Now, going forward, is there any limit, I mean, once I've done this and I'm paying out my $3 million dollars in payroll to my $61,000 a year people, is there any limit onto how much credits I can take into the future? I mean, if I-- if I turn in Monopoly money credits for $10 million am I do I run out or is this an endless well as long as I'm in the period?

MARY HUGO: [01:25:05] It's limited by your liability. You know, so this is-- Nebraska Advantage is not-- you don't just get a refund for the credits because you establish it like a micro or rural. But if you establish the [INAUDIBLE] you had in the years forward enough income tax liability or sales tax and offset withholding for some reimburse the real property taxes, the limit would be what your liability was in the period of time that the credits last.

SCHUMACHER: [01:25:31] So if I'm making or turn out to be really successful and making a ton of money and I'm still keeping my people at $61,000 but I'm taking the extra, there's no limit? As long-- I can keep my income tax at zero, basically?

MARY HUGO: [01:25:48] Yes.

SCHUMACHER: [01:25:49] OK. And what happens if I'm getting near the end of this entitlement period and I get worried I can't use, can I do a merger then with somebody and start using some against somebody else who's got income that I can deduct?

MARY HUGO: [01:26:18] If you had a project that was near the end and you weren't going to have any credits left--

SCHUMACHER: [01:26:23] I'm going to have, you know, I want to burn up as many of these things as I can.

MARY HUGO: [01:26:26] So if you bought somebody and now they're part of the unitary filing can you offset their liability as well?

SCHUMACHER: [01:26:31] Yeah.

MARY HUGO: [01:26:33] Yes.

SCHUMACHER: [01:26:33] OK. So and there's no-- without limit?

MARY HUGO: [01:26:36] There's no limit about the unitary group's income tax.

SCHUMACHER: [01:26:39] OK. Now, in looking at--

MARY HUGO: [01:26:43] Either they have to file a unitary return, you know, they can't just-- they can't sell it to somebody.

SCHUMACHER: [01:26:47] No, no, we'll do mergers. We'll hide it a little better. Now, if-- am I correct in understanding that by the year 2026 we will have had roughly $1 billion of-- I'll call it tax loss, even after we compute our tax gain from the extra employee? It will have cost us nearly $1 billion, this program, net Loss? Okay, does anybody here-- I thought I interpreted--

TONY FULTON: [01:27:23] We're checking right now. You--

SCHUMACHER: [01:27:27] Okay, close enough for government work at a billion.

TONY FULTON: [01:27:31] Net loss.

SCHUMACHER: [01:27:32] Okay. So I did do Senator Harr's math right there. Now back to my-- once I have reached my entitlement under the Nebraska Advantage Act and I decide, you know, I'd just as soon be at a place with a beach, and what's the consequence of me basically withdrawing from Nebraska? Is it only that I won't have any more Nebraska tax to cash in on?

MARY HUGO: [01:28:08] And you mean you being the person or the entity that applied for--

SCHUMACHER: [01:28:12] The entity, yeah.

MARY HUGO: [01:28:14] If that entity left Nebraska and they're in the middle of their entitlement period there would be recapture. They would earn nothing else because they're not here, right. But the number of years of their time period that they didn't maintain the minimums they would owe back that percentage. So some of the entitlement periods are 10 years long and some of them are 7 years long. So if you left and there were three years left in your entitlement period and you had a seven year entitlement period, you would owe back three-sevenths of everything that you had received before.

SCHUMACHER: [01:28:44] Well, what I left the day after my entitlement period?

MARY HUGO: [01:28:50] If you maintain your levels for the entitlement period there's no clawback after that.

SCHUMACHER: [01:28:54] OK. And what if I had another, other Nebraska income? Would I be able to still use that? I had something that my employees are gone, my investments gone, but I still got Nebraska income from something else.

MARY HUGO: [01:29:06] If you had-- if the project had maintained its levels for the entitlement period then had a reduction in its activity in Nebraska, but it still had some, you know, some income tax here, it could use to carry forward credits. We would adjust the care for credits as well. So if they had three-sevenths recapture for anything they paid, they had received before, we'd also reduce the credit balance that carried out at the entitlement period by three-sevenths. But if there were some left, they could have some that they would use after that.

SCHUMACHER: [01:29:36] But the entitlement period is what I've got to maintain my employment levels at, right?

MARY HUGO: [01:29:40] Correct.

SCHUMACHER: [01:29:40] OK. Let's say I've done that, I've done my whatever I promised I'd do.

MARY HUGO: [01:29:44] OK, sorry.

SCHUMACHER: [01:29:45] OK. And I still got, you know, I then have got a period in which I can claim those credits. Cash them in, right? So as long as I've met my entitlement period I still have this Monopoly money I can use to pay my taxes.

MARY HUGO: [01:30:00] Correct.

SCHUMACHER: [01:30:00] OK. Now on the mechanics of the thing, I decide I'm going to-- I'm going to take my 10 sections of land and I'm going to invest them and I'm going to do this thing. I come, I fill out some application form with you guys?

MARY HUGO: [01:30:16] You file an application for the program use, yes.

SCHUMACHER: [01:30:18] OK. Now and everything looks hunky-dory on the application. What do I-- do I enter into an agreement with you of some kind?

MARY HUGO: [01:30:28] Correct. Each of the tiers has a standard agreement that would list here's what you're expected to do, meet the minimum levels, here's the kind of benefits you'd have. And it's signed by the taxpayer and the tax commissioner.

SCHUMACHER: [01:30:42] And can I negotiate with you for special terms in my agreement?

MARY HUGO: [01:30:48] No.

SCHUMACHER: [01:30:48] So it's a standard thing. And is that agreement, is that the one that's on the Web site?

MARY HUGO: [01:30:52] There are sample agreements on the Web site for each of the tiers.

SCHUMACHER: [01:30:55] OK, and that's it. I mean, there's no-- that agreement is what it is. There's no special provisions that this guy got or that guy got? Or an asterisk or something like that?

MARY HUGO: [01:31:07] Correct.

SCHUMACHER: [01:31:07] OK. So if we read through that and we say, Okay, we can do this because we're not contractually bound not to do it, that's-- that's okay?

MARY HUGO: [01:31:18] The agreement itself incorporates the act, so whether the agreement has every provision in it. If there was something that was not specifically stated in the agreement, it said the act would control, so we would go back to the statute.

SCHUMACHER: [01:31:30] The act as it existed on the date that the agreement or as amended?

MARY HUGO: [01:31:35] Say that again.

SCHUMACHER: [01:31:36] The act as it exists on the date of the agreement or the act as we may from time to time amend it?

MARY HUGO: [01:31:44] In general it's based on the date that they applied. There was a legislative change this year that I think would change somebody, you know, potentially who had an agreement based on legislative changes.

SCHUMACHER: [01:31:57] Is there anything that we can do on the existing agreements and claims that are out there to regulate the rate of claim? I mean, is there a way that we say look, we're getting a lot of surges and dips and valleys and it's really unpredictable for us. Is it within our grasp to be able to say look it, you may be able to use these credits, but you're going to-- you aren't going to present them all this year? Or are we just stuck?

TONY FULTON: [01:32:29] Well, if you're referring to a specific agreement, I don't know that one could make-- well, when you say "we" I assume Legislature.

SCHUMACHER: [01:32:41] The Legislature.

TONY FULTON: [01:32:42] One is not able to pass a law that would retroactively go back and change an agreement. But if you're talking about going forward, that is completely-- that is the purview of the legislature and the Governor of course too. But that's-- now that becomes a policy decision. One of the things we've endeavored to do here is to make clear the costs of the program, I mean, that's something that has to be taken into account. But if you're asking whether we can go backward, no. And the agreement is the agreement.

SCHUMACHER: [01:33:12] That's specified in there that we cannot throttle the use and regulate the rate of claim?

MARY HUGO: [01:33:20] It's not specifically a line item, a statement in the agreement.

SCHUMACHER: [01:33:26] Okay. I think I've taken up enough time for right now. Thank you very much.

SMITH: [01:33:30] Senator Brasch.

BRASCH: [01:33:31] Thank you, Chairman Smith. And thank you both for a very thorough explanation here. I do have just a couple questions, and you had mentioned there is not a clawback provision in any of our incentive programs. Once they-- and the reason I ask is at the last Council of State Governments meeting some of the states are now looking at clawbacks on a way to have an ability, should a company exit your state.

MARY HUGO: [01:34:10] We didn't talk about it very much in the slides but there was a comment about there is a provision for recapture, which would be our terminology for clawback. And so under Nebraska advantage or LB775, Nebraska Advantage rural, there are provisions for clawback.

BRASCH: [01:34:25] There are?

MARY HUGO: [01:34:25] There are. I don't believe there is a micro or RND.

BRASCH: [01:34:32] And perhaps we need to incorporate that in future legislation moving forward? It could be done?

MARY HUGO: [01:34:39] Depending on how the programs for that but there is recapture provisions in the bigger programs.

BRASCH: [01:34:43] Very good. And then one more question is, in my District, 16, a few years ago, maybe three or more before Commissioner Fulton was there, it was an oversight that a municipality was not notified of an incentive becoming mature. And so their schools, their city, they were in dire straits for some funding. And I was thinking about legislation but I was told that that is an ongoing practice. You do know when these are maturing that the incentives that the municipalities will be affected. Do you know what I'm talking about and what has--

MARY HUGO: [01:35:35] There was a legislative change started in 2014 that gave some timing or notice to the cities about the sales tax. Now, it doesn't affect-- it doesn't affect the class whatever, doesn't affect Omaha and Lincoln, I don't know what their title is, you know. But for the other communities, any refund that's over $1,500 in a month we would accumulate the refunds for that city. If it's over $1,500. We would notify the city that you would expect this to come out of your receipts in a year. If the impact of that receipt is more than 25 percent of the annual receipts for them then we would start recovering the money in a year and would spread it out over the following year. So we would take one-twelfth of it each over each of the following years. So starting in 2014, we were notifying most of the municipalities, you know, cities in Nebraska about what to expect. Is that what you're referring to?

BRASCH: [01:36:37] I believe so because it was-- it caught the whole, it was Blair specifically, unprepared to meet needs of cash flow. And so I thought about legislation then and spoke to a few people, and they said that was a program or something that's typically done anyhow in the Revenue Department.

MARY HUGO: [01:37:03] It starts, it impacts refunds under LB775 in Nebraska Advantage, those two programs. And it started 2014.

BRASCH: [01:37:10] 2014, very good. I have no other questions. Thank you.

SMITH: [01:37:15] Additional questions from either committee? Senator Groene.

GROENE: [01:37:18] Thank you, Chairman Smith. I think we passed TIF. I think we passed a law last two years that a business has to notify the local community that they're also applying for the Advantage Act if they're applying for a local TIF. Is the way you could cross-reference these businesses who also have been TIFed and what that advantage is a year? And I've always had this question about TIF, so they're being TIFed, they still pay their property taxes to the assessor. Can they deduct that because they have a tax statement that says I paid my taxes? Because the funds they were given from the program is proceeds of the bond. But they still pay their taxes. So can they double dip?

TONY FULTON: [01:38:27] We're going to have to-- I don't know the answer. We'll have to get back to you. Don't know the answer.

GROENE: [01:38:33] Because basically if they're doing this and they're not paying them, they're exempt from the personal property taxes, they're paying very little property taxes to support the local community. Is that not true? If they get hit with both?

TONY FULTON: [01:38:48] Yeah. Yeah, we didn't bring our-- I'm sure we have an auditor watching in the Department of Revenue who knows the answer to this. We didn't bring them unfortunately.

GROENE: [01:38:56] I'd be curious to see a report [INAUDIBLE]. You handle both programs, we see which of these businesses are qualified and are taking advantage of both, because they're both major tax abatement. But I'd like to know that answer if they can double dip and deduct that also.

TONY FULTON: [01:39:19] Yep, we'll get you an answer.

SMITH: [01:39:24] Senator Clements.

CLEMENTS: [01:39:27] Thank you, Senator Smith. Just a general question about the projected revenue gains and losses. The estimated job increases, is that reflected in the revenue gain or loss, the individuals, the new employees that are going to pay income tax on their wages? Is that reflected in the gain or loss?

HOA PHU TRAN: [01:39:49] Yes. Yes, that's how we calculated that number is to know how many. So basically the increase in investment lead to an increase in jobs that will generate more economic activity, would generate more tax revenue. We just-- I can't remember what the table is, it's on the report. But if you look at full table, there's explanation of how we drive all that number in that particular report.

CLEMENTS: [01:40:24] I think page 57 is where I was looking.

HOA PHU TRAN: [01:40:33] Yeah, so like revenue generated by due to an increase of the economic activity, meaning all those increasing employment, increasing investment, generate more income, generate more tax. That's how you see a positive number like $72 million in '17. So $72 million was generated by the increase in economic activity due to the act. But then when you subtract off all the credit used, which is roughly 75 plus 47 which is about $50 million in the whole.

CLEMENTS: [01:41:06] All right, thank you.

SMITH: [01:41:10] Remaining questions post-- yes?

BOLZ: [01:41:12] Thank you. Just one last question. The cumulative credit balance for 2017 is $551 million and grows over time. Are we able-- but not all of those credits are drawn down, right? Not all of those credits are utilized. Can we-- do you have information about the utilization trends and is there any predictability in that utilization trend.

HOA PHU TRAN: [01:41:43] That's the number you just said, which is $551 million. It's an estimate of how much credit is being demanded for in '17 which can be used in future years. I believe in LB775 the rate of uses is 85 percent-- roughly 85 percent. However, in LB312, which is the current program, you have another provision which allows for the withholding credit so the utilization rate might be higher. We don't know what that percentage will be but it would be definitely higher than LB775. Now you can use the credit against your withholding, not just the three kind of tax like in LB775.

BOLZ: [01:42:27] So just so I'm sure I heard you, you-- what I heard you saying is that the LB775 utilization rate is at about 85 percent.

HOA PHU TRAN: [01:42:35] About 85 percent.

BOLZ: [01:42:36] And that the Nebraska Advantage utilization rate is you expect it to be higher?

HOA PHU TRAN: [01:42:41] Higher than 85. Higher than what's in LB775, yes. Because of a new way you can use the credit.

BOLZ: [01:42:46] Okay. So these are all liabilities that we should take seriously because the credits are being taken advantage of.

HOA PHU TRAN: [01:42:54] Yes. I mean, this is the best information that you have today. All these numbers will change next year. I mean, but that's the nature of projections.

BOLZ: [01:43:03] Thank you.

SMITH: [01:43:06] Thank you, Senator Bolz. Other questions? Senator Stinner, do you have remaining comments you'd like to make? All right, well, Commissioner Fulton, thank you to you and your staff for your presentation today. And with that, we close our hearing. Thank you.