Revenue Committee and Appropriations Committee August 29, 2019

LINEHAN: Welcome to the tax incentives joint hearing of the Revenue and Appropriations Committee. I am Senator Lou Ann Linehan representing District 39. As the Chair of the Revenue Committee, I will be chairing the hearing today. This hearing is required under state statute governing the Nebraska tax incentive programs. LB612 passed in 2013 requires two joint hearings between the committees every year. As has been done each year, the Revenue Committee conducts the hearing on the tax incentives; and the Appropriations Chair, Chairman Stinner here, conducts the hearing on tax expenditures. In accordance with the statutes, the Tax Commissioner is required to appear at the joint hearing for the purpose of presenting the annual tax incentives report. This hearing is open to the public but testimony is limited to the Tax Commissioner and employees of the Department of Revenue. Senator John Stinner, Chair of the Appropriations Committee, is seated next to me, and we'll just start to my far right and have the senators introduces themselves.

McDONNELL: Mike McDonnell, LD 5, south Omaha.

DORN: Myron Dorn, District 30: Gage County and southeast Lancaster.

CLEMENTS: Rob Clements, District 2: Cass County, part of Sarpy and Otoe.

ERDMAN: Steve Erdman, District 47.

BOLZ: Senator Kate Bolz, District 29.

STINNER: John Stinner, District 48.

FRIESEN: Curt Friesen, District 34: Hamilton, Merrick, Nance, and part of Hall County.

McCOLLISTER: John McCollister, District 20: central Omaha.

CRAWFORD: Good afternoon. Senator Sue Crawford, District 45, which is eastern Sarpy County and Bellevue.

GROENE: Mike Groene, Lincoln County.

KOLTERMAN: Mark Kolterman, Senator of District 24.

LINDSTROM: Brett Lindstrom, District 18: northwest Omaha.

STINNER: OK.

LINEHAN: Are you ready?

TONY FULTON: Yep. Ready to go.

LINEHAN: Go ahead.

TONY FULTON: Thank you, Madam Chair and Chairman Stinner. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I'm Nebraska's Tax Commissioner. I'm gonna, just to set the table here, I'll open. We plan to have three people presenting. We are, as the Chairman indicated, required by law to not only produce this report but to present it. And so we have to do it by September 1. So I actually couldn't be here tomorrow and your folks, whoever it was, put this together such that I could be here today. And so with that, I just open by thanking you for making that possible. I will open, then I'll turn it over to George Kilpatrick who's our policy manager, he is an attorney. You probably all, you all know him. And he'll present and then Dr. Hoa Phu Tran will present on the economics and the one of the things that's required in our report. So, yeah. I'm just going to kick this off by saying that I recognize that you have a tall order in front of you with respect to tax policy in general, but I'll just remind you what I think most of you know, or probably all of you know, that 2020 Nebraska Advantage goes away. And while it is my responsibility my responsibility, our responsibility in the department to administer the program, I do think it's an important program and I hope that we have some type of, some type of incentives program by the end of next legislative session. So, I mean, that's, that's my own position on it. That being said, I'm here to answer any questions from 30,000 feet. The details, the technicalities of the report itself, there's-- I think we've got 30 pages or so to present to you. So there's quite a bit to get through the report. The report itself is, I think, 90 pages, something like that. So quite a bit in there. We gave it to you guys on July 15, I believe was when we sent that link. So but that being said, I would entertain any questions you have, like I said, from 30,000 feet, if you have any policy questions or anything like that.

LINEHAN: Does anybody have any questions? Will you be here through the whole hearing?

TONY FULTON: Yeah, I will.

LINEHAN: I think maybe it would be better if after the brief, if you're here, we can ask you questions. Does that makes sense to everybody?

TONY FULTON: OK.

LINEHAN: Sure.

BOLZ: Just one question.

LINEHAN: Absolutely.

BOLZ: I think this, I think this is the seventh time, seventh time I've been in this hearing. So we've had some of these conversations before. But I did want to chat with you, and this might be 10,000 feet, not 30,000 feet. But I did want to ask you the, the training the economic modeling tool. There's been more discussion about that tool this last year as we've picked up conversation about tax incentives again. I've always thought that that tool was significantly robust. I think there may be some different perspectives showing up and I'm just curious as director do you have a perspective on how well that tool is serving us in terms of return on investment?

TONY FULTON: Yeah. Well, you know, the return on investment, I guess, we're required to provide a model that accounts, and this is what Dr.-- this incidentally is what Dr. Tran would be talking about. We're required to provide this model of gains and losses. If I could take a little bit different vantage, I always looked at the data as informative but not conclusive with respect to a senator's decision. You know, on paper what a lot of these models show is that the state doesn't gain back that revenue that's lost as a result of Nebraska Advantage or just incentives in general. But just mathematically that, there are a lot of things in these, in the model that can't be present-- that can't be represented. And this is part, you know, we've had, those who have been on this, these committees and have had these, had this hearing, you've been exposed to this. That's only showing, our train model is only showing numerics coming back to the state. There are things that aren't considered. For instance, the unemployment rate or the tax rate or what have you. From my vantage it, it serves its purpose because it's a requirement of the statute. But I hope that the senators will look at this question with more depth than just those numerics. Whether or not we have a Nebraska Advantage or an incentives program is not simply a function of those train numbers. I guess that's the only caution I'd put out there. That we have employment, that we have some tool to compete with other states, that's not taken into account in the train model. The effects of unemployment long-term, how that affects families. A kid growing up, how does that affect if mom and dad-- either mom or dad has a job? How is that going to affect our state's general welfare? None of that is taken into account in such an econometric model. So that's, when I was a senator, those are the types of things that you guys should be thinking about. But from my vantage as the Tax Commissioner it's a tool that presents a chapter in a longer book that, like I said, it's a tough decision you guys are going to have before you.

BOLZ: I appreciate the response and I won't dwell on it, but I do think there is a conversation to be had. If the, if the data resulting from the train model isn't sufficiently robust, is it time to think about a new model? Or if the model that we're using now is a good model that we believe in then we have to also have faith in the numbers that is voting for it. So I think it's a conversation we need to have at the root cause of some of the questions that come up in these hearings.

TONY FULTON: Fair enough.

BOLZ: Thank you.

LINEHAN: Thank you, Senator Bolz. Are there any other questions? Seeing none.

TONY FULTON: OK, thank you.

LINEHAN: Good afternoon.

GEORGE KILPATRICK: Good afternoon, Chairman Linehan, Chairman Stinner, members of the two committees. My name is, as the commissioner introduced me, is George Kilpatrick. I'll spell it. G-e-o-r-g-e K-i-l-p-a-t-r-i-c-k. I'm the manager in the policy section. And we, the policy now section is the area that does the front end, the application aspect of Nebraska Advantage and incentive programs generally. And so we've had different people serving this role in the past, if you go back seven years. But today, today you get me. So let me, let me just start by saying this is kind of what-- this is what we're going to cover on the screen: What is disclosed, what is not disclosed, the summary of the program costs, and then some individual descriptions of the various programs. There are other programs besides Nebraska Advantage, which seems to dominate the conversation. So we will touch your list a little bit on Microenterprise, Rural Development, and Research and Development Act. Those were all enacted in 312-- in LB312 in 2005. And there are a couple of older acts which still have at least some activity associated with them that, again, we'll touch on briefly. But they're, they're all kind of on their last legs, so to speak, I guess, from the standpoint of the state. What we disclose is what's, what the statute says we disclose because the act itself and general disclosure policy of the state would indicate that, that other than the application and what's in this report-- or that the application and all the supporting information is confidential. Individual, the tax records of individuals and individual companies is confidential. So what is it, what is revealed in the report is what the statute says the report should contain. Nothing more, nothing less. That's all that's there. But it includes the amount of employment investment claimed by the various companies; the benefits that got approved by the department and essentially paid out, either, either as credits or refunds of past taxes; the active signed agreements that are there, both Nebraska Advantage Act and the, the older Employment Investment Growth Act, usually called LB775. We, we do talk about the project specifications, which is not confidential. Actually you have this, which is probably a-- maybe I'll say a cleaner and neater representation of what you have to do and what you get for, for qualifying in these things. And for what I always call rural. And, again, that's repeating what I've already said. No information in the report that is protected by-- that will be any information that's otherwise protected by confidentiality requirements. We do use the IRS standards for disclosing aggregated information, which means if it is statewide it can be as few as three taxpayers. But it must be at least that many or we-- or we show nothing at all. If it is something less than statewide, some region or some area the state or county or something like that, but when it becomes easier to identify taxpayers there has to be 10. So those are, those-- that's what governs what's here and what's not. And, again, it's been that way. If you've been here seven years, that's been that way every year. A question that's come up in the past, and these, before we actually describe much of what's actually in the report, there is a kind of a series of slides here that have arisen from questions in the past that we've said, OK, let's just go ahead and answer it. And so that's kind of what this comes to. In addition, this report is required by statute. It is calendar, it's sitting there in various section, various sections of each of these, each of these incentive acts. In addition to that, the state as a whole files a comprehensive and-- comprehensive annual financial report, which people usually call CAFR because it's shorter. And what that requires now in the last three or four years, perhaps, is a disclosure of incentive activities and possible liabilities. So that is something that is also filed through essentially DAS accounting. But it does have some incentive information. And if you're looking at that, you'll see it looks different. And the reason it looks different is for two reasons. First of all, it's an accrual-based system because that's what Governmental Accounting Standards Board requires is accrual accounting. So there is a public-- there is more showing there as, as liabilities for payments than what the cash report that is this report discloses. And, secondly, it's done on a fiscal year basis, which means it runs July 1 to June 30, whereas the annual report required by statute is on a calendar year basis. So there's different stuff in each of them on a year-to-year basis. So if that's been a point of confusion in the past, hopefully it won't be in the future. This is simply a summary of the various programs we're going to talk about, and just one number at the end as to how much in 2018 was either paid out in terms of refunds or claimed in terms of credits. Nebraska Advantage at a little over a $150. The Rural Act was small enough that we didn't, there were few enough beneficiaries that we were not able to report it at all. The next, the next slide will talk a little bit about what the past year has been on all these programs. Microenterprise, about half a million. Research and Development Act that's, that was all part of LB312 and it's part of the reporting requirement. It's a little bit different program in that there's not an application, upfront application aspect that has to do with what you, what you had federally and where it is. And so there's a credit that's based upon how much federal R and D credit you had for research conducted in Nebraska.

GROENE: Is that page in the book?

GEORGE KILPATRICK: That there is, there is stuff in the book. R and D begins on page, well, it ends on page 70. That's what I page too. It's, it's a fairly short description. Page 68, 69--

68 is the statute, 69 is what, what-- a little bit of description about the program. And then 70 shows how much it was used or what those dollars are since 2018 so.

LINEHAN: I think--

GROENE: That page.

GEORGE KILPATRICK: Since 2006.

LINEHAN: Just a second. I think he means-- we don't have the slide deck that you're using, right? You didn't hand the slide deck out.

GEORGE KILPATRICK: Did we not? OK. Well, I didn't know that.

LINEHAN: That's OK. We can probably correct that. If you--

GEORGE KILPATRICK: We, I know we sent the-- I know we sent an electronic version of the report.

LINEHAN: We had that.

GEORGE KILPATRICK: Earlier today I think.

GROENE: It doesn't have the totals anywhere.

MARY JANE EGR EDSON: You usually send the slide deck.

GEORGE KILPATRICK: Well, it does have that total, and it's on page 70 of the report. Not in the slide deck. I mean, there is a slide later that has it.

LINEHAN: Is there a reason we can't have the slide deck?

GEORGE KILPATRICK: No, not really.

LINEHAN: All right. OK, so we'll get the slide deck. All right.

GEORGE KILPATRICK: I apologize.

LINEHAN: No, that's OK.

GROENE: Numbers--

GEORGE KILPATRICK: Again, as noted, there is a little bit of leftover LB775. It should say, and perhaps the picture-- I'm looking at my version here. It looks like this. And there's a table that looks like this. It's approximately page 70 of the report itself.

GROENE: But those numbers there aren't on this table.

GEORGE KILPATRICK: Yeah, it is. The very top one there, 2018: $7,565,316. And it's, it is rounded there to $7.5 million. But it's the same number. That's the R and D number. So it's there.

LINEHAN: OK, proceed.

GEORGE KILPATRICK: I'm sorry.

LINEHAN: That's OK.

McDONNELL: I'm sorry. Is there somebody bringing the slides to us or what are we doing here?

LINEHAN: Yeah. I mean, can we just get them right now? OK. Yeah.

GEORGE KILPATRICK: Well, yeah, I have a version too. But I did write on it so. So this gives a little more-- this gives a little more historical perspective because it shows that it's the same, it's the same group of incentive programs. But it shows 2016, 2017, and 2018. So that's what that's contributing for you.

LINEHAN: OK, well, go back a slide.

GEORGE KILPATRICK: OK.

LINEHAN: I think we're going to have questions as we go through, but we're going to, we're gonna focus on the slides. So Senator Bolz do you have a question?

BOLZ: Is that OK, Chairman?

LINEHAN: Yes.

BOLZ: Could you just address the-- the very first line there in the Nebraska Advantage Act there's a pretty significant difference between 2017 and 2018.

GEORGE KILPATRICK: Sure.

BOLZ: Can you just describe the nature of that difference?

GEORGE KILPATRICK: Well, I can't specifically describe the nature. It does vary, and always has, a great deal from year to year. It has to do with what particular projects might have attained during either, either that year or perhaps the year prior because the department does audit the results and has to verify before credits can actually be used. It's what we call a qualification audit. So it has to do with is, is what, what qualification audits were completed and verified during that year. And what-- how big those particular projects were that were in that time. So that's what, that's what causes the variation from year to year is basically the timing of when they attain.

BOLZ: Sure, but that's, that's a roughly $70 million--

GEORGE KILPATRICK: It is.

BOLZ: --swing. Do you know, is that related to a couple of big projects? Is that just--

GEORGE KILPATRICK: Again, I don't know specifically, but that may be-- that may very well be true.

BOLZ: OK. Maybe that will be a follow-up question.

GEORGE KILPATRICK: But it has to be what, again, it has to do with-- it's also what we verify in a particular year.

LINEHAN: So are you saying that sometimes you get behind and you catch up and that pushes it into the next year? I mean everybody gets behind.

GEORGE KILPATRICK: Bigger projects take longer to verify. So, yeah, if, if indeed Senator Bolz is correct and it has to do with a couple of large projects, then they might have reached conclusion during the same year or happened to have reached conclusion during the same year. The other thing that has some, that has at least some impact on it is how profitable businesses were in a particular year, because the credits are nonrefundable. Which means if their taxable income is higher in some year there's going to be more utilization of carryover credits. Which is another cause of variability, just basically the, the movement in the economy itself.

LINEHAN: I'm sorry, I interrupted your question. Did you have a question, Senator Friesen?

FRIESEN: Thank you, Chairman Linehan. So the, the number for 2018 is, that is not really the total because some can't be disclosed? Or is that the total credits?

GEORGE KILPATRICK: That is the total credits used or refunds issued--

FRIESEN: 2018?

GEORGE KILPATRICK: --during, during calendar year 2018.

FRIESEN: So you're-- we can ask for details about some tiers because there's multiple companies but--

GEORGE KILPATRICK: And it's in the report.

FRIESEN: But does this if, if all of the numbers are disclosed, I mean, couldn't you figure back to see once what some companies got? Because you're seeing a total and you can work from the bottom up. Or some of those-- are all of the tax credits, I guess, listed or are there are some left off? Because of the way I read it, some credits not reported in '17 get included in the '18 total. Is that, there was a footnote under--

GEORGE KILPATRICK: What the number is, is that which is used. It's the credits that are used. And that is the grand, that is the grand total. There isn't anything missing from that number.

FRIESEN: OK. And so the number redeemed versus earned?

GEORGE KILPATRICK: Well, earned is completely different as, well, as you know.

FRIESEN: And so these are the ones, these are the credits that were actually claimed and the money that was paid, correct?

GEORGE KILPATRICK: Correct. Paid out or not collected. Yes.

FRIESEN: So sometimes when you report those that are paid out, I think that's what the footnote alluded to a little bit, is that you may not be able there's-- if a person knew what was paid out in Tier 1, 2, 3, 4, and 5 you're going to be able to figure out from the total what was paid out in Tier 6.

GEORGE KILPATRICK: Sure.

FRIESEN: And, yet, we've always been told you can't release those numbers. Is that, are those accurate numbers then? Because we can--

GEORGE KILPATRICK: Well this is-- the grand total is, can be accumulated because there's enough companies.

FRIESEN: Well, there's enough companies. But if you're breaking it down, can you isolate it to one company that's in Tier 6?

GEORGE KILPATRICK: I don't know. Maybe I'll just put it that way.

FRIESEN: I was just curious if this is the total amount that's paid out and there's no hidden numbers anywhere.

GEORGE KILPATRICK: That is the total amount that was paid out. There are no hidden numbers anywhere.

FRIESEN: Do you have a total of what has been paid out in LB775 and the Advantage Act to date, what that total might be?

GEORGE KILPATRICK: Yes. I think it's, I think it's ahead. I don't recall where.

FRIESEN: OK. If, if it's coming in a slide.

GEORGE KILPATRICK: I believe so. I shouldn't-- I probably shouldn't make promises I can't keep so.

LINEHAN: Well, if we don't-- if we don't come across it we can--

GEORGE KILPATRICK: Page 25 of the report, of the report is a cumulative on Advantage, for example. And there would be a similar one LB775.

GROENE: That's-- can I ask now?

LINEHAN: Yes, Senator Groene.

GROENE: For clarification, what you just referred to it, page 25. That's the page I always go to directly because it's the total tax credits used paid out. I don't see that number anywhere associated with this page. This $151.805, what are you adding together there? You're telling me the-- is credits used translates into expenditures? Is that the same definition? On page 25 you've got total tax credit used: $79,041,000. Up here you're using the term expenditure. Is that definition the same?

GEORGE KILPATRICK: Well, credits used is different than the total benefits because there are direct refunds.

GROENE: But the expenditure means you spent the money, doesn't mean you--

GEORGE KILPATRICK: Expenditure means that it is either paid out or not collected. It is claimed as either a credit or a refund, yes.

GROENE: So you're talking about total credits claimed there?

GEORGE KILPATRICK: Credits and refunds.

GROENE: Claimed--

GEORGE KILPATRICK: Credits and refunds, yes.

GROENE: That came out of the taxpayers' till or we didn't claim.

GEORGE KILPATRICK: Yes, or that we didn't-- yes.

GROENE: Because you also have total tax credits earned, and it's $77 million. That means it's earned but isn't collected on page 25. What numbers do I add together here to come up with $151,805,000?

GEORGE KILPATRICK: $79,041,565, which is credits used, plus $73,401-- sales use tax refunds. Oh, I'm sorry, that's pending. Never mind. Plus $77-- $77,456,609 minus the recapture of $4.692.

GROENE: That would come up with that number?

GEORGE KILPATRICK: It should.

GROENE: So when, over the years when we've talked about it only cost us $79 million last year we've never added in to sales taxes that we never collected?

GEORGE KILPATRICK: Well, it should.

GROENE: The direct sales and use tax refunds of investment. That was a loss of state income.

GEORGE KILPATRICK: No, $50-- if you look at 2017, the total credits used was $52,559,890.

LINEHAN: I just want make sure everybody is on the same page that you guys are on so there. So we're on page 25, right?

GEORGE KILPATRICK: Correct.

LINEHAN: OK.

GROENE: It's always been the numbers we've used, as far as a politician, I've used about how much-- but it's actually more than that. It's more than the $79 or the $86 million or the $52 million last year. We have to add in the direct sales taxes that were forgiven.

GEORGE KILPATRICK: Yes. The sale, the direct-- the benefits on this page, the total includes the direct refunds, yes.

GROENE: Income that was lost by the state.

GEORGE KILPATRICK: It, it was sales tax that was paid on investment, and one of the benefits is a return of sales tax paid on qualified property.

GROENE: With loss of revenue to the state.

GEORGE KILPATRICK: And so it is, it is paid out when they attain and prove that they've met whatever the levels that were required to get, to get the direct refund. And then it's paid out.

GROENE: But that total is never on this page on page 25 so.

GEORGE KILPATRICK: Well, it is. It is on the line that says direct sales use tax refunds on investment. That's that line.

GROENE: But you got to add together.

GEORGE KILPATRICK: You have, to get the total to the total you have to add them together, yes.

GROENE: Add the tax credits also.

LINEHAN: So let me, let me ask this very-- what numbers on page 25 do we add together-- I'm sorry, Senator Groene-- do we add together to get $151,805,000?

GEORGE KILPATRICK: It is the total credits used. If you look at the white box at the bottom, the total of $79,041,565.

LINEHAN: Yep.

GEORGE KILPATRICK: Direct refunds. Down below, it's also a white box, but it's a ways down there, it says direct sales use tax refunds on investment: $77,456,609 and then minus what was recaptured, which is $4.6 million. That should equal, I mean, there's some rounding involved, obviously, but that should equal somewhere near there.

LINEHAN: So people, companies, whoever, they pay the sales tax and use tax and then you refund them?

GEORGE KILPATRICK: Yes.

LINEHAN: Right?

GEORGE KILPATRICK: That's correct.

LINEHAN: So it's not, not collected. It's collected but then refunded.

GEORGE KILPATRICK: But when you use income tax credits or on corporate income tax it is not collected.

LINEHAN: Right. I get that. But so-- OK. Other questions on this? Yes, Senator Friesen.

FRIESEN: Going back to the, to the footnote under there, the total tax credits used. That $79,041,000.

LINEHAN: Which footnote?

FRIESEN: You go look at them, it has two and three listed by it. Number two says to maintain confidentiality credits used in 2017 or '18 for corporate income tax by companies in the industry group 52, which is finance and insurance services not reported and not included in the total or other dependent.

GEORGE KILPATRICK: You are correct, Senator. I stand corrected.

FRIESEN: So there are some numbers that are not included in this call.

GEORGE KILPATRICK: That's correct.

FRIESEN: Do they ever show up anywhere? It goes back to my question, since the inception of LB775 to date what would be the dollar amount in tax credits or sales tax rebates, the whole cost of this program to date? What, what have we, revenue have we foregone?

GEORGE KILPATRICK: Well, there may be some stuff there, evidently there is stuff that is, that has not been reported in the totals. The cumulative total may very well be different. I don't know, specifically. But the cumulative total then was on-- well, it's not, it's actually part of this over there on the total to the left-- to the right column. But you're right, there could be some things not included.

FRIESEN: So we don't really know the total cost of what we've done?

GEORGE KILPATRICK: They're, they're from smaller, small enough companies, a number of companies that can't be reported so.

FRIESEN: But that doesn't mean they can't be big dollar amounts.

GEORGE KILPATRICK: That's true.

FRIESEN: OK, thank you.

McCOLLISTER: Question.

LINEHAN: How, how does that stay consistent with the law then, that you've got a report?

GEORGE KILPATRICK: Because, again, we are trying to-- we are keeping the confidential, the confidentiality of individual taxpayers when there's too few in the area to report. And so, like Senator Friesen pointed out, when you can, when you can back calculate how much it would have been and it ends up being less than three companies statewide, which is probably what's going on here, then we do not report the number.

LINEHAN: Senator McCollister.

McCOLLISTER: Thank you. I understand. I've been through the report and I've seen the individual listings by company.

GEORGE KILPATRICK: Yes.

McCOLLISTER: But on this particular page, page 25, the numbers are aggregated. Why aren't you showing all the numbers as, as you should?

GEORGE KILPATRICK: I don't know.

McCOLLISTER: I think Senator Lou Ann Linehan's question is, is, is apt here because all the numbers should be reported even if there is a confidential, confidentiality issue in some of the other reports.

GEORGE KILPATRICK: Again, again, the reason that we've used, I guess valid or otherwise, is that if it can be "calced" back, figured, we don't report the number. And I don't know that the grand total, whether it's in the grand cumulative total or not, incidentally, I don't know the answer to that question. This is all, this all surprises me so I did-- I'll just apologize. I did not know this was occurring in these totals.

LINEHAN: OK. That's why we have these things.

McCOLLISTER: Follow up.

LINEHAN: Yes, Senator McCollister.

McCOLLISTER: So $151 million, it may or more-- it may be somewhat higher?

GEORGE KILPATRICK: It might be somewhat higher.

TONY FULTON: George, could we just, just a time out. We need to clarify this.

LINEHAN: OK. That would be good.

HOA PHU TRAN: Yeah, we don't report them separately by the industry group but we add them to another industry group to protect that industry group from being identified. But the number in that, we just group them to another group.

LINEHAN: So the number is--

GEORGE KILPATRICK: So the number is in fact the total.

HOA PHU TRAN: We just don't give you that group. We add it to another group.

McCOLLISTER: So the $151 is accurate and includes all--

HOA PHU TRAN: Yes.

McCOLLISTER: --all incentives?

HOA PHU TRAN: I think it's [INAUDIBLE]. We include it into another industry, all different year, whatever it is. And eventually the number of companies will grow. We will get one little company and then it [INAUDIBLE].

LINEHAN: Yes, it does say that. Other questions? Senator Erdman.

ERDMAN: Thank you, Chairman Linehan. George, if we look at this chart on 25, it goes down a ways and it says credits outstanding: $479 million dollars. Those, those credits have been earned but not--

GEORGE KILPATRICK: Not used. That's correct.

ERDMAN: So when the forecasting board meets, because those were outstanding and they even claim those, can they claim those at any time?

GEORGE KILPATRICK: They're gonna have to have liability or an ability to claim them.

ERDMAN: So we don't know when they're going to claim those?

GEORGE KILPATRICK: We don't even know if they're going to claim them.

ERDMAN: OK. So at some point in time they could collect all $479 million of those without notice?

GEORGE KILPATRICK: A certain number expire every year. So I think it's fair to say that they will not all be claiming.

ERDMAN: So if there's $479 million and the Nebraska Advantage Act, how much is left outstanding in LB775, do you know?

GEORGE KILPATRICK: I don't know.

LINEHAN: It's in here.

GEORGE KILPATRICK: It might be here.

ERDMAN: Irregardless, here's my, here's my point. The point I'm trying to make is, if I'm the forecasting board and I sit down to discover what the revenue or projected revenue is going to be for next year and I have no idea how much tax credits could be collected if they needed them or earned the liability, how does one make a forecast based on a guess?

GEORGE KILPATRICK: Based upon past, past practice and past history, how much can be claimed.

ERDMAN: Well, look right there. You went from $80 million one year to $151 the next. That's $70 million right there.

GEORGE KILPATRICK: Yes, that's correct.

ERDMAN: That's a significant number. I would assume you add LB775 to that we're gonna be somewhere in $700 million range outstanding, maybe more.

GEORGE KILPATRICK: The credits outstanding are $230-- no, about $233 million from LB775.

ERDMAN: So $700 million. That's significant. These incentive programs cost us a lot of money. And the unknown is a problem for me. But we don't have to take into account that because we don't have to write a check for it. It's something they claim. These incentive programs cost us a lot of money, and I understand what Commissioner Fulton said about it's important to have incentives. The reason we have all these incentives is because our taxes are too high.

LINEHAN: OK, Senator Erdman, questions? Other questions? Senator Groene, questions, please.

GROENE: So I've got to make a decision. This sales tax refund, how do I know what industry is getting the sales tax? I know if you spent a billion dollars on windmills that's $75 million in itself in sales tax. Who is getting the $77 million in direct sales? What industry is we make a decision or are we trying to track your-- are we spending money we don't have to because they're here already? Is there a breakdown of what industry--

GEORGE KILPATRICK: I don't recall the detail in the industry detail.

LINEHAN: There is an industry breakdown.

GEORGE KILPATRICK: There is an industry detail, but I don't know if it's broken down by utilization. There is for some. Page 33, for example, talks about manufacturing industries.

GROENE: Page 33?

GEORGE KILPATRICK: And then nonmanufacturing.

GROENE: Where's the sales tax?

LINEHAN: It's down in the left-hand column, third of the way down.

GROENE: No, but it's an aggregate over 12 years.

GEORGE KILPATRICK: Well, the first column is. Or yes, yes. I'm sorry, you're correct. Yes.

GROENE: Doesn't tell me-- where does energy fit in? Would it be in the manufacturing?

GEORGE KILPATRICK: No energy would be utilities, I believe.

GROENE: And manufacturing.

GEORGE KILPATRICK: So I think it's gonna be on page 34, not 33.

GROENE: There's none in manufacturing.

GEORGE KILPATRICK: None in manufacturing, it would be in the last column on 34.

LINEHAN: Is that other nonmanufacturing on the next page?

GEORGE KILPATRICK: Yes, I believe that would be correct.

GROENE: It's also an aggregate over 12 years.

GEORGE KILPATRICK: Correct.

LINEHAN: But you could break those down if the committee-- if the committee has asked for them.

GEORGE KILPATRICK: Again, if there becomes too few of them in a category there would be some blending and stuff, which there is anyway. But to a certain extent we can. Yes.

GROENE: My last question.

LINEHAN: Yes, sir.

GROENE: Is that your policy or is that a Supreme Court ruling or is that a state statute that you can't break it down further?

GEORGE KILPATRICK: There is a state statute that says we're not to re-- to reveal, not to reveal taxpayer information except as provided. As Senator McCollister mentioned--

GROENE: We could change that.

GEORGE KILPATRICK: As Senator McCollister mentioned a little while ago, there is individual company information later on about how much this-- it's, it's a, it's a grand total for two years of all benefits. So if you're talking about sales tax versus credits of stuff, it isn't gonna give you that answer. But there is a breakdown of two years of information for qualified companies by name in the report, and that might help you, help you with your position.

GROENE: Credit they took. They took sales tax or--

GEORGE KILPATRICK: It is not broken down then, it is a single number.

LINEHAN: It's page 37.

GEORGE KILPATRICK: Probably.

GROENE: But it's also an aggregate number.

GEORGE KILPATRICK: It is an aggregate number, yes. Yes. Thirty-- well, 38 in mine. Maybe that's the problem, part of the problem.

LINEHAN: Well, it's both 37 and 38.

GEORGE KILPATRICK: OK.

GROENE: So it's by state statute, not Federal IRS rules or anything like that?

GEORGE KILPATRICK: Yes. We use we use the IRS guidelines for how much aggregation is required to remain confidential, but the requirement for confidentiality would be a state statute. Yes.

LINEHAN: OK, that's good to know. Other questions?

GEORGE KILPATRICK: Well, I do want to be respectful for your time. So I'm on, I think, slide--

LINEHAN: OK, OK. Did we get the slides? But they'll be here shortly. OK, go.

GEORGE KILPATRICK: This is one we've shown for a couple of years. And it simply shows essentially the decline of utilization-- thank you-- for LB775 relative to Nebraska Advantage, which I think is self-obvious how that, how that should work. This is a line chart that shows the types of benefits that there are. So, Senator Groene, it looks like direct funds, which is the one that's highest at the, at the far right corner there relative to credit usage and, and refunds using credits and the other ways to, to use credits and how that varies from year to year in terms of utilization of the benefits that are available.

LINEHAN: Can you just-- I can't read the bottom there. Can you read that chart to us, please?

GEORGE KILPATRICK: The one that's the highest on the right-hand side is direct refunds, direct refunds, which is what Senator Groene has been talking about. The lighter blue one that's the second one from the bottom is also sales tax, but its sales tax refunds using credits. If it is not part of the qualified property but is that the project or utilized within the project then the act allows you to get refunds on that sale-- of any sales tax paid on that equipment also using credits, credits that you would not otherwise be able to use. So that's what that line is. The sort of, I'm going to call it sort of tan, the third one down if you're look-- staying on the right-hand side-- is withholding, is use against withholding. And then the red one at the very bottom is corporate and individual income tax.

LINEHAN: OK, thank you. Senator Bolz.

BOLZ: At the, at the risk of confusing the conversation further, I pulled up on my gadget here a comparison of the projection-- the projected total credits used in last year's report. And I'm comparing the projections on last year's report into this year's report. So if you look at the 2017 report for year 2022 and you look at total tax credits used, we're projecting, we projected in 2017 that we would use $126 million in 2022. In the 2018 report, the total tax credit used projected for 2022 is $208.7 million. So that's, that's a significant difference. And I guess the concern I'm trying to illustrate is that not only are we seeing an actual significant volatility in credits used year to year, that also is having a forward projection impact on the growing costs of Nebraska Advantage into the future. Can, can you help me understand a little bit better how those projections work in the future and why, why those are increasing so significantly?

GEORGE KILPATRICK: Are you using the projections that are the in the table that's in this report page 30-something?

BOLZ: I'm using--

GEORGE KILPATRICK: Is that what you're using or are you using--

BOLZ: The fiscal analysis of Nebraska Advantage Act from the 2018 report that is on page 41.

GEORGE KILPATRICK: Well, again, that's Dr. Tran's stuff mostly. But, yes, it is redone anew every year based upon one more year's data than what we had before.

BOLZ: And maybe it's a question that I can follow with Dr. Tran about, but I just, I think it's notable that, that when we're, when we're looking at this chart, the chart from last year would have looked different than the chart from this year because the chart from this year is showing an even greater increase in total tax credits projected to be used, correct?

GEORGE KILPATRICK: Are you talking about this chart or are you talking about the one on page 33.

BOLZ: The 20-- well, I mean, sort of the same difference, right, because we're talking about--

GEORGE KILPATRICK: Well, that's 2022 and this is 2018. And I don't know what the projection for 2018 was.

LINEHAN: OK, but this is not your--

BOLZ: I can ask Dr. Tran. But the bottom line that I'm trying to get to is that this-- the point of this chart is to show projections into the future, and we're seeing a significant increase projected cost into the future. And my point is, when you look at last year's projected cost increase compared to this year's projected cost increase it's even greater.

GEORGE KILPATRICK: And the, and the chart that's on the screen now isn't projections, it's actuals.

BOLZ: OK, thank you.

LINEHAN: Go ahead. Oh, I'm sorry. Senator McCollister.

McCOLLISTER: Yeah, thank you. So if we add up the amounts of money for those various categories that will come up with the number we've been talking about the--

GEORGE KILPATRICK: Yes.

McCOLLISTER: OK, thank you.

LINEHAN: Thank you.

GEORGE KILPATRICK: Are we ready?

LINEHAN: Yes.

GEORGE KILPATRICK: This is the same chart for LB775. You can see some decline. There was some utilization of corporate individual income tax in 2016 that's dropping now, and withholding was not a use of credits for LB775, so that line is not there anymore. But otherwise the lines are the same.

LINEHAN: Senator Friesen.

FRIESEN: Thank you, Chairman. On LB775, do you know how many dollars of outstanding credits there are, because they can't earn anymore, right?

GEORGE KILPATRICK: That's correct.

FRIESEN: So what, what is the total number.

GEORGE KILPATRICK: Well, we had, we talked about it earlier, I think, over here, $232. Is that what it was?

FRIESEN: LB775? OK.

GEORGE KILPATRICK: And maybe this is the part we can go a little bit faster because we're just describing the current, the current program a little bit. But the brochure probably provides a better description than, than what the report would about what the program looks like and what, what you have to achieve or do in order to get certain benefits. There is-- and now we're seeing some, as you see, references into the report specifically, because a lot of those other slides were aggregations and different things that were not necessarily in the report. So maybe this is a place where we can speed up a little bit. One of the issues is qualified business activity because sometimes applicants may have qualified and nonqualified activities in the same place, going on in the same place. Because not every type of business qualifies as a qualified business for Nebraska Advantage, and the other programs too, for that matter. So sometimes there has to be a division within a, within a particular location of these, these folks and this equipment versus these folks and this equipment as to whether it counts or not. If there's multiple project locations they have to be interdependent, which means there has to be some flow of value between the two, the entities-- or between the different locations that essentially means that they, they don't function independently of each other. However, there is a provision that says headquarters are presumed to be interdependent from any of the other locations that might be there. There are several tiers: tier 1, tier 2 through tier 5, and then through tier 6, I'm sorry. And then some other things about large [INAUDIBLE] centers and so forth that provide, that have been added on over the years that talk about benefits for this type of industry, that type of industry and so forth. This is a summary, I guess, of the qualification, of the requirements by application level, how much investment, and how much new employment is required for each of these things, and then the wage level requirement which is different for tier 6 than what it is in 2018. Again, to know, the tier 5 projects don't necessarily require new employment but they do have to maintain employment in order to qualify for what is essentially just the direct refund. So again, the brochure probably does all this a better job than what the slideshow does. And then these are the benefit-- this, this describes several different aspects. The attainment period does vary a little bit. The 1 and 3 have had five-year attainment periods as opposed to seven years for the 2, 4, and 5. And then tier 6 is also, I'm sorry, also a five-year attainment period. That's the period by which they have to have increased the investment and the employment to the required threshold in order to get the benefits. That's what they mean by attainment period. So that's the period of time at which they have to achieve what they, they have said in their application they plan to achieve. After that is the entitlement period, which is when they can actually earn benefits. And that mostly is seven years, mostly in seven years. The tier 1 and 3 are a little bit different because it's measured from applic-- because the end of entitlement is measured from the application date instead of from the attainment date. But other than that it's the same. And there's the carryover period, again, is how long they can carry credits over after the attain-- after the fin, the end of the entitlement period and continue to show them as, as credits earned but not used. And so there's a sort of a description of what the maximum life of a contract or an agreement under these programs are. This describes the benefits and what they, what they get. Tier 2 is a little bit less. The, the wage credit varies based upon the wage and a number of new employees. A couple of them get the personal property exemption. That would be the large data center ones and then tier 4 has some: ag machinery and computers and so forth that can be exempt. At the bottom of this shows it sort of as a checkmark and who gets what benefits exact, exactly. So I don't know if there's any. Maybe this is, maybe this is the easy part. This is another description a little bit that's come up somewhat in our, in our, I guess, these past meetings and what questions might have occurred. But when a company believes it has attained what it says it's going to do, we'll say it's 10 and 100. So they've got 100 new employees and they believe they have attained, they ask the department for a qualification audit. And then we do actually examine as, as we feel that we are bound to do, their records to assure that they have and how much. So that sometimes, depending on how complicated and it is, takes some time. But about 10 to 15 percent, just for your information, of those who believe they have attained in some year didn't, as we find out. The majority of those do result in at least some adjustment. So that they believe that they're at 110 employees and we might say it's a 105 or something different than that. Or the investment is a little bit less. So we do, we do take that responsibility seriously, and so there is some variance between what they believe they might have earned and what they actually get granted at the end of this process. And then we also verify things later, but a lot of the work has to do with the qualification audit because there's so much, there's multiple years of data to look at to see if they have attained. And then later, of course, there can be some recapture of benefits if they fall below what the required levels are. And that happens some, I won't say a lot. But it does happen some. I believe the next one would say yes. Approximately, approximately half of them never attain-- that have an agreement-- never attain. And so most of the rest of the report, virtually all of the report, only talks about the other half to do and what, what they may have benefited from. For those who do attain--

LINEHAN: Senator Friesen.

FRIESEN: So when you, you're saying half of all applications just don't continue on. They, they missed it, something--

GEORGE KILPATRICK: They withdraw, they--

FRIESEN: Pull out and say forget it.

GEORGE KILPATRICK: --they whatever. They just don't get there.

FRIESEN: The half that's left, 69 percent of those will-- so when you fill out an application, I mean, all you have to do, really, is in the application is say that you're going to meet the minimum requirements of the tier you're looking at qualifying for, right?

GEORGE KILPATRICK: Many of them do exactly that, yes.

FRIESEN: So, I mean, and then there's-- since there's, I mean, there's no penalty for exceeding it. I mean, we just want them to meet the minimum. And so you're saying 69 percent of them exceed that initial application. If you put that in dollars and cents, what kind of dollars and cents are you looking at, or that they exceeded that?

GEORGE KILPATRICK: I don't know.

FRIESEN: Because when you, when they apply there's a dollar amount on their application that they're, the minimum requirement would give them this much money, right?

GEORGE KILPATRICK: You know, approximately. Because, because we don't necessarily know the wages and they would get a little bit higher wage credit. All they have to claim is a number of new jobs, so we don't necessarily know what the wages of them might be. So you can make an estimate.

FRIESEN: It's a scientific guess--

GEORGE KILPATRICK: You can make an estimate.

FRIESEN: A guess. OK.

GEORGE KILPATRICK: And often when you see news reports, for example, they will say it's, you know, so much millions of dollars in credits. Generally, that come from the company, not the department. But having said that, that may or may not be the right answer.

FRIESEN: OK.

GROENE: Chairman.

LINEHAN: Yes, Senator Groene.

GROENE: Back to page 25. And don't go there but it says tax credits recaptured from tax from credit balance and tax credits expired: $9,525,000. But then back to your, where you say total tax credits unused is $494 million. Do you do a projection out of what dollar amounts you think into the future we would not-- the tax credits will expire and be deducted then from the total tax credits available?

GEORGE KILPATRICK: Well, only sort of. We do a projection of what we think will be used.

GROENE: Well, some of these companies, because they're limited to what, 30 years is the max that you can recapture them after

30 years? Ten years you can accumulate credits, for the next 20 you can recapture them.

GEORGE KILPATRICK: You can, yeah, use them.

GROENE: But most of them are 15 years or so.

GEORGE KILPATRICK: Correct.

GROENE: So do you do a projection on when that 15 years hits how many we won't be-- that will become null and void because they didn't pay enough taxes to use the credits?

GEORGE KILPATRICK: I'm, I'm-- I don't know. I'm going to guess no, we probably do not. But we do, in order to, to do revenue forecasting and stuff we do have to make some assumptions and estimates as to how much actually get used.

GROENE: So have we been into this long enough that the $9,525,000 of tax credits that expired that's a good number? When it's only like 5 percent.

GEORGE KILPATRICK: Well, in terms of what's expired, there would be very little at this date that would have expired.

GROENE: Because there isn't enough progress--

GEORGE KILPATRICK: Because there isn't enough years.

GROENE: Years into it.

GEORGE KILPATRICK: When we're talking about the $232 number for LB775, that's nearing its end. So, and I don't want to say-- I don't want to make a prediction and say it's half or something like that. But a significant number of those will, in fact, expire unused.

GROENE: Which will lower the number of what tax credits outstanding.

GEORGE KILPATRICK: Correct.

GROENE: Thank you.

LINEHAN: Thank you, Senator Groene. Senator McCollister.

McCOLLISTER: Yeah, thank you, Chairman. George, is there a protocol you follow when you award these credits? For example, on page 25, you first take care of the corporate income tax then you go to the individual income tax or then you follow that with the sales tax?

GEORGE KILPATRICK: They choose.

McCOLLISTER: How do you decide which, which-- how to, how to reward the, the--

GEORGE KILPATRICK: We don't. They claim them.

LINEHAN: But you audit.

GEORGE KILPATRICK: We audit them, but they claim-- they're going to-- I assume most people would try and maximize. So they'll take whatever they can get in any particular year.

LINEHAN: Do you have a question?

McCOLLISTER: So, so in other words they'll first extinguish their income tax obligation and then, then at some point go to sales tax?

GEORGE KILPATRICK: Well, what they're going to get first will be their direct refunds, which don't depend upon anything else. They may very well use it against corporate income tax if they have corporate income tax that is owed. They will probably use it against withholding to the extent they can, withhold-- the use against withholding is limited to the employment, to the employment credits. They can't use investment credits against withholding. And then to the extent that they have nonproject or nonqualified property at the project for which they can claim a credit refund, they will do so. So that's, that's, that's more work for them, and so they may not. But we assume, I think, that they try and maximize.

McCOLLISTER: Thank you. Thanks, George.

GEORGE KILPATRICK: But they choose. They choose what they're asking for. If they want it to not, not claim, for example, credit refunds that's not anything that we are concerned with.

McCOLLISTER: But you don't see that. They usually claim the full amount.

GEORGE KILPATRICK: We don't see what they don't claim, no.

LINEHAN: Thank you, Senator McCollister. Senator Stinner.

STINNER: So I'm looking for a percentage to apply to the $479 million that Senator Groene is, I think, looking at and struggling with. If I use 90 percent that they will end up, will end up having to pay, that would be a good number? Or should I reflect on the $9.5 and the $11.4 of recapture, repaid, and tax credits that expired? That's about $20 million. There's a percentage in there too, but--

GEORGE KILPATRICK: I'm not going to argue with you. It's not really--

STINNER: Tell me a number that I can use against that so that I can kind of figure into the future what's happening.

GEORGE KILPATRICK: Well, I'm not sure I can do that. I don't--

STINNER: Just based on history.

GEORGE KILPATRICK: What I'm saying is you're beyond my level of expertise.

LINEHAN: Can I ask the same question a different way?

STINNER: Absolutely.

LINEHAN: Go-- you go back a couple, three slides. You don't have to go back. I think everybody will remember this, and you said that 69 or 65 percent are got there. But the other 40 percent or 30 percent never come back to claim this.

GEORGE KILPATRICK: Well that's about--

LINEHAN: Half.

GEORGE KILPATRICK: Well, about half do never attain.

LINEHAN: OK, half never attain.

GEORGE KILPATRICK: And of those who do, this slide would say that 65 percent have investment that would exceed what they had initially applied for or claimed at the date of application. And then-- or 60, I'm sorry, 69 percent of the investment and 65 percent on the employment side.

LINEHAN: OK, so on the $494 million here, does that include the 50 percent that we'll probably never hit there?

GEORGE KILPATRICK: No, it doesn't.

STINNER: That's the application process.

GEORGE KILPATRICK: I won't dispute your number, Senator Stinner. I just, I can't say that it's correct or incorrect.

LINEHAN: OK, other questions? Proceed.

GEORGE KILPATRICK: This is an opportunity for us to, I guess, probably to brag a little bit. One of the Tax Commissioner's goals is to try and speed up the application and approval process. That's one reason to move away from where it was in the department to the policy section. So this is an opportunity just to say we are actually having some success at least in reducing the backlog of applications under review. So I don't know if there's much to say that. But we're in the process of-- we have, at least at the end of 2018, there were 52 applications outstanding. Which was, which was a reduction from the prior year. So that's all that has to do with.

LINEHAN: Senator McCollister.

McCOLLISTER: Yeah, of those 52 do you know what the amount of money would be?

GEORGE KILPATRICK: I don't know what the amount of money would be. One of the things that might be being reviewed is exactly that, that they're not sure of any of that and even what tier they might be in.

McCOLLISTER: I see, thank you.

LINEHAN: Senator Friesen.

FRIESEN: Do you know roughly how many applications were received in 2019?

GEORGE KILPATRICK: Roughly?

FRIESEN: Yes, on--

GEORGE KILPATRICK: I don't know. I think we can probably answer that by the end of the day. Maybe that's a better way to respond than to guess. I could I could guess, but I think it might be better to get a real answer.

LINEHAN: Yeah.

FRIESEN: You have 52 applications that are outstanding yet, and the same totals for 2006 to 2018. But that same number is under 2018 only, so those are the applications. There's 52 applications that are outstanding yet that you haven't approved, that are waiting.

GEORGE KILPATRICK: That are waiting. Or a certain amount, a certain percentage of them do get abandoned, incidentally.

FRIESEN: Right.

GEORGE KILPATRICK: And not followed up on. But, yes, you're correct.

FRIESEN: But they're waiting, whatever the reason they've not been approved but they're sitting there.

GEORGE KILPATRICK: They're sitting there, yes.

FRIESEN: And you could approve them yet. How long do the applications sit there before you toss it?

GEORGE KILPATRICK: Well--

FRIESEN: I mean, the application is made. Do, do they have--

GEORGE KILPATRICK: Well, we generally give them--

FRIESEN: --to be approved by the end of 2019?

GEORGE KILPATRICK: By statute they are to be approved within 180 days.

FRIESEN: OK.

GEORGE KILPATRICK: However, that statute is toll for any time that we are awaiting information. So what happens when they get delayed is we don't have enough information to say if they are involved in a qualified business or that sort of thing. Or what tier they're under.

FRIESEN: So under the-- under the current Advantage Act as expires at the end of 2020 or--

GEORGE KILPATRICK: The end of 2020. No, that's correct.

FRIESEN: And so there could be a rash of applications come in and you have 180 days to approve them unless you're asking for more information. So applications could be approved for another year.

GEORGE KILPATRICK: Yes, easily. Easily.

FRIESEN: OK, thank you.

LINEHAN: Other questions?

GEORGE KILPATRICK: Well, this is, again, this is one that we already talked about, I guess. So maybe we don't have to spend time as much time here now. But this is the summary of activity and how, how these companies use them. Whether it's against corporate and corporate income tax or if it's-- when it becomes individual income taxes because it's an S corp or partnership or something where it is individual income tax. There is no corporate income tax. And that that sort of thing. So, again, we've, we've, I guess I'm going to say we've covered this now. Unless you have additional questions.

LINEHAN: It's page 23, right? Or 25? Well, whichever, page 25.

GEORGE KILPATRICK: It's slide 23, it's page 25.

LINEHAN: All right.

GEORGE KILPATRICK: That's a little bit of explanation of the, of that particular page, and includes only amounts for those qualifying projects with a qualified audit. So we know what exactly they have claimed.

GROENE: Could I ask one question?

LINEHAN: Yes, Senator Groene.

GROENE: The very last property tax value of personal property exempted. You don't ask, translate that into dollars of property taxes foregone, foregone by local--

GEORGE KILPATRICK: We do not. That's not what the statute asks us to do. And the-- as you know, it's going to depend on where it is, what the rate really is.

GROENE: So if it's average two?

GEORGE KILPATRICK: If you average two then you can make an est-- you can make a ballpark estimate.

GROENE: Fourteen, $15 million or so.

LINEHAN: Other questions?

GEORGE KILPATRICK: I won't dispute that estimate.

LINEHAN: Senator Kolterman.

KOLTERMAN: Thank you.

LINEHAN: OK.

GEORGE KILPATRICK: Again, 154 qualified projects that we have right now today under Nebraska Advantage Act since its inception. Ten billion dollars of-- is a billion, right, I think, ten billion dollars of reported investments. So for invested direct refunds: credits earned, credit used, and then you've got a credit balance. Again, these are some things we did talk about somewhat earlier about what the credit balance is. And that's how you get to that total. This is a pie chart which-- which you might find useful too It sort of describes--

LINEHAN: Can we just go back.

GEORGE KILPATRICK: Sure.

LINEHAN: This seems like we jumped ahead really quick. On the--so this is 154 qualified projects. That's all that have qualified under the Nebraska Advantage Act.

GEORGE KILPATRICK: By the end of 2018, yes.

LINEHAN: From the beginning.

GEORGE KILPATRICK: From the beginning.

LINEHAN: So 154 projects.

GEORGE KILPATRICK: Correct.

LINEHAN: And that's your investment. So this would say that--does this say if you add up the used and not used it's almost a billion.

GEORGE KILPATRICK: Yes.

LINEHAN: So but you've got 10 mil-- $10 billion in investment.

GEORGE KILPATRICK: Correct.

LINEHAN: OK. And 18,000, almost 19,000 jobs.

GEORGE KILPATRICK: That's their report. Yes. That's-- that is-- that-- those are the FTEs for which they received compensation credits, the cap.

LINEHAN: And we don't have a way of knowing, what you've told us many times here, but just we don't know for sure that all these outstanding credits will ever be used.

GEORGE KILPATRICK: Well, I think we can predict they won't all be used. As to what percentage will be used, I'm not sure I'm qualified to say--

LINEHAN: OK.

GEORGE KILPATRICK: --or predict.

LINEHAN: OK. But they-- it's-- it's unlikely they would all be used.

GEORGE KILPATRICK: It is unlikely that they would all be used. Senator Stinner mentioned 90 percent and, again, I'm not going to dispute his estimate.

LINEHAN: OK. Any questions? Senator Erdman.

ERDMAN: Thank you, Senator Linehan. So, George, on that page where it says direct refunds on investment, is that number included in the $983 million?

GEORGE KILPATRICK: No, those are credits.

ERDMAN: OK. So tell me could you explain how those-- how those work? What are those direct refunds?

GEORGE KILPATRICK: Well, you get the-- the direct refunds are investment is the sales tax refund on investment in qualified property at the project. So if you put in a large manufacturing machine, OK, and you qualify, you would have-- well, it wouldn't be manufacturing because that's exempt. I'm sorry. That's wrong. Some other-- some other business equipment that's not manufacturing. We'll say it's not a manufacturing operation.

LINEHAN: Computers.

GEORGE KILPATRICK: Sure. A bunch of computers. That's very typical, very typical. And it's part of your project and it's part of the qualified property. Then you would-- then you would be paying sales tax or, or the contractor would be paying sales tax at the time that it's all installed. Or if you're building a building and the contractor is paying sales tax on the materials that go into that building, when you attain and reach the levels that you're required to reach, all of that sales tax can be refunded to you.

ERDMAN: So would that business qualify for those direct refunds if they weren't in the Nebraska Advantage Act?

GEORGE KILPATRICK: The Nebraska Advantage Act contains that as a benefit.

ERDMAN: OK.

GEORGE KILPATRICK: They got the same thing in LB775.

ERDMAN: So why wouldn't you add that in as earned credits?

GEORGE KILPATRICK: Because the refunds in there are already used. They're used when claimed.

ERDMAN: When you're totaling that up, it's $983 million. It's actually $264 million more than that. Am I missing something?

GEORGE KILPATRICK: They have received $264 million in credits, cash.

ERDMAN: OK.

GEORGE KILPATRICK: And they have also received or used almost $500 million in credits. So their cost is what I would say is-- actually comes out just almost exactly 750, doesn't it? Then there's a- then there's a balance--

ERDMAN: OK.

GEORGE KILPATRICK: --that may-- that may-- that a portion of-- a large portion will be used at some point.

LINEHAN: Senator Dorn. Thank you, Senator Erdman. Senator Dorn.

DORN: The 479 there, how many years? I think you-- it depends or it varies.

GEORGE KILPATRICK: It varies a little bit.

DORN: Some will-- could be up to 30 years though?

GEORGE KILPATRICK: If it's a-- if it's a tier 6.

DORN: If it's a tier 6.

GEORGE KILPATRICK: If it's any other tier, it's about 15.

DORN: Do you have any idea what percentage the tier 6 is out of that?

GEORGE KILPATRICK: Well, those tend to be large projects. But, no, I don't know the percentage; but in order to be a 6, it's a large project.

DORN: It's a large project. Thank you.

GROENE: Quick question.

LINEHAN: Yes, Senator. Thank you, Senator Dorn. Senator Groene.

GROENE: I'm confused again. You got 154 qualified projects and that's what you have on-- on your summary of 25, on page 25. But then when I look at total agreements in effect, there's 136.

GEORGE KILPATRICK: Right.

GROENE: What's the difference between that?

GEORGE KILPATRICK: Those who have an agreement and have not attained.

GROENE: But the time period hasn't ran out yet.

GEORGE KILPATRICK: That's correct.

GROENE: Is this-- is this list including-- do you take off the list the ones that the time period has run out or do you keep them on there? I mean is this-- what is this number?

GEORGE KILPATRICK: Well, I-- I don't know that we have a list of those that's that.

GROENE: From 2006--

GEORGE KILPATRICK: I don't know that we have a list of those that expired. Well, remember, every time anybody has an agreement we record it. And so there is a company name there that has [INAUDIBLE].

GROENE: All right, that's reported to you.

GEORGE KILPATRICK: And then whether they attain or not they don't ever come off the list.

GROENE: Are in effect, they're in effect. All right. So they haven't time limited out because some of the first one--

GEORGE KILPATRICK: I think that's correct.

GROENE: --in 2006 could have time limited out with their 10-year period. All right. So back to what Senator Stinner and I were referring to lately, we know-- we know 154 of them are actively-- actively getting refunds--

GEORGE KILPATRICK: Getting qualified for benefits, yes.

GROENE: And the other, I mean is that--

GEORGE KILPATRICK: Close to 300.

GROENE: Three hundred we don't have any idea.

GEORGE KILPATRICK: Even if.

GROENE: All right. Thank you.

LINEHAN: Thank you, Senator Groene. Any other questions? None, OK.

GEORGE KILPATRICK: OK, that's-- I guess that's where I was before, right?

LINEHAN: Yes.

GEORGE KILPATRICK: So that's just a-- that's just a picture of some of the same stuff we were talking about is how much-- how much of it is in the form of direct refunds, how much of it is-- is used as a corporate income tax credit, how much is used as an individual income tax credit, how much is used against withholding and then use--sales and use tax refunds using credits or a smaller portion. The direct-- the direct refunds are, in fact, the-- not a majority but the largest share of the utilization of benefits.

LINEHAN: Does this include everyone even if there-- you can't name them because--

GEORGE KILPATRICK: Yes.

LINEHAN: So all the money's here.

GEORGE KILPATRICK: Yes.

LINEHAN: Did I see a hand? Senator Groene.

GROENE: So earlier you said you couldn't put a number on the personal taxes exempted but you do. You put $111 million in it.

GEORGE KILPATRICK: Well, isn't that the-- that's the exempted amount. Is it-- you're right, it is. One point six five is probably the statewide average.

GROENE: [INAUDIBLE]

GEORGE KILPATRICK: The statewide average property tax rate so it would be essentially the non-- well,

GROENE: All right. You use the statewide average.

GEORGE KILPATRICK: It's the statewide average. And you know there are some places with pretty low property-- fairly low rates but [INAUDIBLE].

GROENE: So it's all in Omaha and Lincoln where they have high rates it's probably more than $111 million.

GEORGE KILPATRICK: If the project happened to be inside the city limits, yes; and that isn't always the case either, as you know.

LINEHAN: Other questions? OK. This was helpful. Thank you.

GEORGE KILPATRICK: My industry. I very much lost my place. OK, that's what I thought. We-- this-- I'm sort of towards the end of my part but industries. There is-- there is at least some industry breakdown. And as-- as Dr. Tran said earlier, when there are too few in a particular industry to disclose, we do combine it with another industry in order to disclose-- disclose the totals. There is some information. We did not put that in the slide show, but that's all on pages 29 to 34 of the report cards. I don't know if you want to pause here or--

LINEHAN: If that's what you're planning, that's fine with me.

GEORGE KILPATRICK: I don't have a plan.

LINEHAN: Well, you're not going anywhere, right? You're going to stay around to the end.

GEORGE KILPATRICK: I'm not going. I'm here till you dismiss me.

LINEHAN: OK. Can I-- it seems odd to me that we talked-- just one more question for you-- we talked about you can't disclose. But am I reading page 37 right? These are the benefits these companies got. Total--

GEORGE KILPATRICK: The individual, there is, there is required by the act disclosure of individual company information in an aggregate number that covers two years of benefits. That's what the statute provides for. So, yes, that is there.

LINEHAN: So one could go back-- I'm not suggesting anybody might do this-- but one could go back and look for a single company and then add up whatever they've gotten since 2006 just by going back.

GEORGE KILPATRICK: Sure. Yes.

LINEHAN: OK. Because it's a little weird that it's two years because all you would have to do is go back and, go back and subtract and you could figure it out, right?

GEORGE KILPATRICK: Well--

LINEHAN: It seems odd to me that it's two years' information because if you got 10 years of 2 years--

GEORGE KILPATRICK: All I can tell you is that's what this, that's what the statute does. It was, it was a compromise at the time. I, I'm not here to defend it, I guess, that's just what the statute says.

LINEHAN: OK, thank you. Other-- yes, Senator Clements.

CLEMENTS: Thank you, Chairman. Back on slide 22 it had 52 applications outstanding December 31. The footnote says there are 48 outstanding as of August 9, 2019.

GEORGE KILPATRICK: Thank you for that.

CLEMENTS: Does that include 2019 applications?

GEORGE KILPATRICK: Yes, it does. Yes, it does. I did not-- I guess I should read my slideshow better. But, yes, we have, we have also-- we have reduced the back, the backlog of applications since the first of the year, yes. So that was an earlier question that I said I could get back on.

CLEMENTS: And it doesn't split how many new ones and many resolved older ones.

GEORGE KILPATRICK: It will be some sort of combination. There are applications that don't take that much review. There are some like that. But often the ones that hang around are more complex for whatever reason.

CLEMENTS: Thank you.

LINEHAN: Other questions before-- but you're going to stay here so if we-- OK.

BOLZ: Can I?

LINEHAN: Sure. I'm sorry, I didn't see your hand.

BOLZ: You're OK. Could you come back to the cumulative slide, please?

GEORGE KILPATRICK: Which one was that?

BOLZ: If you just scroll back for me, I'll stop you. This one.

GEORGE KILPATRICK: That one?

CLEMENTS: Twenty-five.

BOLZ: And maybe, maybe I'm getting into Dr. Tran's territory, so you can redirect me. But what's missing from this slide is that, in spite of significant reported investment and in spite of reported increase in employment, the, there is still a cumulative revenue loss correct?

GEORGE KILPATRICK: Correct.

BOLZ: I just--

GEORGE KILPATRICK: Well, again, this slide isn't talking--

BOLZ: I appreciate maybe I'm in Dr. Tran's--

GEORGE KILPATRICK: There's a difference between what Dr. Tran is going to talk about which is, which is essentially a dynamic modeling and, and what the report, the rest of the report talks about, which is just basically an accounting aspect.

BOLZ: My apologies. I don't mean to put you on the hot seat. It just seems like an incomplete slide when you're trying to understand what the policy implications of the program are.

LINEHAN: But-- OK, other questions? I'm sorry, were you done? But this, to your point, you just said this, this is not dynamic. So this doesn't take into any consideration that you get 18,000 more people working, paying taxes, buying houses, paying property taxes.

GEORGE KILPATRICK: Yes, that is the slide that Senator Bolz is referring to.

LINEHAN: Yeah. OK, thank you very much.

GEORGE KILPATRICK: See, again, we talked about there is some project-specific stuff that is allowed. And, again, I'm not going to go company by company. You can certainly read that yourself. And this basically is some description of some of the other aspects of the record and what's in there. Again, I'm not going to spend time describing to you. I just, it is there and, and if you're interested certainly you can read any of those, those things. There is, there is a lot of information in this report, more so than you'd find in pretty much any other state.

LINEHAN: Who at the Department of Revenue looks and compares our Nebraska's incentive programs to the other states? I realize it was in their report.

GEORGE KILPATRICK: It's a research that's done by the folks that Dr. Tran supervises in his research section.

LINEHAN: OK. So I'll ask Dr. Tran about those questions. OK. Then are we ready for Dr. Tran?

GEORGE KILPATRICK: You know, I think so.

LINEHAN: We're still have you here in case.

GEORGE KILPATRICK: I am. I'll put it that way.

LINEHAN: All right, Dr. Tran.

HOA PHU TRAN: Good afternoon. My name is my Hoa Phu Tran, H-o-a P-h-u, last name Tran, T-r--a-n. And I will be sharing the next two slide and we can get George back up after that. So one of our task is to do the revenue gain and loss dynamically. So, as we all know, tax incentive affect Nebraska state tax revenue in two ways. First, there's a positive effect of tax incentives. So when you provide tax incentives to accompany A, let's say, they will-- basically their tax, their spending on capital technically decrease without giving them a tax credit. So they will hire new people, increase investment, all that stuff. So it's enhanced economic growth for the state. The negative effect of tax incentive is you actually forgone the state tax revenue from those companies directly in the program. So to do this, we utilize what we call a computable general equilibrium model, meaning we integrate [INAUDIBLE] the form of tax incentives. They hire people, the people get more income they will spend, household behavior. And then the government will collect taxes on top of the new investment and stuff. So basically it's an interaction of the economy between the firm, the player, the household, the government, and then the rest of the world. For our particular model, the rest of the world, we assume everything outside of Nebraska is the rest of the world. To do the projection we forecast out the tax credit use and all of [INAUDIBLE] into the future based on what the economic condition is provided by ISS, which is a macroeconomic variable that we use. We have a contract with them, they provide us on a monthly basis of how the U.S. economy will look for the next 10 to 20 years. We use some of those variables to try to predict what the economy will look like in the future and then apply certain economic equations to try to come up with the best of our ability to basically assume how most credit will be used, meaning the lower-- the lower the cost of capital, if you will. So we do a 10-year projection analysis which come up with this table. So if you just focus on the first block, which is the second block is the same thing, it's just for the next five years. So let's take 2019 for example. The first draw you see there is what we call revenue generated by tax, by incentive tax credit. So this is the extra tax revenue that we get due to stimulating demand, stimulate investment. People buy more stuff, more spending. That's how much tax revenue we dynamically we get from all the increase in investment due to the tax incentive. The total tax credit use and direct refund, that's how much the state is paying out in [INAUDIBLE] for 2019. Roughly $205 million. And then the revenue gained and lost, you just do the math. You get a negative number. The fourth line, the company estimated new qualifying tax job tax credit, this is the number where companies actually reporting on their tax that-- on their form to collect the tax credit on a new FTE. So they reported three thousand. We, we think that we'll project roughly about $3,100 new FTE for, for, for credit for those new hires. Then we put all this in here. We run the baseline, we run the new scenario by basically we provide a shock meaning, let's say 2019 we provide a shock to the economy that is to the-- [INAUDIBLE] rate of capital decrease by $250 million. So we put in there with lower investment; lower staff; low, lower, lower price of capital. A company will hire more, so dynamically we beat the more or so you roughly dynamic estimate job will be 1,169 job, which is smaller than what the company is reporting. Just because some company will grow by itself even without tax credit, they we will hire people just because the demand increase. And keep in mind that the dynamic job include both direct job indirect jobs. Meaning when you provide a tax credit to company A, let's say, that company will use supply from company B who might not get the tax credit. But based on increasing demand, company B will go out and hire more people and then this trickle-down effect. So that's what those numbers assume. So it's assumed both direct and indirect job. And as you see the sort of program and in 2020. And then if you look, if you read across the row and then down there as time goes on, the total tax credit use and direct refund will start to decrease because the program is ending. Also the tax generated will also start to decrease and then the revenue [INAUDIBLE] loss start to be, to be less negative. And the job number also facing in that direction. So that's a general description of the program without reading every number on the slide. See the picture and, and we use the train model for this, as Senator Bolz mentioned earlier, we do, that's an in-house model. We have economists that's responsible for building and maintaining the train model with what we call a tax analysis in-- tax revenue analysis in Nebraska.

LINEHAN: Questions? Senator Friesen.

FRIESEN: Thank you. So you've been doing this projected revenue loss or gains for quite a few years. So if you look back, have your projections met what reality was in those years already when you look back? How close were you in your projections and--

HOA PHU TRAN: The, the closer the year is, the closer the number. The further out you go, the more uncertainty we get. In the world of prediction, the only thing you know for sure is by the time you release this, all this will be wrong. That's the only guarantee I can tell you. It is how it is. And in terms of the forecasting for the state revenue, we do build in a certain amount of dollars in terms of credit usage by incentive. If you look at our forecasting advisory board table, there is a projection for how much incentive is paying out in terms of sales tax only. But [INAUDIBLE] everything else we have built into the model. So we do account for this when we do the forecasting.

FRIESEN: Well, the projections for LB775, for instance, were fairly small. But in reality, the cost was very large. Do we even have a-- do we have a total of what LB775 credits? What it has cost the state or what we've given up in revenue for a total now what we're nearing its end?

HOA PHU TRAN: You mean the actual uses? The actual uses, I think that's in the report. But I don't know what the actual number is. I don't know how much credit use we pay out in the-- it's in the report. I just don't know where it is. I don't.

FRIESEN: OK.

LINEHAN: Thank you, Senator Friesen. Senator Stinner.

STINNER: So this model shows just the impact of the Nebraska Advantage Act. And it shows it expiring 2020, but the tax credits continue to go at 253, 255, then it starts to drop off.

HOA PHU TRAN: Yes.

STINNER: But, interestingly, the dynamic estimate of net jobs also drops off. So without some other incentive program coming in one would say that--

HOA PHU TRAN: This will have an opposite effect, which is a reduction in jobs. The thing about incentive and projections is Nebraska had incentives in 1987. We do not have in the economy, a base economy without incentive to work with. And we can't really throw everybody into a back room and tell them this is how it is and [INAUDIBLE] their behavior. We don't--

STINNER: Without an incentive program, we no longer have a competitive advantage over any other state that we're competing with.

HOA PHU TRAN: Yes.

GROENE: Question.

LINEHAN: Excuse me. Senator Groene.

GROENE: Are you making an assumption that we had 100,000 jobs last year, now we got 100,000, 100,399 dollars-- jobs, or do you throw a statistical factor in there that there was some people already lived here and moved, moved to this other job and now that other positions are not filled? Because that's what I see in Nebraska, we have a lot of empty job positions.

HOA PHU TRAN: Well, first, I don't know if we create 100,000 jobs last year.

GROENE: No, I said but you're taking a base that we had 100,000 jobs in 2018, now we got 100,399 jobs. Is that a net--

HOA PHU TRAN: The 2,931 job-- 2,000-- 3,099 jobs, that number is what the company reported how much they hired over that time frame for them to claim credit. So, yes, they, they hired that many people.

GROENE: But you don't know if that person that worked across the street moved over there?

HOA PHU TRAN: No.

GROENE: That we actually created a new job.

HOA PHU TRAN: Yes. We don't know that.

LINEHAN: Other questions? Senator McCollister.

McCOLLISTER: Yeah, thank you, Chairman. Are those FTEs or are those full-time jobs?

HOA PHU TRAN: Those are FTE.

McCOLLISTER: So it could be part-time jobs and you add those together.

HOA PHU TRAN: Right, so if you have two FTEs and two part-time-- whatever the definition of FTE is it's not-- so it's not exactly 3,099 part-time people. It doesn't say that. It's just 3,099 FTE. Whatever the definition that we--

McCOLLISTER: So I understand, full-time jobs or a combination?

HOA PHU TRAN: A combination I suppose.

McCOLLISTER: OK. Thank you.

LINEHAN: Senator, Senator Dorn.

DORN: Thank you, Chairman Linehan. Explain the dynamic estimate, the difference between that 3,099 and the 1,169, the dynamic estimated net job increase.

HOA PHU TRAN: All right, so the 3,099 job. Let's say you have 10 companies in the incentive program. By the time you qualify you submit a form for us to do an audit on. You claim from the base year, let's say you apply in 2008, now it's 2019-- or whatever time you do it-- you add in. So the company reported in their form, on paper, 3,099 jobs. However, dynamically some of those companies will grow by itself, without any tax credit. The dynamic part assume a certain growth rate in those companies and then [INAUDIBLE] back out. So technically only you can-- [INAUDIBLE] as 1,159 jobs because some of those jobs we create regardless of tax incentive.

DORN: So technically what, what you're estimating is this incentive program created 1,169 brand new jobs that wouldn't have been created without this program?

HOA PHU TRAN: 1,169 jobs is created due to the tax credit.

DORN: Tax credit.

HOA PHU TRAN: Without the, without the--

DORN: Without the tax credits we wouldn't have--

HOA PHU TRAN: We don't know that.

DORN: There's a good possibility we wouldn't have had those jobs.

HOA PHU TRAN: Correct.

DORN: OK.

HOA PHU TRAN: Some [INAUDIBLE].

DORN: Part of what my question was then, we had a revenue gain or loss of $142 million.

HOA PHU TRAN: Yes.

DORN: That's $121,000 a job. So technically a job is created. It does get better, though, farther out, when you go to 2023 with $68,000 a job. I mean, we as, we as senators, or we as a people in the state of Nebraska, we have to look at that and does this justify that? And then Chairman Stinner, I thought he asked a real good question too. Without it, we wouldn't have these, we wouldn't be able to compete against other states. So we have to weigh all of that as we're making our decisions.

HOA PHU TRAN: Correct.

DORN: But like I said, next year in 2019 year these projections here state that it's going to be a little over $21,000 a job that we're dynamically creating.

LINEHAN: Senator Kolterman. I'm sorry, wait a minute. Senator Bolz.

DORN: Thank you.

LINEHAN: Senator Kolterman.

KOLTERMAN: She had her hand up first.

BOLZ: We're good diplomats. I was just going to ask you some of the questions that I asked George and see if I could maybe get your insights on them.

HOA PHU TRAN: OK.

BOLZ: So, so this chart shows net revenue loss but this is not cumulative net revenue.

HOA PHU TRAN: No, this is per year. Yes.

BOLZ: So to date do you, I think it's in the report here, but it's, it's about $520 million net revenue loss cumulatively to 2019.

HOA PHU TRAN: I would not dispute that number.

BOLZ: You would not dispute?

HOA PHU TRAN: I don't have the--

BOLZ: OK. That's what you have in your chart?

HOA PHU TRAN: Yes. [INAUDIBLE] and yes.

BOLZ: OK. And so one of the things that Senator Erdman and I were grappling with is that we had credits claimed that were significant for Nebraska Advantage that was a significant swing between '17 and '18. Can you provide any more color commentary on why there was such a significant difference between the two years?

HOA PHU TRAN: Just human behavior, company behavior, when they need the money, when they don't want the money. Also, if you look back, so when George began the slide, so 2016, '17, and '18, '16-- '17 to '18 there's an increase of roughly $70 million. But then from '16 to '17 that's a decrease of roughly the same level, is $125 to $80. So it's going that there's no way out, and this is all we have as we can't really predict when this company will put in a claim. And all this would take is one huge project or company make the claim and then the projection would be off but--

BOLZ: So we have some year to year volatility based on the economy and company behavior?

HOA PHU TRAN: Yes.

BOLZ: But the other question that I was asking George is that it seems like there's also a long-term impact that that we can look at if you compare the 2017 report to the 2018 report your, your projected future costs into the future seem significantly higher. And I was using with George, I was using the comparison of 2022. I think it was $126 million versus $209 million or roughly.

HOA PHU TRAN: Right.

BOLZ: So can you explain why that, why--

HOA PHU TRAN: When we made the last year report we haven't seen what the sheer number is. So we saw a $124 decrease to $80. So everything got driven by the data they were getting. So it's a reduction so we don't increase as much. And then from here you get $80 to $151, so the projection will reflect those new data set. And then if next year there's something going on with the economy, those numbers would change again. There's no-- I can guarantee that it's good change, but [INAUDIBLE].

BOLZ: That makes sense to me. Thank, thank you for that. Yeah, I'll leave it there. Thank you.

LINEHAN: Thank you, Senator Bolz. Senator Kolterman.

KOLTERMAN: So the program that we're talking about, whether it's LB775, the Advantage Act, or the Imagine Act that's coming forward, each one of those programs are pay for performance type of program. Is that not an accurate statement?

HOA PHU TRAN: That is accurate.

KOLTERMAN: You don't get a nickel until you've shown that you've earned it.

HOA PHU TRAN: Yes.

KOLTERMAN: Is that correct?

HOA PHU TRAN: Yes.

KOLTERMAN: And so in many cases.

HOA PHU TRAN: At least for [INAUDIBLE]. I don't know anything about a new program that does not exist.

KOLTERMAN: Yeah, OK. So in many cases we won't know for years down the road what kind of incentives are being paid out once-- so as an example, if we have an employer that comes to my community and they, and they sign on the line and they get the application in there, they don't, they don't have any specific, I mean, they have a specific time frame based on the type of business they are. But we don't know when you're gonna pay that out.

HOA PHU TRAN: No.

KOLTERMAN: But in the meantime, is it accurate to say that because they came and they use the incentive program that they're creating tremendous economic benefit for the community that they're in, both increased property taxes, increased spending, things of that nature, is that an accurate statement?

HOA PHU TRAN: It's whenever you have a new business come in, coming in, regardless of the reason that it's a part of-- to the economy. On the other side, if you pay for that company to come in you still, that's a positive effect to the direct community. But anything else, we can't really.

KOLTERMAN: And then if they never, and when we have documented proof that many times they don't use the credits, they let them expire, they just don't qualify.

HOA PHU TRAN: There is some qualify a credit, there's no question about that. But, I mean, but if they apply for a program, if they meet the attainment period of the threshold, whatever it is, they will give you the credit. So I'm not--

KOLTERMAN: Well, so what I'm saying is, if you're looking at future value, you're looking at getting a lot of indirect and direct credits upfront that won't be paid out for many years that we know.

HOA PHU TRAN: Yes, until they get to the qualifying. So you get the, the benefit of the company coming in first, yes. And then when they qualify, when they prove to us what they had promised to do, then they start to get the benefit.

KOLTERMAN: But, again, the bottom line is they don't get a nickel until they prove--

HOA PHU TRAN: That this correct.

KOLTERMAN: --that they've performed.

HOA PHU TRAN: Currently, yes.

KOLTERMAN: Is that how all others work in other states, do you know?

HOA PHU TRAN: No, I don't believe so. Some-- I think Iowa may have used, they have a [INAUDIBLE]. I'm not so sure. But Iowa might have something different. I don't know.

LINEHAN: Thank you, Sarah Kolterman. Senator Crawford.

CRAWFORD: Thank you, Senator Linehan. Thank you. I just wanted to make sure to clarify it, when we're, when we're looking at your projections of revenue generated by that by the train model--

HOA PHU TRAN: Yes.

CRAWFORD: It's including indirect revenues, it's including everything you can consider, that you consider would impact revenue generated even indirectly?

HOA PHU TRAN: Yes.

CRAWFORD: Yes. OK, thanks.

LINEHAN: Thank you, Senator Crawford. Other questions from the committee? Committees, sorry. Seeing none.

HOA PHU TRAN: OK.

FRIESEN: I have one, one question.

HOA PHU TRAN: Yes?

FRIESEN: So if, when I look back and I add up numbers, and if I would tell you that it looks to me like we have forgone about $4.1 billion in revenue since the inception of LB775, would that be an accurate statement?

HOA PHU TRAN: If you add up the numbers to be around that then yes. I don't add the number myself, so I'm not-- if you add that up, yes. I want to emphasize something here that's, the state is technically not-- you think of a firm. The state it's not really a profit-maximizing firm. There's no question those incentive program, even though there is still negative revenue coming to the state with the pay incentive, there's no question about it. But for the welfare, the benefit of the citizen, you see personal income increase, you see more jobs created. You will see it just-- so you're maximizing the welfare of the citizen. You increase the welfare of the citizen by creating more job, more income for them, personal income increase as a whole, GDP for a state increases as a whole. I guess the question is, is there. So we, I always look at the state is not a profit maximizing company. We do what we do. Not for profit.

FRIESEN: I think I get that part but I look at now, and I, you know, we always talk about our, our advertised tax rate and our effective tax rate. And if I look at what revenue we've forgone here, there is companies that to me are, they probably have a negative effective tax rate. We can't give up that much revenue. The numbers don't add up in my head, and maybe I'm just thinking about this wrong. But there's, that's a lot of revenue we have forgone over the last, I don't know, how many years, 30 years?

HOA PHU TRAN: Thirty years.

FRIESEN: $4 billion of revenue. And there's, it's limited to certain companies, a number of companies. And so their effective tax rate to me it would have to be a negative number, effective tax rate.

HOA PHU TRAN: We do collect corporate tax rate roughly $300 to $400 million a year so.

LINEHAN: Say that again.

HOA PHU TRAN: We do collect roughly $300 to $400 million on net from corporate income tax per year so.

FRIESEN: But not maybe from those companies that are taking advantage of the incentive programs. There's only a hundred and-

- how many companies take advantage of the incentive program, 154?

HOA PHU TRAN: On the corporate income tax side, if you look at the top, the 50 percent of who-- of 50 percent of corporate income tax received paid out by roughly top 50 corporations in Nebraska. So it's not that many people contributing to that large number.

LINEHAN: You have. OK, Senator, can I just follow up on this?

HOA PHU TRAN: Yeah.

LINEHAN: Do you have the number of jobs that have been created in the last 30 years that are connected to incentive programs?

HOA PHU TRAN: We have the number of the company estimated, whatever they're reporting. But we don't have what we call dynamic because we, those are estimated. We cannot come up with those number because, like I said, we do not have an economy without incentive to compare to. So directly, no. Indirectly, yes, depending on what you want to use--

LINEHAN: So indirectly, what would you say we've created? How many jobs in the last 30 years?

HOA PHU TRAN: You take whatever the company estimates by reporting. So the last slide that George had like 18,000 jobs for the last, whatever that year is.

LINEHAN: Almost 19,000.

HOA PHU TRAN: Yeah, almost 19. And then do we do the same thing for LB775, and so that's the number.

LINEHAN: And back to a negative, unless I'm misunderstanding something here, you only get refunds on taxes you paid. So you have to pay them to get a refund. On sales and use tax.

HOA PHU TRAN: On sales and use tax, you do have to pay them. But if he referred to the negative on the corporate income tax--

LINEHAN: No, let's just stay with this. To get a refund on your sales and use tax you had to pay for it.

HOA PHU TRAN: Correct.

LINEHAN: You can't get a refund for something you didn't pay.

HOA PHU TRAN: Correct.

LINEHAN: So that could be a wash.

HOA PHU TRAN: That is a wash, yes.

LINEHAN: But it's not going to be a negative.

HOA PHU TRAN: No.

LINEHAN: And to get the income tax credit you have to have to pay income.

HOA PHU TRAN: You have to have tax liability, yes.

LINEHAN: So even if they're not refundable, like I went out and earned all my-- let's say I earned a million dollars in credits. But if I don't owe any income taxes--

HOA PHU TRAN: You can't use any of it.

LINEHAN: I can't use any of it. So I don't see how you get to a negative number. Because you have to pay the tax or owe the tax to use the credits.

HOA PHU TRAN: Correct.

LINEHAN: OK, go. And then Senator Erdman.

FRIESEN: I want to clarify something though, quickly, with this. The reason you can get to a negative number is the payroll withholding. And that is a number that keeps on going. And you can, you can get to zero income tax. The sales tax is a wash but you get to claim those credit against payroll withholding. So your effective tax rate I maintain could be a negative number.

HOA PHU TRAN: I'm not sure that exists, but I can't tell you that.

LINEHAN: Well, that-- we need to figure that. This conversation needs to be figured out. Senator Erdman.

ERDMAN: Thank you, Senator Linehan. So to follow up with Senator Dorn's comment about 1,169 jobs created with a $400-- and $42 million loss, that's $20-- $121,000 per employee. So following up with Senator Friesen said, and then Commissioner Fulton had made a comment earlier that we don't take into consideration the benefits that these employees bring to the economy because they're paying taxes and, and those kind of things. So following up with Senator Dorn, if you take each employee cost $121,000, that employee would never in a year pay four times their annual wages or three times their annual wages in taxes. It's still-- even if you figure up how many employees there is, and they're paying taxes and they're paying property taxes, whatever, they're never going to pay back. They're never going to return to the state in taxes the amount of money that this incentive program costs us. That, that is exactly what Senator Dorn was pointing out with $121,000 cost to the state for every job created. I don't care how much taxes they pay, it's still a loss. They're not going to pay enough to make it up? Is that correct?

LINEHAN: Is there a question?

ERDMAN: Yeah, is-- am I stating that correctly or did I miss it?

HOA PHU TRAN: We never say the tax incentive will pay for itself. That's why you get the negative number. If tax incentive [INAUDIBLE] a positive number.

ERDMAN: But even if people paid taxes on all the money that they earned, they would never make up the $121,000.

HOA PHU TRAN: Yes, they will-- you can't generate enough tax on a new tax-- on a new hire to get back to where you are. Just makes it a tax cut.

ERDMAN: OK, thank you. I was trying to clarify that. Thank you.

LINEHAN: Thank you, Senator Erdman. Senator Lindstrom.

LINDSTROM: Thank you, Chairman. I think Senator Friesen pointed out over the last 30 years a loss of $5 billion. But if I'm looking at just the Advantage Act on slide 25, which I think it was around 2005, 2006, if I'm not mistaken there is a reported investment $10 billion. Am I missing something in that--

HOA PHU TRAN: No.

LINDSTROM: --number?

HOA PHU TRAN: That's the investment, how much they make investment.

LINDSTROM: And then 18,826 jobs, FTEs just under the Advantage Act, not including LB775?

HOA PHU TRAN: Correct.

LINEHAN: Sure is it--

LINDSTROM: That's it.

LINEHAN: Senator Bolz.

BOLZ: Just briefly I wanted to revisit the question that I started the hearing off with Senator Fulton. If we are not appropriately capturing those quality of life and other indicators using the train model, if we get a-- if we're getting an incomplete picture with the train model, is there another model out there that will better help us understand what kind of return on investment we're actually getting?

HOA PHU TRAN: This is strictly economic. So we assume everything else stays constant. Is there a better model? I'm not so sure. But if-- I have total confidence in [INAUDIBLE]-- I mean, sorry, in train that the direction, maybe not the number, but the direction of this number are correct. Might not be the exact number, but the direction where-- not the magnitude, but direction of the positive or negatives would be correct.

BOLZ: OK, thank you.

LINEHAN: Senator Stinner.

STINNER: I just have a real quick question. Have you ever seen a study done or do you know, do you have a number. If we don't have an incentive program in the state of Nebraska what would our job loss be?

HOA PHU TRAN: No, I have not.

STINNER: OK.

LINEHAN: Other questions? Following up on that, have we ever done a study. I'm sure, if I remember LB775 right, done a study if we lose major corporate employers in the state. Has there have been a study done if First National Bank decides to move to Iowa?

HOA PHU TRAN: Not to my knowledge. I don't think we've done a study.

LINEHAN: That might be a study worth looking at. Senator Kolterman.

KOLTERMAN: Just as a, just as a matter of correction. You know, I hear all the time that ConAgra moved out and LB775 was created for ConAgra. I'd like to remind this body that ConAgra still employs 12, 12,000 people in Omaha. That's not small business. And even though they did move their headquarters--

LINEHAN: So maybe a question would be how many companies do we have with how many employees that benefit. Like the total number of employees employed by companies that are listed in here. We have this somewhere, surely we can figure this out. The total number of employees employed by companies that have decided to access the Advantage Act or LB775, that those companies and how many people they employ in the state of Nebraska. Could we find that out?

HOA PHU TRAN: We could find that out from the Department of Labor. But what I can say is, if all those companies decide to move out there would be no one left in Nebraska.

[LAUGHTER]

LINEHAN: Thank you. Senator Lindstrom.

LINDSTROM: Just a simple question. Is there any state that does not have an incentive program?

HOA PHU TRAN: I think some. Some states do not have taxes, so they don't need an incentive program, I guess. I think on our report we say like 40-some states have some form of incentive. I can't remember off the top of my head.

LINDSTROM: Forty-three.

HOA PHU TRAN: Forty-something. I can't remember.

LINDSTROM: OK, I was just curious on that.

HOA PHU TRAN: Many do.

LINEHAN: Other questions? Senator-- Commissioner Fulton, would you like to wrap up? Unless does somebody else have a question here?

TONY FULTON: Just have the, have the record reflect that there is, there are a number of other programs that are included in your report. I'm with you. You just look at those programs. The one, I mean, the one that where everyone's most interested in obviously is Nebraska Advantage, and that's what we put in the front of the report, as well as our presentation. So to satisfy our statutory obligation, we do have more to present. And I'll just close without presenting it. If you have questions on any of the other programs, you're welcome to ask us. I think there is a statutory provision that says if there is a need for supplementary information that we have, you make the request and then I think we have 30 days-- 30 days to reply. And, you know, my experience on that side and on this side is that it's a lot quicker than 30 days we get back to you. So I just offer that to you. This is, the closing remark I'll make has to do with really the remark that I started--

LINEHAN: I get, I want to-- I'm going to ask if anybody has any questions for you, because I do have a couple. So I don't know if you want to close before we do that or have questions first.

TONY FULTON: Yeah, I'll just, I'll make the remark and then please ask, ask questions. It's, it's difficult. In fact, I'm going to say it's not-- I don't know that it's possible to come up with a mathematical answer to the question that I sense is being asked among senators here. There was a class that I took back in college, IE 206, and we were to put a numeric value on intangible values in such a way as to allow us to come to a mathematical certainty of a given question. And this professor put out in front of us whether or not I should propose to my beloved, my girlfriend or my-- OK, you can put mathematical representations of the answer to that question down on paper, but I think most people just experientially understand that you're not going to come up with the answer to your question mathematically. I'm not suggesting that this question is like that, but there are a lot of intangible, intangible things for which a numeric representation is very difficult. And that's, that's part of what the economists have to do when they put together this model. But even then, there are a lot of assumptions that go into these models. And then, of course, there are a lot of things that you can't put it-- it's just difficult to do. The but/for question, I've had that question asked a gazillion times. Well, if we didn't have this what would it be? I mean, that's something for the deity to answer. I don't know what that answer is. We've had it here and most other states for incentives for some time. And, yeah, that's, that's the one thing I want to get across. So fire away.

LINEHAN: Senator Friesen.

FRIESEN: Just really one question. I'm not, I'm not going to argue whether or not the cost-benefit ratio or any of that, because it is a hard thing to reach. What I guess I want is how much, since the inception of LB775, to as close as we can get to today, have we foregone and revenue and how many credits are left out there in all those programs, in all of our incentive programs? How many credits are left out there that could be redeemed, because we also don't know whether it's going to be 90 percent, 95 percent. We're guessing. But I need to know, I guess, how much is that total from our incentive programs and how many credits are outstanding, because the outstanding part concerns me going forward when we're looking at revenue. Those are-- and I, when I add up numbers, I can't find in the report that matches that. I'm sometimes close, but I'm missing something. So if--

TONY FULTON: OK. That, that is in the report and we'll-- how about this? In our response, so that, so that I'm not guessing and trying to find it here, we'll provide a citation in the report to where that precisely can be found?

FRIESEN: Thank you.

LINEHAN: Senator Groene.

GROENE: I just want more detail. I mean, we've been at this 10 years of be-- that's the point where we could refine this thing. And I'm looking at sales taxes of total of $108 million of the, of the $151 million. And I'm sitting there, you could build windmills, you could build warehouses, you could build a huge data center that has five employees, and I'm trying to put a quantitative number on, on the sales tax exemptions that, that actually create jobs, full-time jobs. And I can't find it. And you can't tell me was it windmills, was it a huge data center, was it a warehousing which creates very few jobs, long-term jobs. And I'm looking at the one I could put-- tie to jobs, which is the, the end of the income tax withholdings, and it's about 12 percent of it, of our incentives that's directly could be tied to a job number of the $27 million. And I'm sitting there going, why am I giving away sales taxes that might be tied to location, location, location, three most important things why people build, and I can't tie that to jobs. But you can't tell me where that sales tax went. What type of an industry it went to, who it went to because all you'll ever give me is aggregates.

TONY FULTON: You're right. There is, there to some extent we can. But there is, I think, the level of detail you're looking for, I don't know that we're going--

GROENE: Because there's no correlation to sales taxes spent on a new project to jobs, there's absolutely none.

TONY FULTON: Well, there's correlation. I just--

GROENE: Well, but not in, not what something you can put in a mathematical formula and say: If we give this many dollars of sales tax exemption, it creates this many jobs. Because it could be a warehouse, could be windmills that creates none, very nothing.

TONY FULTON: Yeah, yeah. Our study, we're looking--

GROENE: Long-term, I'm talking so.

TONY FULTON: Yeah, we're looking at the Nebraska Advantage as a whole.

GROENE: Yeah.

TONY FULTON: Yeah.

GROENE: So in the new-- I know we're not supposed to, but in the absence of more clarity, would more clarity help you, more ability need to dissect it and report on if we-- in a new statute instead of these? I'm gonna tell you right now I can go on a Web site and find out how much Curt Friesen got in federal and how much any other farmer got in federal payments. That's tax dollars. He's not complaining. But I can't do, find out who I gave a tax dollars to because I gave it to him. If you don't want to be-- if you want to be private then don't take the damn tax dollars. I think we need more clarity in the new statute.

LINEHAN: I think-- thank you, Senator Groene. Didn't Mr. Kilpatrick say that it's the statute? If we want more clarity, we need to-- you can get more clarity. So that's on us.

TONY FULTON: Yeah, if the question is if, if the department could provide greater detail, well, we would, we could.

GROENE: You could.

TONY FULTON: But, yeah, but--

LINEHAN: It's not in the statute.

TONY FULTON: Yeah, that's right.

LINEHAN: Right. So kind of-- OK, I'm sorry. Other questions?

BOLZ: One last one.

LINEHAN: Sure.

BOLZ: I think it's a-- there has been some conversation about kind of an all or nothing. And what would happen if we had no incentives. And I, I guess I feel like I need to speak up and say I think there's a whole lot of middle ground between where we're at right now and nothing. And I think there's plenty of room for improvement between the two. And I, and I think we have a once-in-a-decade opportunity when we renew the Nebraska Advantage Act to make some of those improvements. So I just wanted to give you a brief moment to say, are there any improvements that you want to share with us as policymakers?

TONY FULTON: Well now, I can say it this way. We, we have been engaged-- Senator Kolterman, LB720-- we were engaged to provide input. And the extent of the Department of Revenue's input had to do with the administration of the program. And here's where I'll, I'll-- from day one when I came in to being the Tax Commissioner, my mantra has been this necessity to simplify. What I have heard from companies, it's anecdotal, but I think it's reflective of what's going on here. Nebraska is one of very few states where we've got to lawyer up to get through your incentives program. And my, you might remember my history. I'm not a lawyer up kind of guy, I'd like to have markets be a little more free. And for this, there is a lot of, well, you can look in the brochure that gets put out. There is, there's a great opportunity for simplification of our incentives program. And so in so far as that opportunity presented itself in the provision of LB720, we were there. And I brought my deputy because he was, he kind of led the charge on this. So we have specifics. A lot of them did get in, not everything got in. But, yeah, in terms of how much, what industries, that's not-- I just don't feel that's something that should come from the Department of Revenue. So we did have some input and it had to do with the simplification of whatever it is you guys ended up doing.

BOLZ: Thank you, Commissioner.

LINEHAN: Senator Stinner. Or Chairman.

STINNER: I just wanted to make more of a statement than a question. But speaking, first of all, about appropriations, you know, predictability is a big piece of what we tried to do on the budget side. We do get these swings up and down on incentives, so I do pay attention to that. We did try to at least have a look in provision in this new LB720. Is that enough to give us some of that predictability, or at least from the budgeting side trying to stay ahead of what's happening though the incentive is not?

TONY FULTON: I think so. There have been, there have been amendments. I'm just-- I'll divulge my ignorance of the most recent amendment. There, there have been amendments that were adopted since LB720 was introduced. And I can't honestly say that we have considered all of the amendments that have been put out there. But in terms of administration and to, to some degree, the predictability that we all would like to see, we did have input into that. Some of this is, it's just going to be, it's hard to predict. I mean, what's going to happen in the economy three years from now? I don't know. We give you a prediction. But and that does have an impact on, for instance, how much, how many credits get used. It has to do somewhat with the action of a free actor, a taxpayer who's making decisions about you. So here's a way, here's another way to look at it. When, when we put out every month our general fund receipts news release, we do that around the 15th of the month, you're going to see this difference in the corporate income tax between what actually gets collected and what was projected. And I get asked this, the media always ask this: Well, why is that so-- you missed it a lot last month. And you were on this month. It's because it's a very volatile number. It's not possible to predict what a company is going to do with respect to recognizing these credits or caring for losses or whatever it is. So there are just things that will be part and parcel to any incentives program which lend to a volatility, a difficulty to predict. But insofar as there is room to make it more predictable, we did have input into that.

STINNER: Thank you. The other thing I want to make a mention of is right now we have about a $5 billion budget biennium, $10 billion budget. We're contributing maybe 3 percent of total revenue to incentives. Should it be 3 percent, should it be 5 percent, should it be 1 percent? Any feel for that as you look across to other states in any kind of studies that you've looked at? And I'm reflecting back on, on a business career where I had to compete, I had to compete with other businesses. This is not dissimilar from that because we're competing against other states. So we're investing, and I call it investing, whether you want to call it marketing expenses, investing in the state of Nebraska in these incentive programs. And so we should be putting away, in my estimation as a business person, a certain amount of dollars that will allow us to compete and continue to be a dynamic economy and continue to grow. And so my question to you is, is the 3 percent enough? Can it be 5 percent, would we be that much further in advance? And just comparatively speaking, have you seen any studies that would say this X percent should be committed?

TONY FULTON: Well, nice try, Senator Stinner. I just, I don't know what that number is. And there's-- I don't also, I also don't know if there have been any studies done to this effect. And if you just from 30,000-- and I keep saying that. I say

20,000 feet, the tax policy in the states, they're different. You know, you don't have an income tax in certain states. And in other states, they have a means by which they collect their own. Alaska and Wyoming are places that, you know, their tax policy is going to be quite a bit different. They'll be looking a lot more different, you know, depending on who the president is. I mean, there are, there are so many. So what the right answer is, I honestly don't know. And if I did know, I wouldn't, I wouldn't say it is the Tax Commissioner. But to that end, I don't know that there are studies out there. That's what makes this so difficult. I mean, I'm the same as you. I have a business background, a math background, I'd love to be able to put this into a formula. And I asked-- you can ask Dr. Tran, my first couple of months down here I asked for the formulas that they're using for the regression analysis, and pretty difficult to put together a formula that expresses this all across the state. I do know that most, 40-some states have some program. There are some states who don't have a program. But I also noticed that, for instance, I think Texas is listed in our report. Well, I know companies that have moved down to Texas who got checks to move down to Texas, and that's not part of their incentives program. Well, I'm here to tell you if someone were to just write a check to me then I'd consider coming down and opening a business down there. You bet that's an incentive. Well, that doesn't, that doesn't show up in all the models. So, I mean, that the states are competing. We're, we're trying to-- and competing means you're going to get ahead of what the other state is doing. So by the time I do do a study, or anyone does a study, it's going to be different. So I'm punting on your question, Senator, but I'm explaining why.

STINNER: I appreciate that. And to me, 3 percent, I used 5 percent when I was in business in my total. So we're somewhere in that neighborhood. But the other thing, I want to make a statement, I guess. And we talked about $121,000 per job. God, that's a big number for one job, and they'll never pay it back in taxes. But let me tell you something. To create a job in manufacturing, in nonmanufacturing, it takes a lot of capital. It takes a lot of capital. And this is just an indication of the capital requirements to create the types of jobs that you all want to have, which is high-paying job. So, yeah, we can say $121, and maybe that sticks out. We can say a couple of billion dollars that we've spent over a lifetime, but we still have to have an incentive program in my estimation. That's the end of my editorial comments.

LINEHAN: OK. Senator Kolterman.

KOLTERMAN: Just, I want to get something on the record. You did have a lot of input, and we appreciate the work that we've done back and forth, and there's a lot of negotiating. But a couple of the amendments that you talked about have not been advanced yet. Let's get that straight. But it's on Select File and we're going to get in [INAUDIBLE] so. But there are-- we have not got it all finalized, LB720, but it will be finalized next time we go to the floor with it.

LINEHAN: Thank you, Senator Kolterman.

KOLTERMAN: You're welcome.

LINEHAN: Other questions? All right then. Thank you very much for being here. Appreciate it.