STINNER: Appropriations--

VARGAS: This is Tony.

STINNER: --hearing. My name is John Stinner. I am from Gering and represent the 48th Legislative District. I serve as Chair of this committee and we will start with senators doing self-introductions, starting with Senator--

DOVER: Robert Dover.

STINNER: Dover. OK. I was going to say Drover, but I knew that was wrong. I'm sorry.

LINEHAN: That's a restaurant.

DOVER: Senator Robert Dover, District 19, Madison County and south half of Pierce County.

DORN: Senator Myron Dorn, District 30, all of Gage and part of Lancaster.

CLEMENTS: Rob Clements from Elmwood, District 2, Cass County and part of Lancaster.

MCDONNELL: Mike McDonnell, LD 5, south Omaha.

KOLTERMAN: Mark Kolterman, District 24: Seward, York, Polk, and Butler Counties.

WISHART: Anna Wishart, District 27, west Lincoln and Lancaster County.

STINNER: John Stinner, District 48: Scotts Bluff, Banner and Kimball County. On the telephone, Senator--

VARGAS: This is Tony Vargas, District 7, downtown and south Omaha.

STINNER: Thank you, Senator Vargas. How about Senator Erdman, are you on? I don't hear him. So assisting the committee today is Tamara Hunt. And to my left is our page and she is from Gering, Morgan Baird, and a senior, right--

MORGAN BAIRD: Um-hmm.

STINNER: --at the university. At each entrance, you'll find a-- green testifier sheets. If you're planning to testify today, please fill out and sign the sign-in sheet and hand it to the committee clerk when you come up to testify. This is for invited testimony only. To better facilitate today's proceedings, I ask that you abide by the following procedures. Please silence or turn off your cell phone. Order of testimony is the introducer and then we will hear the invited testimony. When we hear testimony regarding if-- well, I can skip that part. We ask when you first come up that you spell your first and last name for the record before you testify. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. We need 12 copies. If you have written testimony but do not have 12 copies, please raise your hand now so the page can make copies for you. With that, we will start with Senator Linehan, LR-- LR330.

LINEHAN: Good morning, Chairman Stinner and colleagues. For the record, my name is Lou Ann Linehan, L-o-u A-n-n L-i-n-e-h-a-n. I represent Legislative District 39, Elkhorn and Waterloo. I'd like to thank the Appropriations Committee for holding this interim hearing today, and I would like to thank you for letting me change the date since it was my granddaughter's birthday last time it was scheduled. Today I'm opening on LR330, which is an interim study to determine what percentage should be used to forecast revenue when preparing fiscal notes and determine if state agencies and/or political subdivisions should use the same percentage. The idea for this LR came last year when we were discussing tax cut legislation on the floor and spending the whole-- all last year, actually. We spent hours debating bills and arguing over what percentage growth to use over the out-years. Legislative Fiscal, Department of Revenue and the Governor's Office, at least to my understanding, were all using different numbers for percentage of growth in the out-years. This led to different numbers on how much each bill would cost. So my recollection is Fiscal was using 0 percent growth while the Department of Revenue, when they figured out what tax cuts were costing, was using 4 percent. And then the Governor's Office, I think, was using 3.5 percent. So it was frustrating as a Chair of the Revenue Committee to try and figure out where's the-- I don't care at that point. I mean, we did care. But it seems to me that if we're going to figure out what the out-years are based on, that's the same thing the cost of the tax cuts should be based on. They should-- because if you go out 10 years, 4 percent difference makes a significant difference. After all our debate, it was pointed out to me that there is a rule in the appropriations process that could have assisted in resolving this debate, so. I need these, I'm sorry. Can you-- the rule is-- and my fault for not knowing this. The rule is Rule 8, Section 71 [SIC], and I have boxed a key part on page 2, but I will read it for the record. I'm just going to read, not the whole rule, but the key part. Prior to attaching the fiscal status to the agenda, the data and assumptions for the ensuing years beyond the budget biennium and methods for arriving at estimates shall be reviewed by the Chair and the Vice Chair of Appropriations and Revenue Committees and shall be approved by the majority membership of each such committee. Upon mutual agreement by the Chairs of Appropriations Committee and Revenue Committee, the projections may be reconsidered pursuant to the provisions of this section. Now, in the six years I've been here and the four years as Revenue Chairman, that hasn't happened. I did ask staff what the situation was, why it hadn't happened, and they said the last time it happened it never came to a resolution so they just stopped doing it. I-- I don't, I don't think we should just stop doing rules because it's hard, but-- and I've-- I don't know if I've invited-- I didn't read this testimony before right now so that's on me. I assume you have-- the committee has people from the Department of Revenue and the Fiscal Office to give us explanations on the percentage they do and how we could all move to using the same number. Thank you all for being here today, and I'm open for any questions.

STINNER: Any questions? I just have-- and you're right, there was all kinds of numbers and percentages for the out-years. And the out-years became incredibly important because we were doing some tax legislation that stepped up. So before the session started, I had a, I had a meeting with the Governor's Office and the budget folks there and they indicated to me what they were going to use as a percentage growth factor in the out-years. I don't care if they use 2.5, 3.5, 4.5 in their projections, simply because it's their recommendations to us in the Legislature. It's our budget. We, on the status report side, have always used that stagnant model that averages about 4.5 percent. So if you have these big spikes in growth, it basically shows everything flat and it was showing a negative at that particular point in time. To be fair, so that we had, I think, more accurate than, than what we were potentially using as a negative that we normally would have. Tom Bergquist and I had a discussion and I, I indicated to him, that based on IHS and Moody's, that we could definitely come up to at least a flat revenue projection, which then gave us the resources to, to pass the tax legislation we had. You are correct that there is considerable variances in some of those estimates. Now, if I'm going to do some kind of long-term projections on proposed legislation, I would then probably go back to that average of 4, 4.5 percent that's in our book that-- because it takes out all those fluctuations up and down in my calculations. So that, I hope, kind of distills out a little bit of the uncertainty that was created the last time because of what we were trying to get done tax wise. And then certainly what happens at Fiscal Office as it relates to long-term impact on, on, on different types of proposed legislation.

LINEHAN: So my response would be then the Department of Revenue-- if Fiscal Office is going to use zero growth, the Department of Revenue should use zero growth when it costs tax cuts. Because if they use 4 percent, that tax cut is going up faster than we're projecting our revenue is going up. So you have a disconnect there.

STINNER: It, it-- one of them has to do with the overall budget and revenue growth that's projected so that you can kind of look out into the, into the future and see what that revenue bogey is. And it was around $900 million, if you remember. And that's where I came back and said, that's what we need to make sure that our tax revenue or our tax-- taxes were-- wouldn't exceed that in those out-years. Even though we had a big positive in this year, I think that it was in excess of 400 or 500 that could have, under normal circumstances, be used. But when I'm doing something that is out over a long, long period of time, I would then go back to historically, what's the impact on revenue? Well, historically, we have increased revenue by 4, 4.5. So two different things: one, it was what we were trying to do, budgetarily; the second thing is, is what is the fiscal impact of what we're trying to get done? And that is over a long period of time and when you go out a long period of time, using averages, I think, is the, the best thing we can do.

LINEHAN: But the tax cuts are over a long period of time too--

STINNER: Right.

LINEHAN: --Chairman. So if I use over a long period of time for growth zero, then how do I-- when I do the tax cuts, they're going to multiply over 10 years, which, as you know, is much more than 40 percent.

STINNER: I, I, I get that part.

LINEHAN: So it doesn't-- again, I'm not-- well, first of all, the second part of my testimony here today, I think we should have a bigger discussion about the out-years, and that's what's in the Rules and that's what we should do going forward.

STINNER: Understood.

LINEHAN: And it doesn't-- the Appropriations Committee will still rule because Appropriations Committee is going to do with-- Appropriations Committee, they'd have nine votes, Revenue would have eight. So if the Appropriation Committee decided the out-years is zero, then they would have a 9-8 vote. But I do think it's worthy of a discussion, a public discussion. And I also think that if we're going to, if we're going to say we're not going to grow, then we can't say our tax cuts are going to go up 4 percent-- cost 4 percent more a year. It just doesn't-- you're not using real math there. I don't think-- if I'm dealing with my budget at home and I know I'm going to make $50,000 a year and I say there's zero potential for my growth in my budget, then I can't go over here and say my expenses are going to go up 4 percent a year. If I'm going to have zero percent here, I have to have zero percent over here. That's all-- I just-- either the same number or-- and regardless of what we decide on that, we need to meet as a committee and look at the out-years as a group.

STINNER: I, I don't disagree. I just was trying to explain the difference between the two calculations and why we changed the rates to zero. But in any event, Senator Clements.

CLEMENTS: Thank you, Chairman Stinner. And thank you, Senator Linehan. With the Appropriations or the Fiscal Office, the out-years, the fiscal status report that the senators get only is two more years out that I've seen. I'm not aware that Fiscal goes 10 years out, but there were zeros for 10 years. And it's really a question for Senator Stinner. Could you comment on that? How many years they were using a zero flat?

STINNER: Just the two years so that we could come up with a number that would fit within what we felt to be a margin of safety for the tax cuts, which was about 900 maybe.

CLEMENTS: So the Fiscal Office was not projecting past the next two--

STINNER: It was, it was my preference to go to zero rather than a negative 2.5. I thought that 2.5 was too-- penalized us too much in our decision-making process, especially when I reflected on when IHS and Moody's, who are supposedly these forecasters, were using some other number. I did not want to be aggressive and use 3.5 to 4 percent because I thought that was not realistic. The other piece of what I was trying to get accomplished there was to make sure, first of all, we kept the, the real estate tax piece of that so it didn't fly off the face of the map. And we did-- we were successful in doing that. The second thing was, is to make sure we had an insurance policy called the Rainy Day Fund. The Rainy Day Fund, I felt, needed to be somewhere in that $1.2 to $1.5 million in order that if we do get a down-- downdraft in revenue, we'd have at least $500-700 million that we could look to to supplement that downdraft without starting to make cuts. So that was the strategy, and I think Senator Linehan was involved in a lot of those discussions, maybe not all of them, but it was my decision to deviate from what we normally would have done and that was, I think, a sensible thing to do.

CLEMENTS: Yes, I agreed with that. I was told that some of those factors in-- that the fiscal was talking about a negative number and adjusting it to zero for the next two years was fine, but I don't believe that we had anything beyond two years out on the fiscal side.

STINNER: We did, we did not just for that specific piece of legislation.

CLEMENTS: Thank you.

STINNER: Wanted to tease out.

LINEHAN: Can I respond?

STINNER: Yes, please.

CLEMENTS: Yes.

LINEHAN: So, you're right. It only goes out-- it actually goes out four years, right, the next two bienniums.

STINNER: It's the current biennium. And then there's, there's-- there's actually five years that we deal with, OK, it was the actual, then the current biennium and then the out-years.

LINEHAN: So they are out-years are four-- or three years, four years. You can figure that out. You're the actuary. If the tax cuts they send over from the Department of Revenue say they're this much in the first biennium, but they're going to go up 4 percent, the cost is going to go up 4 percent-- so in those 3 to 4 years, I get, like, 10 percent higher on what it costs to cut taxes, then we're showing the budget's going to grow. And I just-- that's what I don't think is right. Like, pick a number. Tax cuts can't cost more if we have no budget growth. That's the-- and we, and we ended up-- on the last day, Senator Stinner and I went back to Senator Hilgers' office and we took off a tax cut that now, of course, we wouldn't have had to do because the revenues are much more significant than the green sheet showed. But we did a lot of tax cuts. We had a good year. I'm not-- but there-- when you get to billions of dollars, all these little percentages make a big, big difference.

CLEMENTS: Yes, and I agree. Thank you. I think that coordinating those projections would be helpful, yes.

LINEHAN: At least having the opportunity of coordinating them. Thank you.

STINNER: Any additional questions? Seeing none, thank you.

LINEHAN: Thank you, sir.

STINNER: OK. We have invited testimony, Department of Revenue.

HOAPHU TRAN: Senator and, and good afternoon. And my name is HoaPhu Tran, H-o-a-P-h-u, last name, Tran, T-r-a-n. I am the economist for the Department of Revenue. I'm here today to outline the process that the Department of Revenue undertake when we provide an estimate for fiscal impact of proposed legislation on General Fund revenue, essentially the fiscal note that end up in front of you for various piece of legislation. Two of Nebraska largest source of General Fund revenue are the sales tax and individual income tax. So I will briefly go over the process of estimating the fiscal impact for sales tax exemption and then I will cover a little bit of change in the individual income tax rate or base. Starting with the sales tax and use tax exemption, as is often the case with developing any of this economic estimate, the accuracy of the estimate is primarily determined by the quality of the data used to generate the fiscal impact. So the first decision when preparing a fiscal note impact is to choose the best data that we can get our hand to. So when available, we try to utilize the data internally on our database, at least provide the most direct measure of relevant industry activity in Nebraska. However, in most proposed legislation, specific data relate to the product or industry is not track, maintained or broken out in detail enough by the Department so that we can utilize the data. So often then, when we don't have the specific data at the agency, we have to go to the national level in order to provide a suitable estimate. So this data is almost exclusively gathered from primary source in the federal government. Sets out the census data, BEA, BOS. So this a federal agency that have access to much larger data source for a variety of products and industry than we have at the state level. When state-level data is available from this agency, we can use that data directly. When the data is not-- is more accurated [SIC], we must scale that data down to estimate to the proportion of sales we expect to take place in Nebraska. Most often, this is done by using population or in our GDP ratio given the industry. Depending on the specific of the proposal, the data is then analyzed and used to generate an estimate for the base year impact of the pro-- of the proposed legislation. When we establish the base year of the fiscal impact using the data, we then have to adjust the estimate for future years by some percentage to account for growth. This is tailored specifically to the context that the proposed, proposed legislation, as it's often the case that the projected percentage differ due to industry differences. For example, the growth rate for the tax industry and agricultural sector in Nebraska are different. Therefore, it would be inaccurate to project equivalent growth using the same percentage for different industry. So to the extent that the data is available, we choose the most accurate growth factor to project change in estimating from the base year. In many case, we use general consumption-- consumer price index, which is the CPI, but if more accurate industries subset of the Consumer Price Index exist and they are often used. In our case, we look at historical average growth of the growth sale and use tax or projection of growth for future consumer spending on certain goods and services provided by SS-- IHS or Moody economics. So in the sense that even on the sales tax, when, when we change the sales tax base, we don't use the same growth rate in the future years for every single sales tax exemption that is landing on our desk. You know, different things have different, you know, consumer spending behavior on different types of product and that reflect on the data. Moving on to individual income tax: for proposed legislation that deal with changing the income tax rate or the tax based on exclusion, including of certain type of income, the Department used the latest available data for Nebraska individual income tax and federal income tax return to simulate the current law versus the proposed law. Using the simulation result, we calculate the percent of change of the Nebraska tax after nonrefundable credit of the proposed law versus the current law. The Department then apply that percentage to the forecast value of the Nebraska tax liability after nonrefundable credit over the fiscal impact horizon. The Department then provide the estimated fiscal impact for legislation on income tax for all fiscal year until they are fully implemented. It is important to note that when dealing with a tax rate or base change, the chance that not impact the amount of refundable income tax credit such as the Nebraska earned income tax credit, the child tax credit and the Nebraska property tax incentive credit. Hence, it is not correct to use the growth of a net individual income tax for analyzing fiscal impact for tax rate or tax may change. In the end, we use different growth rate for our fiscal impact analysis just as, just as the growth rate of the total net General Fund revenue is different from the growth rate of the component that make up the General Fund revenue. Sales tax, individual income tax, corporate income tax, miscellaneous income tax, which all have different growth rate from the total growth of net General Fund revenue. Furthermore, different agency analysts, economists, we have different set of assumptions for their analysis based on their knowledge, experience, and how they feel about the future. Rarely, if ever, you will find a set of assumptions from two individual to be exactly the same. One thing I want to point out specifically is that when we change the rate on the base, we-- that basically impact your taxable income times the rate to get the Nebraska tax. Anything after that have nothing to do with the rate like-- except for the nonrefundable credit, but all the refundable credit have nothing to do with the rate. So your net might be at a lower percent, but when you change that rate, the tax liability is actually a lot higher before the nonrefundable kick in, so. And nonrefundable is now quite a big part of the net General Fund revenue calculation.

STINNER: Senator Wishart.

WISHART: Thank you for being here today. Do you-- does the department track your accuracy in projections? So if you were to look back over the years, is your projections that you provide to us at the beginning of every budget cycle, what is the percentage of accuracy?

HOAPHU TRAN: So answer is no, we don't look back. However, on individual-- sales tax have this issue because you know, when, when we do a fiscal note on sales tax, usually data is not breaking down by detail, by industry, by good-- by the type of good that we want to exempt. So a more general data set have to be used. Fiscal impact tend to assume full compliant, all right? As we know, a lot of stuff are not 100 percent full compliant. Even the refundable income tax credit, that's not full compliant. But when we do our fiscal impact that is assumed because we don't know what percentages to assume how much people would pick up. So sales tax tend to have a more, you know, it won't be an accurate income tax. Income tax, on the other hand, we do income tax using real data, real time. So let's say for fiscal year for next session, 2023 Session, we get a view on income tax rate change or whatever the case may be, the base rate. We actually run the simulation on tax year 20-- 2020 data. We have about a million return, we run that through with the new law and then we take that divided by what would the tax in 2020 is for that particular year. So we take the proposed versus the current-- you divide that to get the percentage of that reduction in revenue. And therefore, to get future years, what we do-- we project tax liability so over the last-- not, not, net General Fund revenue but tax liability which is line, roughly 19 somewhere, in the tax return. So on an accuracy point of view, that is a much more accurate measure, at least in the short run. But we don't go back and we can't-- things change, you know.

STINNER: Any additional questions? So if I was going to take a look at long-term impact of something-- let me put it this way. The state of Nebraska derives income from sales tax, and sales tax has its own individual rate, rate of growth. Is that correct?

HOAPHU TRAN: Correct.

STINNER: In-- individual income tax has its own individual rate of growth--

HOAPHU TRAN: Correct.

STINNER: --as corporate, as miscellaneous. If I was going to do something as it relates to, for an example, individual income tax, whether it be bracket or something that will be long term in nature, would I not use to judge the fiscal impact of that, that long term growth rate on average?

HOAPHU TRAN: That's what we do.

STINNER: That's what I know you do. That's why I asked the question. But I'm sorry, I didn't mean to interrupt. Go ahead.

HOAPHU TRAN: So again, what your question again?

STINNER: Well, the, the next question would be what are those growth rates as it relates to sales tax, income tax, corporate, miscellaneous, but you--

HOAPHU TRAN: So, so on the income tax, right, we, we don't even use the net income tax number, all right? So the forecast basically is technically not relevant on the fiscal note process except for the first two years. Because, as I say, refundable income tax have nothing to do with the bracket or rate. So the net is heavily impact on those refundable income tax.

STINNER: Right.

HOAPHU TRAN: So on the long horizon, we go back to basically, you know, we look at 20 years average. You know, you see some negative weak number --negative like-- for like, if there's a note next year. This year, the projected increase in net tax liability for tax year '21 is roughly about 14 percent higher than tax year '20. So next year, we actually be a negative number even for that first year and then grow that negative number out roughly by an average rate.

STINNER: OK.

HOAPHU TRAN: Answer your question?

STINNER: Any additional questions? Seeing none, thank you.

HOAPHU TRAN: All right. Thank you.

STINNER: Senator-- or Fiscal Office will now have their invited testimony, the Legislative Fiscal Office. Good afternoon.

KEISHA PATENT: Good afternoon. My testimony says it's good morning, but I guess it's not morning anymore. Good afternoon. My name is Keisha Patent, that's K-e-i-s-h-a P-a-t-e-n-t, and I'm the Legislative Fiscal Analyst. Legislative Rule Section 5-- sorry, Legislative Rule 5, Section 7-- sorry, I misspoke-- includes several provisions regarding the responsibilities of our office regarding fiscal notes. Subsection (b), the rule states, "in determining the fiscal impact of any bill, the Legislative Fiscal Analyst shall request the appropriate department or other entity of state government or subdivision thereof, or appropriate association which shall be affected by the bill, to prepare the fiscal note." The rule goes on to state in part-- in subsection (c), that "the Legislative Fiscal Analyst shall review the fiscal note so prepared" and "shall include in the fiscal note any exceptions to the conclusions of the Department or other entity." And in subsection (h), the rule states the fiscal note shall be factual in nature, as brief and concise as may be, and shall be, if possible, provide a relative-- reliable estimate in dollars and, in addition, it shall include both the immediate effect and, if determinable or reasonably foreseeable, the long range effect of the measure. If, after investigation, it is determined that no dollar estimate is possible, the fiscal note shall contain the statement to that effect, setting forth the reasons why no dollar estimate can be given. When our office requests a fiscal note response from any agency or political subdivision, we also include instructions for completion. The instructions are mostly technical in nature regarding things like due date, how to submit their response, formatting, those kinds of things.

____________: The caller--

VARGAS: Senator Tony Vargas.

____________: --has left the conference.

KEISHA PATENT: We also include the following note on completion with those instructions. After reviewing the bill, if its passage would not have an impact on your expenditures or revenues, please indicate no fiscal impact on the form. If the proposed legislation would result in any increase or decrease in your expenditures or revenues, state the amount of the estimated fiscal impact for each of the next two fiscal years by fund type on the top portion of the form. The major objects of the expenditure section on the bottom portion of the form is used to provide additional detail on the expenditure impact. In the space provided for narrative, explain concisely the rationale used in determining the estimated impact. In order to clarify fiscal impact, the narrative should include the assumptions, workload statistics, etcetera, used in estimating the fiscal impact. Our office does not dictate precisely how any agency should estimate any such fiscal impact, nor does it seem like it would be helpful for our office to do so. There is a benefit to having agencies or political subdivisions using their own assumptions and methodology to estimate expenditures or revenue loss, whether it be based on historical average trend over a particular time period, CPI, econometric modeling, or some other method that the agency deems appropriate. In many instances, a particular bill affects multiple agencies and/or political subdivisions, and more than one entity will be doing estimates of the impact. On some of these, there is no overlap with the estimates because the agencies or political subdivisions are estimating an impact of the portion of the bill that affects only them. However, sometimes there are several entities estimating the impact of the same change. Differences in estimates can be attributed to different data sources available or methodology in estimating these future projections. Our role in the Fiscal Office is to evaluate the agencies' assumptions and their data sources and compare those to our own assumptions and data sources. If any of the assumption of the agency is unclear, it's the role of the analysts in our office to verify those assumptions as a part of our review process before the fiscal note is published. It can be useful to have different perspectives on methodologies to estimate the impact of the bill with any tax rate or fee change or the usage of a particular program. For example, using a five-year historical average annual growth rate could be different than using a 10-year average historical growth rate. There could be a change in policy during that time period, a particular outlier year, something that would affect that particular growth rate. It's interesting-- helpful to talk to the agency about why they chose one over the other. In looking at how this relates specifically to the Nebraska Economic Forecasting Advisory Board in estimating the impact of an individual bill, it does not often occur that any such estimation would be comparable to projected increases or decreases in the General Fund revenue categories that are forecasted by the Forecasting Board. Many bills do not affect General Fund revenue at all. Of the bills that do, projections of the impact relate to a specific-- related to a specific bill could be very different than the general forecast by the board. As Dr. Tran mentioned, I have similar examples. For instance, many bills amending provisions related to sales and use tax are often tied to a specific exemption or sales of a particular good or service, not the overall sales tax rate. Estimates of these bills are often based on sales of the particular good or service covered in the bill, rather than the overall trend in sales tax or projected growth in sales tax revenue generally. It's similar for miscellaneous taxes credited to the General Fund. This category includes many different taxes, fees, transfers, interest and others. Any legislation addressing any individual one of these would be estimated based on its own trends and particularities, rather than the overall trends in the miscellaneous tax category. For instance, cigarette tax has declined steadily over the previous 15 years. That's one of the miscellaneous taxes in that category. Insurance premium tax is also in that category and it has increased substantially during that same time period. We would not want to use the same growth weight-- growth rate to project the two of those. Legislation related to individual and corporate income tax is slightly different in that some instances, estimation can be more closely tied to a broad category of income forecasted by the Forecasting Board. However, bills that amend a particular deduction or credit to the income tax are estimated based on qualification for that deduction or credit, and again would not necessarily reflect overall trends in the total income tax revenue. Bills that are-- that propose to make broad-based changes to the individual income tax and corporate income tax in the recent past have actually used rates that-- projected growth rates that have been fairly close to the historical trend line. As Dr., Dr. Tran mentioned, there are several different ways to estimate projected revenue loss from these types of bills. As he mentioned, the Department of Revenue generally uses overall tax liability and projects growth in that. I know that in the past couple of years, the Fiscal Office has generally agreed with the Department of Revenue's projections on the largest tax bills, the ones that have been in question today. It is my understanding in the past, it would be unusual for our office to use a variable growth factor in estimating the impact of any bill. However, to reflect a different rate of growth each year, but rather-- sorry, it's much more common to use a steady rate of growth for the purposes of estimating any impact for a fiscal note. This methodology can more accurately account for volatility over the long term. The General Fund financial status also uses a methodology with an averaging effect to reduce volatility over the long term. The status which was-- has been brought up several times today is used by the Legislature and prepared by the Fiscal Office. It shows rate and base-adjusted growth rates for General Fund revenue growth. The Fiscal Office has been using rate and base-adjusted growth rates to measure annual General Fund growth since 1981. This methodology specifically adjusts for any federal or state legislation or action that changes the tax rate, allows for any credit or exemption to a tax, diverts revenue from the General Fund to another fund, or otherwise affects the amount of tax revenue that is credited to the General Fund. The original purpose was to account for annual changes in income and sales tax rates by the State Board of Equalization so that growth rates and revenue were comparing apples to apples from one year to another. Even after the State Board of Equalization no longer changed tax rates, our office continued using this methodology to adjust out the impact of legislation in calculating annual growth rates to show revenue growth attributable to economic factors and excluding legislative changes. Currently, the base year that we use for the calculating rate and base-adjusted growth is 2013. That's the last time a rebase was done. The adjustments to any individual year are substantial in terms of dollar amounts, especially in the individual income tax category. As legislative changes, even ones enacted several years ago, have ongoing impact and carry forward through the current fiscal year. The 40-year-- historical average rate, sorry, the 40-year historical average for rate and base-adjusted growth is just over 5 percent for revenue as a whole. This is what we use to calculate revenue for the out-years. And the way that that's done, is we take the current fiscal year and the two years for the next biennium that are forecasted by the Forecasting Board. They set the forecast for those three years and those have an associated rate and base-adjusted growth rate and we calculate what the revenue would be-- would need to be in order for the average growth rate over that five-year period to be 5 percent, essentially, to, to match the historical average. And that's been the practice in the Fiscal Office, like I said, since about 1981. And in, in the past, it has come up. To Senator Stinner's point about last year, bringing the-- it was supposed to be negative in the out-years and bringing it up to zero. It had happened in the past where there had been a period of low years and the out-years were supposed to be very high. And so there had been a practice of capping the high years as to not plan for too high of out-years. But it had never happened before that the first years were so high that the, the out-years were negative to that extent. So there had never been an experience where there was a need to cap the low side. That was the first time that had ever come up. And so the experience of last year was unique, I believe. So-- but this methodology is designed to allow the Legislature to budget for the volatility in revenue over that five-year period. So if there's an upswing in revenue, it anticipates that over that five-year period there will be a downswing as well, so that it averages to that historical average. So I hope that helps clarify some things. That average, though, does take out all impacts of, of legislation. So it's not an actual revenue growth calculation. It, it has adjustments in it, so I hope that helps clarify. If you have questions, I'm happy to answer them.

STINNER: Any questions? Senator Wishart.

WISHART: Thank you, Keisha, for being here. And I think this might, I think this might be the first time that you've been in front of us as the director of the Fiscal Office, at least for me, So congratulations.

KEISHA PATENT: Thanks.

WISHART: I'll ask the same question I asked of Dr. Tran. This has been-- this process has been in place since 1981. Has the Fiscal Office looked back at the accuracy of using this system of modeling?

KEISHA PATENT: Well, in terms of the rate and base-adjusted historical average, I do know that over the past three years, the average has changed slightly. It's, it's sort of a moving average, so if that helps answer your question. Because we had very high growth the past two years, the average has actually increased slightly, even though it's a 40-year average. It actually-- the two years of growth that we had were so high, it actually moved the needle a little bit. So I think, in some regard, because it's a long-term historical average, it's, it is sort of a moving target, but there is still some swings. I mean, as, as you know from the Forecast Board last year-- or not last year, last Friday, last Friday-- that last year's estimates were considerably lower than what the forecast board ended up setting the forecast out for fiscal year '23-24 and '24-25. So sometimes the historical average methodology doesn't get the exact percentages right, but it, it's an attempt to get close to the swings in revenue. Is it going up or is it going down or in terms of economic conditions?

WISHART: I have one more question.

STINNER: Yes.

WISHART: I think, first of all, I'm really glad that Chairwoman Linehan brought this legislation because I do think that this conversation is helpful and may be very helpful as we're putting together a budget to have this point in time where we're having this discussion. In, in statute, we would be coming together for this discussion before attaching the first financial status to the agenda. When in the-- can you give me a picture of when that would be next session, when, when we would be coming together if we, if we decide as a Legislature to do this?

KEISHA PATENT: It's my understanding that, that the first financial status is required when the budget goes to the floor.

WISHART: OK. So it would be right prior to that.

KEISHA PATENT: So it would have to be right prior to that, yeah.

STINNER: Any additional questions Senator-- Senator Dover.

DOVER: Just for, for the sake of perspective, what is the incremental increase in your historical average?

KEISHA PATENT: From what--

DOVER: From just where you said, you said recently, you said there's been a incremental increase. What is that, just for my-- for perspective?

KEISHA PATENT: Yeah, about .2 percent.

DOVER: Okay. Thank you.

STINNER: Just as a point of clarification, depending on the type of legislation, the agency that's affected, the agency actually prepares the fiscal impact and then Fiscal Office reviews it. And if Fiscal Office has a problem with it, they generally change it to what they think is, but they'll footnote what the agency also said, that there is a difference of opinion. So when you look at the fiscal note, you'll see, hey, there's, there's a difference of opinion in the fiscal impact about this.

KEISHA PATENT: Right and because the bill is usually requiring an agency to do something or is requiring some sort of change in a program that they administer or a tax or a fee that they collect, and so they are best situated to make the initial assessment of that impact, which is why we request the response from those agencies or political subdivisions because in some cases, they have the data, they're directly administering the program or the tax or the fee or that, that sort of situation. So that-- they, they provide the initial response. And then it's our job to review that to-- if we have additional data, if we have a different data source, then there are times that we disagree with agencies. There are times that we, we have additional data, like I said, or we don't agree with their assumptions. And then that's in our fiscal note why we disagree with them or what additional data we're using. But yes, that's, that's the way the process is, is designed.

STINNER: So there is a difference between revenue bills and expenditure bills or appropriation bills?

KEISHA PATENT: Sometimes, and sometimes bills have both. They have a--

STINNER: Right.

KEISHA PATENT: --a change in revenue and also an increase in an expenditure or change in expenditures.

STINNER: And many times, is that different agencies get involved in that calculation or is it generally into revenue?

KEISHA PATENT: In terms of a revenue bill?

STINNER: Yeah.

KEISHA PATENT: Well, it depends on the, it depends on the revenue. There are quite a few agencies that collect different fees so if it's a cash revenue, cash fund revenue, it could be various agencies that would be responding to that sort of.

STINNER: Most of them would lie in the miscellaneous section.

KEISHA PATENT: Yeah, but if it's-- I mean General Fund revenue, it is often the Department of Revenue, obviously. There are other miscellaneous taxes that are administered by other agencies, but most of them are administered by the Department of Revenue.

STINNER: So-- but historically, if-- you've testified that we generally do not have big disagreement between agencies and what Fiscal Office is. I can only remember maybe a handful since I've been here.

KEISHA PATENT: Disagreements in terms of the fiscal note?

STINNER: Fiscal note, the fiscal impact, yeah.

KEISHA PATENT: I wouldn't, I wouldn't say we normally have big disagreements because I, I think that it's, it's in everyone's interest for us to come to some sort of, I don't want to say agreement, that's maybe not the right word, but for us to work together in coming to an understanding.

STINNER: Right. And it should be noted that the Appropriations Committee, when we go through the requests, many times we'll change those requests because we believe that they're either not using the money or that there should be a different number in there. But Senator--

DORN: Thank you, Chairman Stinner, and thank you for being here, Keisha. And welcome to the-- Chairman of the Fiscal Office. I guess

I-- talk a little bit about the Forecasting Board. They just met. And so when we sit there and we get the green sheet on the floor and we see what we-- or the Fiscal Office puts in there for growth in the out-years. And yet, we have, from the Forecasting Board, their concept of where our growth is going to be at. Do those interrelate or how do you look at those?

KEISHA PATENT: Yeah. So the, the Forecast Board, like I said, they, they set the forecast for the current year and then the next two years. And when we were at the meeting last week, they look at the rate and base-adjusted growth. That's something that our office provides them as well when they're setting the forecast. So they have that information by type of tax and overall. So they also look at rate and base-adjusted growth so that they can look at it just in terms of economic factors and adjust out the legislative impacts. But they also can look at overall growth rates, just actual to actual growth rates in addition to the rate and base-adjusted growth. But the out-years are something that once the Forecast Board has met, the out-years are something that are used mostly for planning purposes for the Legislature. And so we use that historical methodology of the averaging to the historical average growth rate over the course of the five-year period. And that-- those two out-year numbers will include those estimates for revenue growth and also some appropriations estimates, and that will be published in the Tax Rate Review Committee report, which I believe they're meeting on the 17th of November, and that will be available for the Legislature before session starts then.

DORN: But when we, when we come down to the floor and we pass the final budget and then afterwards we'll pass other bills too, yet, but part of what we look at and know is the final-- I mean, we look at the budget very much on the final forecast from the Forecasting Board there in April or whatever. So we-- that's an important part of it. So we don't-- I mean, trying to say that we just don't, you know, automatically put a different number in there than what they say based on a percentage that we're going to have 5 percent growth or whatever we're going to have growth, there are other factors that make up a big part of what we're having a discussion on today here.

KEISHA PATENT: I guess I'm not sure I understand what, what you're asking me.

DORN: Well, no, I wasn't asking you for comment.

KEISHA PATENT: OK.

DORN: I mean, but you look at the Forecasting Board, I mean, when you're-- as you're planning, you give them data, but then you also use that data.

KEISHA PATENT: Yes.

DORN: From the forecasting projections, I guess. Is that correct?

KEISHA PATENT: That is correct.

DORN: Yeah.

KEISHA PATENT: Yeah. It's what they, what they decided on Friday is the starting point for the five-year financial status because that was the first time that they had set a forecast for the current-- the upcoming biennium, fiscal year '23-24 and '24-25. So since that's the first forecast we have for that biennium, we'll replace the preliminary numbers that our office used last year because last year we had those preliminary zero percent growth numbers which were the out-years. Now we'll replace those with the forecast, the official forecast, and I'll use the historical methodology to do estimates for the new out-years and, and prepare a new five-year financial status. And, and we'll shift, shift over to new, new five-year section.

DORN: I guess I didn't ask, ask it quite right, but thank you for that answer. That's what I was looking for.

KEISHA PATENT: OK. I hope that helps then.

STINNER: Any additional questions? Seeing none, thank you.

KEISHA PATENT: OK.

STINNER: Senator Linehan, would you like to conclude?

LINEHAN: I'm just going to hand out a couple things and I asked Grant to go back and get the green sheets, but-- Morgan? So this-- oh, I need to keep one so I know what I'm talking about. So this is the fiscal note for-- first one I'm handing out is LB939. So that's the fiscal note for the income-- individual income tax cuts. So you can see when you get it, Senator Dorn, Senator Clements, it goes out to '26-27. I'll wait till you get it. It makes it a lot easier. And then the second one is the actual bill that we passed, LB873, which put it all together. So we've got the two bienniums up here where we've got the Forecasting Board's information. But then when you get down here below, this compares against the green sheet. So my point being that if these numbers are at 4.5 percent or-- I'm not sure. I think it's 4.5 percent, but maybe it's 4 percent, whatever. And that--but we're projecting only zero percent growth in the out-years, that's the delta that concerns me. 'Cause we-- Chairman Stinner has been very good. We are very good financial situation, much different than when he-- here, Morgan, here's the General Fund status-- when he took over and we had a painful first year. So we have the funding but when-- if you look at the green sheet here-- and this is before we had '23-24 Forecasting Board-- you can see, according to the green sheet, in the '24-25, this showed us-- even though we took some-- one tax cut off, we were still going to be in the hole, according to the green sheet, from '23-24. So it's just-- I know this is really down in the weeds, but maybe now we'll go back to the rule and we all meet and we talk about it. That's different. It's just trying to figure out how I can-- if we have tax cuts. You know, you're the Appropriations Committee. But that's how the numbers-- I just thought it'd be good to show how the numbers lay out. So questions?

STINNER: Any questions? Seeing none, thank you.

LINEHAN: Thank you, Chairman Stinner.

STINNER: And good luck next session.

LINEHAN: Good luck for football tomorrow.

STINNER: Yeah, gosh. [LAUGHTER] I passed this out. This is a-- this is the rendition of the Kimball Sentinel, which I think both Senator Linehan and Senator Clements, myself were-- but this is their actual request. They're going to firm up numbers. I thought you ought to have it for the Appropriations Committee because I'm presuming it's going to be in the Governor's budget. If it isn't, there's going to have to be a bill. I've-- I'm-- been a little bit out of the loop. I told them when they came to me to put it in the Governor's budget, so.

LINEHAN: I don't know any more than the day we went out there. That's just the Kimball part, right? Not the--

STINNER: That's, that's not the mega site.

LINEHAN: --waste place.

STINNER: Mega site is something different.

LINEHAN: A ways-- but it's by Kimball. But they're separate, so. OK. Thank you all very much.

STINNER: OK, get these out.