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Revenue Committee
January 23, 2013

[LB24 LB33 LB34]

The Committee on Revenue met at 1:30 p.m. on Wednesday, January 23, 2013, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB24, LB33, and LB34. Senators present: Galen Hadley, Chairperson; Paul Schumacher, Vice Chairperson; Tom Hansen; Burke Harr; Charlie Janssen; Beau McCoy; Pete Pirsch; and Kate Sullivan. Senators absent: None.

SENATOR HADLEY: We'll go ahead and get started. I appreciate your coming. My name is Galen Hadley, a senator from Kearney; to my left is Senator Schumacher from Columbus; to his left will be Senator Pirsch from Omaha; and to his left is Senator Sullivan from Cedar Rapids. On my far right is Senator Burke Harr from Omaha; to his left is Senator Janssen from Fremont; to his left will be Senator McCoy from Omaha; and to his left is Senator Hansen from North Platte. Our research analysts are Mary Jane Egr Edson to my right, and Bill Lock is back in the office. Matt Rathje, to my far left, is our committee clerk. And just to let you know, Matt became a father today, so we're congratulating...what time was that Matt?

MATT RATHJE: 7:36...well, she went into labor about 1:00 and so, it's been a long night for your committee clerk.

SENATOR HADLEY: That's dedication, right, being here?

MATT RATHJE: Yep.

SENATOR HADLEY: Our pages are Nathan Funk from Norfolk and Evan Schmeits from Columbus. I appreciate that. I'd appreciate it if you'd turn off your cell phones or put on vibrant while in the hearing room. The sign-in sheets for testifiers are on the tables by both doors and need to be completed by everyone wishing to testify. If you're testifying on more than bill, you need to submit a form for each bill. Please print and complete the form prior to coming up to testify. When you come up to testify, hand your testifier sheet to the committee clerk. There are also clipboards in the back of the room to sign in if you do not wish to testify or would like to indicate your support or opposition to a bill. These sheets will be included in the official record. We will follow the agenda posted on the door. The introducer or representative will present the bill followed by proponents, opponents, and neutral. Only the introducer will have the opportunity for closing remarks. As you begin your testimony, state your name, and spell it for the record. If you have handouts, please bring ten copies to the committee and staff. If you only have the original, we will make copies. Give the handouts to the page to circulate to the committee. You will notice that senators may get up and leave during the proceedings. We are also introducing bills in other committees that we may have to go for that, so please do not take offense at that. With that, I am going to turn the chair over to the Vice Chair, Senator Schumacher. Since I am introducing the first three bills, he will be

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running the committee. Thank you.

SENATOR SCHUMACHER: Thank you, Senator Hadley. The first bill up on the agenda is LB24 to update references to the Internal Revenue Code. Senator Hadley.

SENATOR HADLEY: Vice Chair Schumacher, members of the committee, my name is Galen Hadley. I represent the 37th District of Kearney and Buffalo County. I appreciate the opportunity to come before the committee. For those of you that are new, we basically have...the first day are what are called department bills. These are bills that the department has asked the committee chair to introduce, but basically the explanation will be given by the Revenue Commissioner, Commissioner Ewald. So we will start with that. The first bill, as was mentioned, is to update references to the Internal Revenue Code. And with that, I will turn it over to Commissioner Ewald. Thank you.

SENATOR SCHUMACHER: Thank you, Senator Hadley.

DOUG EWALD: Actually I wasn't prepared to talk on this one because it's a normal update, but...Vice Chair Schumacher, members of the Revenue Committee, my name is Doug Ewald, E-w-a-l-d. I'm the Nebraska Tax Commissioner. With respect to LB24, basically what it does is it updates the links of the current provisions in the Internal Revenue Code. We adopt the Internal Revenue Code here in the state of Nebraska. That's our starting point with respect to computing taxable income. What this is, makes sure that we're update to the current provisions in that federal code. [LB24]

SENATOR SCHUMACHER: Any questions? Seeing none, thank you. Any proponents? Seeing none, any opponents? Anyone just want to talk in the neutral? Senator Hadley, you want to close? Senator Hadley waives closing and that concludes the hearing on LB24. Next on the agenda, LB33. Senator Hadley. [LB24]

SENATOR HADLEY: Thank you, Vice Chairman Schumacher, members of the committee. My name is Galen Hadley. I represent the 37th District, Kearney and part of Buffalo County. LB33 is, again, introduced at the request of the Commissioner of Revenue and the Revenue Department. It's a change that will eliminate certain revenue laws and authorize agreements relating to tax collection. With that, I would turn it over to the Commissioner of Revenue to explain the bill and answer any questions you might have. [LB33]

SENATOR SCHUMACHER: Thank you, Senator Hadley. [LB33]

DOUG EWALD: (Exhibit 1) Vice Chair Schumacher, members of the Revenue Committee, my name is Doug Ewald, E-w-a-l-d, Tax Commissioner of the Department of Revenue. I appear before you today as a proponent of LB33. LB33 is the

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department's annual cleanup legislation, which will help simplify tax administration. Specifically, LB33 authorizes a pilot project to examine the potential benefits of issuing levies to financial institutions electronically; it repeals the individual income tax return checkoff for contributions to the Campaign Finance Limitation Cash Fund; it allows taxpayers to voluntarily extend the statute of limitations for longer payment plans to avoid filing of liens; and it authorizes the imposition of a penalty for filing a late tobacco products tax return. Specifically, getting into a little bit more detail here, to authorize an e-levy pilot project. The e-levy pilot project is simply a way for the department that we can utilize technology to reduce costs associated with current practices of processing and mailing levies to financial institutions. Over the past several years, the Revenue Committee has supported efforts by the department to encourage taxpayers and tax preparers to e-file. This effort has leveraged technology to improve processing of tax returns, reduce errors, and to get taxpayers their tax refunds quicker. The department has also taken steps to improve collection of delinquent taxes through the automation of many of our debt collection efforts. While significant progress has been made, additional efficiencies can certainly be achieved through collaboration with the private sector. The e-levy pilot project is an extension of those efforts. To be clear, an e-levy system would not change any rights of a taxpayer that they have with respect to contesting a tax liability or lien filing. Rather, it merely changes the way we more efficiently communicate with financial institutions. Specifically, we hope that we can partner with one or more financial institutions while addressing issues of confidentiality of customer information and the immunity from liability for good faith compliance while developing a state-of-the-art electronic levy system. So basically what we'd like to do is we'd like to partner with one or more financial institutions for a period of time, and then basically come back to the committee and say, okay, what's the best practice out there? How should we go forward with this filing? And at that point in time, we can come back and amend the statute, however it needed to be amended. The next item: Repeal of the campaign finance checkoff. As many of you may know, the Nebraska Supreme Court recently held that the Campaign Finance Limitation Act was unconstitutional. LB33 would simply strike the statute that requires a tax commissioner to include a checkoff box on the income tax return for contributions to the program. We've actually already struck that line from the tax return. This basically removes the related statutory reference. I also understand that Senator Avery has, as part of LB78, this provision in his bill that's going through the Government Committee. With respect to lien extension agreements for payment arrangements, this bill would allow the department to record a lien up to one year after the expiration of a payment arrangement between the department and a taxpayer. As background, current law provides a three-year statutory lien that begins when a tax liability becomes due. The department can formally record a lien anytime within that three-year period. The department frequently executes payment arrangements with taxpayers to satisfy delinquent tax liabilities. As you know, recording liens can have a serious and negative impact on a taxpayer's credit rating, so the department tries to avoid recording a lien if possible. However, we do occasionally run into situations where a taxpayer is unable to pay off the tax delinquency within the

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current three-year statutory lien period. As a result, we're required to file a lien to protect the interest of the state. LB33 ensures that we don't have to record a lien against the taxpayer when that taxpayer has entered into a payment arrangement with us. Specifically what we would do is, when we enter into that arrangement and we know it's going to go longer than the statute of limitations, we would ask them to sign an agreement to waive that at that point in time. Therefore, when we got past to the point where the statute of limitations would expire, we would not have to address that issue with them. It would be built into the payment arrangement with them. There is one item. We will be circulating an amendment with respect to this particular item. It changes the language just a little bit to clarify what our intent is with that particular provision, but it's taxpayer friendly as well. Other tobacco products late filing penalty--this bill establishes a 25 percent penalty for filing a late return under the other tobacco products program. Today, taxpayers that fail to file a return by the due date are only responsible for interest on the tax due. In contrast, the cigarette tax program includes a 25 percent penalty for late filing. LB33 ensures that late filings are treated the same for both programs. So today we have OTP treated differently than we have the cigarette program. With that, that concludes my testimony, and I'd be more than happy to address any questions that the committee may have. [LB33]

SENATOR SCHUMACHER: Any questions? Senator Pirsch. [LB33]

SENATOR PIRSCH: Thanks. With respect, and maybe I'll just start with the last one, other tobacco products. What are we talking about both in terms of what categories, and is it substantive in terms of...? [LB33]

DOUG EWALD: Well, basically other tobacco product is really anything other than cigarettes. So snuff, chewing tobacco, that type of stuff anyway. [LB33]

SENATOR PIRSCH: And is that substantive in terms of dollars? Are we dealing with large dollars then? [LB33]

DOUG EWALD: Well, the fiscal note here is a positive fiscal note of about \$45,000. Today we have a fair...not a fair amount, we have some. And I'll say maybe 10 percent from that standpoint that don't file timely with us with respect to this item. Cigarettes, they're very good about it. They know there's a penalty out there, they're always predominantly on time with respect to their filings. So this would help us marry up those statutes and hopefully create a little bit better compliance with respect to that provision. [LB33]

SENATOR PIRSCH: Yeah, and a couple of more substantive points and I don't really have anything about repealing the campaign finance checkoff, but authorizing an e-levy pilot project, the first part of that. So how would that...would there be anything changing? Could you talk about, give an example about how the way things are done

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now nonelectronically and then this pilot project, how things would...I mean just kind of stepping me through (inaudible). [LB33]

DOUG EWALD: Right. Today this is all done through the mail system. So if we're going to levy an account, we fill out the appropriate paperwork, we send it to the appropriate financial institution who checks the balance of someone's account, and if there's dollars or funds in there, they basically tap that account and send the proceeds to the state. What this does, it would allow us to...what I kind of envision here is some sort of database or an e-mail that we would generate to the appropriate financial institution with that particular information. It would be to one person at the bank, or it could be to whoever they designate at that particular financial institution, who deals with these levy situations from that standpoint. [LB33]

SENATOR PIRSCH: So in terms of providing notice or anything, it doesn't change anything from the current status quo? [LB33]

DOUG EWALD: No, it... [LB33]

SENATOR PIRSCH: It just makes an electronic process of the actual lien process. [LB33]

DOUG EWALD: Correct. [LB33]

SENATOR PIRSCH: Okay. And then finally, the lien extension agreement for payment agreements facet. So what substantively is being changed, if you can give kind of an illustration of what is occurring today and how that would change? [LB33]

DOUG EWALD: Right. Today if you had a delinquent account with us and we entered into a payment arrangement with you, the statute of limitations allows us to go back three years. Now, if we entered into a payment arrangement that lasted longer than three years, it would require us at the end of that three-year period to file a lien with respect to that issue. We prefer not to file liens because we know if somebody is in good faith honoring their payment arrangement with us, they're trying to get their credit reestablished or whatever their situation might be, a lien could be very detrimental to them with respect to their personal matters. So what we like to do is, we would...when we enter into that payment arrangement, we would also have them sign paperwork that automatically extends the statute of limitations to the time at the end of their payment arrangement, those two are married together up-front, and both parties agree up-front, it prevents us from filing a lien at that point in time because they're in agreement with respect to extending the statute of limitations. [LB33]

SENATOR PIRSCH: And if you have an arrangement then that goes...starts in year two and goes over the...what would normally be the statute of limitations, year three, and

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then it will honor that agreement. At point would the clock start ticking again then, at the point in time in which they violate the terms of the agreement, is that right? [LB33]

DOUG EWALD: Yeah, correct. I mean, they enter into that arrangement with us to agree to extend the statute of limitations, so we already have that extended to a certain period of time. Obviously, if they don't honor their payment arrangement, there's other things that happen with respect to that particular item. But, really, this is a taxpayer friendly that allows us not to have to go back and touch something again later on in the process, and then prevents...they don't have that lien against them personally on their record. [LB33]

SENATOR PIRSCH: You're saying it's for the taxpayer's benefit because then you'll err on the side of caution and file normally... [LB33]

DOUG EWALD: Right. Exactly. [LB33]

SENATOR PIRSCH: ...for the three years just to preserve your right. So this gives you the leeway to exercise the discretion to (inaudible). [LB33]

DOUG EWALD: Exactly. They've waived their right up-front. [LB33]

SENATOR PIRSCH: Yeah, but I'm saying, so you give them the benefit of the doubt, you enter into an agreement with them for whatever repayment schedule it's based on. And then should they default after the three years, is it at the moment that they do not meet the payment schedule is...? [LB33]

DOUG EWALD: Well, we would hope that if it's down to the last payment, we're going to catch them before they run out of the statute of limitations we would ask them to, you know, if they ask us...and sometimes they come in and say, hey, I can't make this arrangement within the current, I need you to extend it a little bit farther for me. So at that point in time, we'd ask them to extend their statute of limitations again to coincide with the new payment arrangement. [LB33]

SENATOR PIRSCH: Okay. And then it gives you up to whenever the renegotiations, another year. Is it a year past the point at which the default of the (inaudible)? [LB33]

DOUG EWALD: Well, it's three years, though, from the date...the point in time the tax was originally due from that standpoint, so. [LB33]

SENATOR PIRSCH: If you enter into a modifying agreement, right, which...how far does that extend the statute into? [LB33]

DOUG EWALD: Well, we could...I mean, depending on what the taxpayer wanted to do,

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we would enter into an agreement with them that would hopefully meet their needs in satisfying their obligation with us. You know, we really like the things to be within one year, but sometimes that doesn't happen. Sometimes we need to extend things out two years or more depending on the facts and circumstances. [LB33]

SENATOR PIRSCH: So, I'm seeing on page 3, the language says, line 8, the old language in line 7, "for three years from the time of the assessment" and then the new language would kick in at line 8, "or one year after the expiration of an agreement between the Tax Commissioner and a taxpayer." [LB33]

DOUG EWALD: Right. It gives us an additional year outside, beyond that. [LB33]

SENATOR PIRSCH: Whichever is later. Okay. After the expiration of agreement, is there any potential for ambiguity in the sense of, you know, they could argue that the time restarted ticking after I failed to make my payment, so then a year passed, and now the department is trying to recontact me and make an arrangement. In other words, they should have got to me within a year after I didn't make that payment, or...? [LB33]

DOUG EWALD: You know, I don't think there's any unintended consequences there. We have a electronic collection system that we've developed internally today that on a daily basis all of our revenue agents know what accounts they have to touch on that day, so they're keeping on top of them. So there's going to be something in our file if somebody doesn't adhere to their payment arrangement, or they do something in that one year, we're going to be aware of it from that standpoint. [LB33]

SENATOR PIRSCH: You're counting that...you take appropriate action within that so you think it's a moot point. [LB33]

DOUG EWALD: Correct. Yeah, I'm pretty comfortable with that, yes. [LB33]

SENATOR PIRSCH: Okay. Thanks. [LB33]

SENATOR SCHUMACHER: Any other questions? Senator Sullivan. [LB33]

SENATOR SULLIVAN: Thank you, Senator. Thank you, Mr. Ewald. Just a couple of questions on the pilot project. How are you going to select the financial institutions and how long will the pilot project last? [LB33]

DOUG EWALD: Well, we would...we'd like to work with the Nebraska Bankers Association and have them put it out there and say, okay, do you have any of your members that were willing to pilot a project with us, from that standpoint? If they have some people that are willing to embark on that with us, that's why we probably start with our pool from that standpoint. And depending on what we do and how fast we move,

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this thing could last from a year to two years from that standpoint, depending on how quickly we got somebody on board and how quick we were able to progress some of the items that we wanted to address in here. [LB33]

SENATOR SULLIVAN: Thank you. [LB33]

SENATOR SCHUMACHER: Other questions? Seeing none, thank you, Commissioner Ewald. Any other proponents? Any opponents? Anyone neutral? [LB33]

BOB HALLSTROM: Vice Chairman Schumacher, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association in a neutral capacity on LB33. I appreciate Commissioner Ewald's comments regarding working with the association, both in terms of setting up the pilot program and in looking at some issues that we've raised to his attention with regard to immunity from liability for good faith compliance, and confidentiality of customer information, both in terms of the bank potentially releasing information and the department gaining access to that information. I would raise a technical issue for the committee and for the Tax Commissioner. I notice in line 3 of page 2 it talks about levies upon real and personal property. I'm not sure how a financial institution would be involved with a levy on real property or have any information or control relating to real property, but again that would be a technical issue only. We certainly do not object to the establishment of the pilot program. It provides for voluntary participation and the set-up of an agreement that is agreed upon by the commissioner and the financial institution with respect to how the program is set up. From our preliminary discussions with the commissioner, one thing that perhaps we're not crystal-clear on, and perhaps hasn't been made crystal-clear to date, but it was our understanding that one of the components to better allow the Tax Commissioner to identify delinquent taxpayers and where they have accounts, could possibly involve the exchange of confidential customer information to determine if the Department of Revenue has a list of delinquent taxpayers to match up against customers who may have accounts with the financial institution that is participating. If you're familiar with the...what we refer to as the Child Support Bank Data Match Program that's already set up under Nebraska law, it has provisions very similar to that. When that legislation was adopted, we were diligent in trying to make sure that issues regarding compensation, confidentiality of information, and immunity from liability for participating, were all set forth in the statute. And we think it would be prudent, even though it's a voluntary program, even though there's going to be an agreement between participants and the financial institutions, that those types of protections probably need to be set forth in the statute to have applicability and validity. So with that, I'd be happy to address any questions. [LB33]

SENATOR SCHUMACHER: Any questions from the committee? Seeing none, thank you, Mr. Hallstrom. [LB33]

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BOB HALLSTROM: Thank you. [LB33]

SENATOR SCHUMACHER: Any other neutral testimony? Seeing none, that concludes the hearing on LB33. And next up on the agenda, LB34. Senator Hadley. [LB33]

SENATOR HADLEY: Vice Chairman Schumacher, members of the Revenue Committee, Galen Hadley, District 37, Kearney and Buffalo County. I'm here to introduce LB34 at the request of the Revenue Department. And this bill, LB34, basically changes some of the provisions of the Nebraska Advantage Act. And with that, I would ask that Commissioner Ewald explain the changes that the department is interested in. [LB34]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Commissioner Ewald. [LB34]

DOUG EWALD: (Exhibit 2) Vice Chair Schumacher, members of the Revenue Committee, my name is Doug Ewald, E-w-a-l-d, Tax Commissioner of Nebraska Department of Revenue. I appear before you today as a proponent of LB34. LB34 makes the following changes to the Nebraska Advantage Act: Simplifies the definition of taxpayer; changes the definition of year under the act from tax year to calendar year; simplifies the employment calculation under the act; eliminates the interdependency requirement for certain projects; allows the department to disclose project information for transferred projects; and eliminates certain reporting requirements under the act. Since its inception, we've had over 300 businesses apply for incentives under the act estimating the creation of over 19,000 jobs and \$8.4 billion investment. Nebraska Advantage is unique among many state incentive programs because it requires businesses to create those jobs and/or invest in the state before the state pays out benefits underneath the program. The process of verifying employment and investment under the act can be both complex and time consuming for businesses and the department, but a necessary step to ensure that the state's tax dollars are not being wasted. As you know, a number of businesses, or you may know, this last year raised concerns regarding delays in processing applications or refund claims with the department. In response to this, the department reallocated resources to reduce these delays. I usually have approximately 75 to 80 applications in progress at any point and particular time. I found at one point in time we had about 160. So upon finding out of that, we reallocated some resources; and I'm happy to report today that the only real applications we have sitting out there are those in which we're waiting for information from taxpayers to complete their applications. There are also statutory changes which can make...that we can make would simplify the administration, make things easier for businesses, and that's what this piece of legislation is intended to do, while not adding to the cost...overall cost of the program. With respect to definition of taxpayer, LB34 would simplify the definition of taxpayer. Today, the definition of taxpayer includes nonprofits and governmentals, as well as partnerships and other pass-through entities, where 20 percent or more of the ownership can be traced to a nonprofit or

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governmental entity. This bill eliminates the extra scrutiny associated with the pass-through entities receive and treat them the same as we treat corporations today, including S corps. Let me tell you why this is important. Today, we have a number of businesses. We have co-ops out there. We have ethanol facilities, many of which have, for example, have hedge funds that invest in that particular project. And what we're asked to do in proving up that ownership to say, okay, you can't have more than...depending on when the application was filed, you can't have more than 10 percent or 20 percent nonprofit or governmental ownership. It basically requires the owner of that plant to prove that up. And if you have a hedge fund that has a 25 percent interest in there, they are under no obligation whatsoever to disclose their list of investors to the company. And, therefore, if they won't disclose it, we can't prove it up. We can't prove up the fact that they meet that 80 or 90 percent threshold, so that leaves them sitting there, well, we have all these potential benefits available to us, we can't do anything with it, the hedge fund won't give you the information on it, we're just stuck. So this basically levels the playing field for those other pass-through...those pass-through entities. This change would greatly reduce the amount of time the department and taxpayers spend trying to verify ownership without precluding any public-private partnerships or expanding benefits under the program. Definition of year--LB34 would define year under the act as a calendar year instead of tax year. This change will simplify the employment calculation by allowing the department and the taxpayer to rely on information that is currently filed with the IRS, specifically W-2s. Historically, under LB775, the prior incentive program, a year was defined as a taxpayer's tax year so that it correlated with the taxpayer's depreciation schedule for investment purposes. However, some taxpayers have miscalculated their attainment period for purposes of employment by using the taxpayer's tax year. This change will eliminate that confusion and simplify the calculation. In addition, the change will avoid shortening a project's life if a taxpayer has a short year. As background, a taxpayer can have a short year because of a company reorganization or a sale or a sale of the particular...of the project. You may have a...you could have a calendar year you start with, somebody acquires you who has a January 31 year end, and you end up with a one-year short tax year. And this basically would eliminate that particular situation, because when you have a tax year, even though it's only one month, it burns a tax year. It burns a year from the standpoint of credits you can earn, and credits you can actually utilize. And roughly one-third of our taxpayers out there that apply are on a fiscal year basis. Everybody else is pretty much on a calendar year. With respect to the work week for salaried employees, we would deem the work week to be 40 hours per week. Since the employee's status as a full-time employee varies from business to business, one company may be 35 hours, one company may be 42, another is 40. So this basically would simplify the standard work week used by most companies and place every taxpayer on equal footing for purposes of verifying employee and wage levels. And really kind of a...makes it very easy when looking at their accounting records. LB34 eliminates the interdependency requirement for taxpayers who include every location in the state that is involved in a qualified business activity in their project. Today, a

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taxpayer must demonstrate the different site locations are related to and interdependent parts of a single project. As background, interdependency requirement was adopted to prevent businesses from including together unrelated activities just to meet employment and investment thresholds, while excluding other locations that were being closed or where jobs were being eliminated. So basically in the past, somebody could try to game the system and say, I'm going to apply for this one because I'm growing here while I'm reducing employment over here from that standpoint. Statewide projects--and this is what this focuses on--have not had similar issues because all employees are considered base-year employees. The companies put their entire statewide operations at risk...or with respect to Nebraska Advantage. It would eliminate the interdependency requirement for taxpayers who include every location in the state that is involved in a qualifying business activity in their project. With respect to sharing of information, this bill allows the department to disclose information to taxpayers that have acquired a Nebraska Advantage project. Because a single project can last over 15 years, and approximately one-third of our projects today are transferred from one taxpayer or another over the life of the project, it's not uncommon for an acquiring taxpayer to not have all the information related to the current incentive project. They could...they buy a company or they buy a particular project, and they may not know that the...what the specifics were in that arrangement that the prior company had with the state. What year they are in their entitlement period? Where they are at as far as credits earned and utilized? And due to confidentiality requirements in the state, which we treat very seriously, we can't have those two taxpayers...I mean, if they won't talk to each other, we can't tell the subsequent project holder what's going on or what transpired in the prior project or in the first part of the project when there was another owner. It's not explicitly clear in statute and this bill would actually make it explicitly clear that we could share this information with both parties so that everybody knows what's out there and available with respect to the project and regarding the prior owner. Lastly, LB34 eliminates the requirement that a taxpayer provide preproject wage and total number of employment employed in the state prior to the application date. This information is not used to determine benefits and does not provide an accurate picture of whether or not a project is successful. Preproject wage and total number of employees employed in the state do not relate to a particular project, but includes the taxpayer's operations, their entire operations in the state. So it's really...we require the information, but it's really meaningless to us because we don't use it for anything. So if we're not going to use it for anything, don't require it, and we've had situations in the past where this has held up a taxpayer's application because they didn't provide that information to us. This would eliminate the need to actually provide that information since it's not actually used for anything. I guess in conclusion, this makes it easier for businesses to verify their jobs that they've created, easier for us to verify the investment they've made, reduce some of the administrative complexities under the act, and is all around really taxpayer friendly from that standpoint, while being revenue neutral. So with respect to that, I'm more than happy to answer any questions. [LB34]

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SENATOR SCHUMACHER: Thank you, Commissioner Ewald. Any questions? Senator Hansen. [LB34]

SENATOR HANSEN: Thank you. Thank you, Commissioner. I have a question on page 2, under Section 4, where it actually lists the former names and now they're all changed into an entity. And the question would be about the cooperatives and if they're...you have one section toward the top of the page, lines 1, 2 and 3, and then down lower you have it somewhat again, but it also includes the political subdivisions. But it also involves cooperatives again there and they're exempt under Section 5.1 of the Internal Revenue Code. Are these cooperatives that are currently described in the definitions in two different places, qualify as a taxpayer under the act? [LB34]

DOUG EWALD: Yes, they are. [LB34]

SENATOR HANSEN: And will they continue to qualify? [LB34]

DOUG EWALD: Yes, they will continue to qualify. We basically struck all this language out of here, so basically we don't care the type of entity you are. We're not going to...in the past, the type of entity would create winners and losers from that standpoint. It's entity out there that's recognized. [LB34]

SENATOR HANSEN: Thank you. [LB34]

SENATOR SCHUMACHER: Any other questions for the...Senator Pirsch. [LB34]

SENATOR PIRSCH: Yeah. With respect to your last point, eliminating certain reporting requirements under the act, and I think it's probably reflected by the...on page 16 and 18 off the cuff, I note there's some...at the bottom of page 16 striking on lines 24 and 25, and on page 18, I think page...lines 20, 21 and 22, so it's that reporting requirement that previously existed that you had to disclose the total number of employees so these taxpayers "employed in the state on the last day of the calendar quarter prior to the application date." And you said you don't utilize that...you were not utilizing that information for any purpose, and so it just was needlessly holding up or delaying approvals. Is...was the original reason that that requirement was their application, so that, I mean the whole...was the gist of it they wanted to ensure the original thought that these are new jobs so we have to have an understanding of what your original basis was and why...how is that not relevant? [LB34]

DOUG EWALD: Well, I believe this was a carryover from LB775, actually had the exact same reporting, exact same requirement. But here's the...unless you had a statewide project, that information has always been, I'll say meaningless from that standpoint, because you could have statewide operations but only carve out one particular manufacturing facility out in Grand Island, for example, and that's what we're going to

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capture. We're going to capture the investment of the employment at that particular information, therefore, your statewide numbers are useless to us. They're meaningless from that standpoint. [LB34]

SENATOR PIRSCH: So this is just asking for information in the aggregate statewide... [LB34]

DOUG EWALD: Right. [LB34]

SENATOR PIRSCH: ...and so you have alternate sources of information that give you the baseline that you need. [LB34]

DOUG EWALD: Yes. Absolutely. They will give us the baseline. It's the end of the tax year preceding the year of application. [LB34]

SENATOR PIRSCH: Okay. Thank you. [LB34]

SENATOR SCHUMACHER: Any other questions? Senator Harr. [LB34]

SENATOR HARR: Thank you. Thank you, Commissioner Ewald, for updating this. I think I have some questions on the Nebraska Advantage Act and your legislation. I guess...and you addressed some of this in your statement. You talk about how there has been a feeling that there is delay and I appreciate that, this chance to clarify and to make it simpler. I guess the first question is, and you talk about the success, 19,000 new jobs, \$8.4 billion in new investment in the state. And I'm looking at a report put out by the Department of Revenue, and it talks about in the first year you had 23 businesses qualify; the second year you had 6; the third year, 2008, you had 3; 2009, you had zero qualify; 2010 you had 1, and 2011 you had zero. So I guess my first question is, why since 2008 have only 4 businesses qualified when the first year we had 23? [LB34]

DOUG EWALD: I would say you would need to ask the businesses that question. They have not...they have not asked us to come in and, you know, we're in a downturn, 2008, 2009, 2010, they have not contacted us to do a qualification audit. Therefore, they don't feel that they've met the minimum thresholds. [LB34]

SENATOR HARR: Okay. Well, the reason I ask this is because the first year you had a 24 percent acceptance rate as far as number of applicants. The second year you had a 11 percent acceptance rate. Year three it dropped to 5 percent. Year four, 2009, you had 27 applicants and zero. Then 2010, you had 57 and one qualified. And then 2011, you have 62 and you have zero qualify. And I guess my question is, if we're trying to fix this legislation and make it better, don't we want to address why so many businesses are applying and not qualifying? I mean, isn't that probably what would be the smart

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thing to do because we want to create more jobs? [LB34]

DOUG EWALD: Well, I don't know that we have enough information to measure that yet, Senator. I mean, you'd have to go back to LB775 in 1987 and see if you have the same exact time line with respect to the ramp up of that particular program to know when a company's...who applied, how many applied up-front, and then how many qualified when. As far as the number of applications we receive, it's not unusual for us to get a wave of applications in December from that standpoint, so that's probably why you receive something in December, they...okay, where are we at this year? Because if they apply in December, they can use the prior year as a base year, so if they grew their employment base in...let's say they applied in December of 2012. They go back to the base year of 2011. If they had employment growth in 2012, they're able to get credit for that employment growth in 2012 towards meeting their requirements. I guess I think it's a business by specific question. We don't ask businesses why they...where they're at in their particular process. Believe me, they're quick to notify us if they're ready for a qualification audit because they want to get that money back in their hands as soon as possible. [LB34]

SENATOR HARR: Okay. So you're saying...but do you think it's worthy of the Legislature reevaluating that and talking to businesses if we have a...I mean, in the last four years, we have a 2 percent acceptance rate and we only have four projects approved? [LB34]

DOUG EWALD: Well, I guess I'd ask you, I know the...we just went through a performance audit, the Legislature's Performance Audit Committee. They just completed that audit. We're waiting for the actual report to come out, so I think that probably would be a good place for the Legislature to start based on what their evaluation was of their audit of the department and the programs. [LB34]

SENATOR HARR: Okay. I appreciate that. Yeah, I'm just trying to figure out...and I worked on this in the off session how to make this bill better because I think we all come from a common, that we need to incentivize our businesses in Nebraska. And the question is, how can we do it best? And then you talked about it in your last bill, what are best practices? And I would hope we could rely on you as a resource as we go forward to say, okay, based on your experience, can we use you to help determine best practices? And I appreciate, because I know that you're addressing some of the issues. Previously the average wait time was 18-20 months, and I know you have taken the steps necessary to lower that wait time and I appreciate that. And I think this will help alleviate that even further. And it is best practices because less resources. I do have a question on interdependency. So if we go to page 4, line 17. Really if you start on line 14, you're talking about the new language that you want to add. And you put in there...then it says, "If a taxpayer's plan includes every location in the state that is involved in a qualified business activity, then all of the taxpayer's locations are

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presumed to be interdependent." I guess my question is, what is "presumed," meaning what does "presumed" mean? If I'm going to apply and I need to prove or disprove that my company is interdependent, how do I do that? [LB34]

DOUG EWALD: Well, I guess what this says is, it...this specifically addresses statewide operations. So you're willing to put...you're going to put your entire operations across the state in play with respect to this. So we're saying, here, if you're going to put your entire operations in place, and you're not going to try to game the system by carving something out here where you have employment and investment growth versus another operation over here where you're basically downsizing, we're going to basically deem the whole thing to be interdependent. Now, if you have...if you don't want to put your entire statewide operations in a project, then we're going to...if you have...I guess it depends. You know, with respect to interdependency, there needs to be some sort of transaction going on between the two operations. So one place may manufacture it. One place may assemble it. Another one may distribute it. So it's...the product is, for example, is going from plant A to plant B to plant C in that particular example. [LB34]

SENATOR HARR: Okay. But that's my...I don't think you answered my question and maybe I wasn't clear enough because you say, basically we will. What I want to know is, let's say...let's use your example. You have a producer, you produce a part, you manufacture it, put it together, and then you distribute it. And the department, for whatever reason, says your distribution is not connected to the other two. I say, yes, it is. Now, you say, what is the level I have to prove? I mean, how do I prove? How do I rebut that presumption to say, if you...first of all, you come in, you say you're not, how do I prove that I am? What level? Is it more likely than not? I'm not quite sure. [LB34]

DOUG EWALD: Well, it's in that particular situation we're going to want to see if you have physical product going from here to there and being distributed, there's interdependency from that situation. If you have two or three plants that are doing their own thing, and they do everything from the assembly to...the manufacturing, the assembly, and the distribution out of that one, out of each particular plant and they're all independent, they may not be interdependent. They may operate on their own. They may compete against each other in that particular situation. [LB34]

SENATOR HARR: So what is...then what is the level of presumption? I mean, I'm still confused. I don't understand "presume." Maybe, that's my... [LB34]

DOUG EWALD: Well, in that particular situation, they're...if you don't have something, an interaction going on between the facilities, you're not going to be deemed to be interdependent. [LB34]

SENATOR HARR: So how is that any different than we are now? [LB34]

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DOUG EWALD: How is...well, I guess it depends on whether or not you have a statewide you're going to put your whole...all your operations in versus something that you may have a statewide operation, but I'm only going to put these two or three operations in. [LB34]

SENATOR HARR: Okay. So, I have... [LB34]

DOUG EWALD: You know, we constantly make field trips out to taxpayer's locations to improve our understanding with respect to what's going on out there. [LB34]

SENATOR HARR: Yeah, I'm just trying to figure out if I'm a practitioner and I have a client and I say, hey, put all your businesses in, there's a presumption. And my client comes back to me and says, great. What does that presumption mean? It means they're going to assume that you are. Okay? Well, you come back and you say, no, you aren't. And I'm going to say, how did you rebut that presumption? I mean, what is your level that you have to prove to rebut that presumption? How do you plan to rebut that presumption? How could you or would you rebut a presumption other than just saying, we don't believe it is? I mean, there has to be some burden of proof, or otherwise the word presume means just may be. I mean, it doesn't mean anything. [LB34]

DOUG EWALD: Right. Well, I guess you're going to need to show with respect to interdependency how those facilities interact with each other. [LB34]

SENATOR HARR: But don't we do that already? [LB34]

DOUG EWALD: Yeah, we do depending on what you have in the application, you know, depending on how you've carved out that particular project. [LB34]

SENATOR HARR: But you already have to prove interdependency, correct? [LB34]

DOUG EWALD: You...pardon? [LB34]

SENATOR HARR: You already have to prove interdependency, correct? [LB34]

DOUG EWALD: You have to approve interdependency today, correct. [LB34]

SENATOR HARR: Yeah. So does this really change...I mean, it says, or we're going to look that way, but I'm still not quite sure. If you decide no, what do I, as a taxpayer come back and be able to say, no, here's presumption. You say, well, sorry. I'm not sure this really changes that much. [LB34]

DOUG EWALD: Right. Well, if you disagree, you have legal rights with respect to protesting that from that perspective. [LB34]

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SENATOR HARR: Yeah. And so you, now, you protested it and you have that legal right, you protested it, and you say, now, I have to say, okay, they rebutted that presumption. So you now rebutted that presumption. What does that level prove? You have to present to rebut that presumption. Is it more likely than not? Is it more than 50 percent? I'm still not sure. Once you rebut it, how...what would you... [LB34]

DOUG EWALD: Well, I don't know if it's a...I don't think it's a more likely and I don't know that you get to that. I think you need to look at what's actually transpiring at the location. I don't know how you get to more than 50 percent. [LB34]

SENATOR HARR: Yeah, I don't either. [LB34]

DOUG EWALD: You know, from that...it's kind of a...it's kind of that fuzzy ground, almost from that standpoint, that, okay, we're going to want to see certain things happening between locations... [LB34]

SENATOR HARR: Okay, and I get that. [LB34]

DOUG EWALD: ...from that standpoint. You know, common management. So you got a manager that manages all three facilities. You've got three facilities. You want to see that person making trips to all three facilities and being, you know, orchestrating what's going on with respect to that. [LB34]

SENATOR HARR: Okay. So let me put it this way. So there's a presumption. So you say there's a legal right to appeal. Who do you appeal to? [LB34]

DOUG EWALD: You appeal to...well, if you disagree with something, you protest with the department. You have 60 days to do that from when we issue you a notice. And the department would engage an outside hearing officer, and who would hear the case from that standpoint. [LB34]

SENATOR HARR: Okay. So currently right now under the law I would have to prove to that hearing officer these two businesses are independent. [LB34]

DOUG EWALD: Correct. [LB34]

SENATOR HARR: With this language, you would have to prove that, is that right? That's how I read the language, is now the department would have to prove... [LB34]

DOUG EWALD: Yeah, well, I guess... [LB34]

SENATOR HARR: ...that they are not interdependent. [LB34]

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DOUG EWALD: Well, exactly. Yeah, statewide project, and in this we would basically say, well, I don't think we can come back and say under this language that you're not interdependent because you're presumed to be interdependent in that... [LB34]

SENATOR HARR: Yeah. And if it's not, you have the burden instead of the taxpayer. [LB34]

DOUG EWALD: Right. Right. [LB34]

SENATOR HARR: And that's what this does by using the word "presume." [LB34]

DOUG EWALD: Sure. Yeah. [LB34]

SENATOR HARR: Okay. Now I got a better understanding. Okay. So then let me ask you this. Do you think under this language, more, same, or fewer businesses...well, more, same...yeah, more, same, or fewer businesses will be qualified for the interdependent or is it just streamlined? [LB34]

DOUG EWALD: I would think that more would be from this standpoint. At least I would hope from that standpoint. It's hard to say without knowing what type of applications we're going to get in and what type of facilities they're going to include. [LB34]

SENATOR HARR: But based on your experience, you... [LB34]

DOUG EWALD: Yeah. Yeah, exactly. [LB34]

SENATOR HARR: Okay. Let me look through this. I had a couple of other questions, sorry, but I can't go through my notes. On page 16, line 3 through 6, this is that disclosure information. And I guess my question is, if I...who controls whether the acquiring company can receive this information? If I'm the acquiring company, do I just go to the department, or is there some kind of waiver that needs to be signed by the current? How would you address that? [LB34]

DOUG EWALD: Well, what this would do is this would allow us to share that information with the acquiring company. Prior to this, I would say the only way for that acquiring company to get that would be to have the company that originally owned it have some sort of agreement to share that information with them with respect to that. [LB34]

SENATOR HARR: And I guess if I'm the seller, I might have a problem with that because I'm going to say, I want to be able to...I want to be in control of when that person buying the company receives this information, and I think it's probably part of negotiations right now as far as when, where, and how, and so we're making a public

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policy change. And we may not...I mean, how are you going to determine whether that buyer is legitimate so that you can give him that information? Is it...does there have to be a purchase agreement? Is there a letter of agreement? At what point do you feel comfortable saying, I'm going to give you this other taxpayer's information? What would you require? [LB34]

DOUG EWALD: Well, I would...obviously, it works well today where the parties agree to communicate, and that particular information is specifically enumerated in any purchase agreement from that perspective. So I would hope...I mean, and this is why we have it in there because we have a company that sells somebody and say, oh yeah, we qualify for Nebraska Advantage, we got all these benefits, but they might not tell a purchasing, well, we've already monetized all those. [LB34]

SENATOR HARR: But isn't that part of due diligence? [LB34]

DOUG EWALD: To me, exactly, you're right. That's part of due diligence. You're exactly right, Senator. [LB34]

SENATOR HARR: And so, I guess my question is, I'm a little leery of this in here. I think this is...I don't want to use the word "bad," but I think it's ripe for abuse. And I think if you're doing your due diligence and you're saying, okay, you have it, I want to see it, I mean, no one is going to value anything until they actually see it, if you do your proper due diligence. Whereas, this is going to allow a seller, a buyer to have information that it may not be a buyer in good faith, and it...or it may be, it sets you up for a problem of, you now have to determine when that information is being given and this doesn't really...it says, may disclose information to the acquiring taxholder, but doesn't say when, where, or how. And I think if we're going to be giving away other taxpayer's tax information, I think it has to be a little clearer. [LB34]

DOUG EWALD: Well, I guess the information we'd be giving him would be with respect to this particular project, when they applied, what their base year is. How...so from a base year, how many employees they've grown so far, what benefits they've accrued, what benefits they've monetized because they could have a situation, well, we're at...we've got 31 employees, we dropped down to 29, we sold this project after the third year, we fall in the recapture. All of a sudden, we're the acquiring company, we got to repay benefits back that we gave to the seller from that standpoint. [LB34]

SENATOR HARR: And I agree with that. And I agree with that problem. I would think though... [LB34]

DOUG EWALD: So they want to...the acquiring company wants to know where they stand with respect to that particular project. How many employees do I need to maintain today, so I don't get hit with some sort of unintended consequence of having to shell

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some cash out in repaying benefits that were paid to the company I just paid a chunk of money to, to buy this company or project. [LB34]

SENATOR HARR: And again, I understand what you're saying. I just think...I mean, would you notify the seller before you disclose this information? [LB34]

DOUG EWALD: We could. You bet. [LB34]

SENATOR HARR: And would you be amenable to that? [LB34]

DOUG EWALD: Sure. [LB34]

SENATOR HARR: Because I think...and maybe it's just, or simple with the seller's permission, I just think it may not be far enough along that a seller may want to disclose that information. It may...because you're giving proprietary information away and we may not be...I don't want you to be the one having to decide how far you are along in this relationship between the buyer and the seller as far as when proprietary information may or shall be determined between the two. And it's putting you...I mean, at the end of the day, it's putting you in an odd spot because the seller is saying, I don't want that released, we're not far enough along. And now you're...because it's a may, now you're being...you are in the role of decision maker, and it puts you in a bad spot. [LB34]

DOUG EWALD: Well, I mean, and the reason it's in here, as my testimony said, today approximately one-third of our projects get transferred. So this is a...this is a very real issue for us and for acquiring taxpayers from that standpoint, you know. [LB34]

SENATOR HARR: I don't disagree. [LB34]

DOUG EWALD: Yeah. [LB34]

SENATOR HARR: Yeah, I don't disagree that it probably affects it there. [LB34]

DOUG EWALD: And they say, what do you mean you can't tell me? I have no rights to get this from the acquiring company. Well, maybe they should have got that as part of their agreement... [LB34]

SENATOR HARR: And part of their due diligence. [LB34]

DOUG EWALD: ...from that standpoint, but I'm sitting there saying, well, it's confidential. I'm sorry, I can't tell you where you stand with respect to this. [LB34]

SENATOR HARR: Yeah. Okay. I just think...yeah, well, I think you and I can talk off record. I think we can come up with some agreeable language because there is

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probably a problem. I just think we need to be careful in when, where, and how, and what position that puts you in. [LB34]

DOUG EWALD: Right. [LB34]

SENATOR HARR: Because I don't want you to be somewhere you're not comfortable. And I don't want the department to have to determine how long...far long a transaction is to really determine whether to try or not. Now, I see you also on page 20, line 5, or excuse me, 14 through 19, so here we say this is, only applies to bills or after the effective date of this act, which I assume is 60 days after the last day of session, which takes us to approximately September, early...Labor Day weekend of 2013. This Nebraska Advantage Act has a sunset clause, is that correct? [LB34]

DOUG EWALD: I believe it does, yes. [LB34]

SENATOR HARR: And do you know when that is? If I said 2015, would that make sense? [LB34]

DOUG EWALD: Fifteen, I think, something like that. [LB34]

SENATOR HARR: Yeah. Is it...yeah. So this would basically only apply for two years and some odd months? [LB34]

DOUG EWALD: From that standpoint, we usually...legislation is usually applied perspectively. I mean, if you want to put an emergency clause on there, you obviously could from that standpoint, you know, from that. Or make it retroactive to the first of the year, you know, from that standpoint as well. But I'm sure that there will be others, I mean, that want to extend that 2015 date at some point in time. [LB34]

SENATOR HARR: That's what I was going to ask. I guess that's my real question. [LB34]

DOUG EWALD: Sure. [LB34]

SENATOR HARR: As long as we're going around and trying to fix this legislation, I'd like to do it all at once and I'm going to have some ideas as well. [LB34]

DOUG EWALD: Sure. You bet. [LB34]

SENATOR HARR: And my question is, would you be opposed to extending the sunset provision? [LB34]

DOUG EWALD: I don't think that there would be any general opposition from my

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department or from the business community from that standpoint, so, yeah. [LB34]

SENATOR HARR: Oh, I'm sure the business community wants to keep these, assuming they can get them. [LB34]

DOUG EWALD: Right. [LB34]

SENATOR HARR: Okay. And then have you...so when you were evaluating this, you were looking obviously at probably what are the biggest issues out there that are slowing down, and you have probably a better idea than I do of what those were. And so you basically came down with interdependency, 40-hour work week, were probably the two biggest for you. Were there any others that you saw that as far as seemed to slow things down? [LB34]

DOUG EWALD: This was our list when we talked to staff. We threw it out there and say, okay, in a perfect world if you could make this thing easier for us from administration standpoint and easier for taxpayers to comply, what's the low-hanging fruit that you see out there today that hangs us up, as well as makes things more difficult for taxpayers to comply? A great example is the W-2. Looking at a W-2 on a calendar year from that standpoint, instead of having someone that has a fiscal year requiring them to match up two sets of records and mesh them together and say, okay, what were your wages for that particular year we're looking at from that standpoint. So they spend an inordinate amount of time trying to join payroll records in particular. [LB34]

SENATOR HARR: Okay. And let me ask you this. Do you think there's a problem with the whole E-Verify process within the Nebraska Advantage Act? [LB34]

DOUG EWALD: Well, I guess when the Legislature put that in two, three years ago, I think something from that standpoint, requiring us to E-Verify and we've done a pretty good job of putting it out there and companies know from that standpoint, DED has been a pretty good advocate of that. I think the Legislature is pretty adamant about that particular requirement that when you bring on new employees, you need to E-Verify. And I think the law under E-Verify says, okay, you need to do that within three days from that standpoint in order to count that person from their original day of employment. What we've done...we've had situations, honestly, where taxpayers don't do that within the required three days. And what we've done in that situation is, we don't particularly invalidate that new hire, but we only count them from the date they actually do the E-Verify if it's after three days. So it's a situation where there's a specific requirement associated with that. If you don't do it within those three days, we'll allow you the benefit of that employee but only from the date you do it. So if it's two years down the road, you may lose somebody for a year, or whatever, from that standpoint. [LB34]

SENATOR HARR: So let me give you an example. Let me just see where you stand on

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it. Let's say you hire an employee in January and you say, you know what, I'm not going to qualify for the Nebraska Advantage Act. Lo and behold you have a really good year. You don't E-Verify the person, so fine. So it's now December and you realize, holy cow, I might qualify for the Nebraska Advantage Act. I'd better E-Verify these people, these employees. You would say it would only count from when you E-Verify them in December. Would you be averse if there was legislation that said you can go back to when that person was first hired, if we amended the statute to say? Would that offend you, or...? [LB34]

DOUG EWALD: If that's what the Legislature wants to do, I mean, yeah, I would follow those rules. [LB34]

SENATOR HARR: Yeah. You're not pro or against, for or against that necessarily. You don't see... [LB34]

DOUG EWALD: Neither for or against from that standpoint. Obviously, the intent was to make sure you E-Verified somebody. [LB34]

SENATOR HARR: Yeah, exactly, so, okay, thank you. I like that. And then, the problem we run into is the issue of the short year employee wage issue that I've seen, at least when I've been looking at this. Have you guys tried to address that issue, and if so, what have you done? [LB34]

DOUG EWALD: Up until this point we have not tried to address that issue with respect to...if you have a one-month period, basically the way the statute is written today, you don't annualize that employee's wages or investment from that standpoint. So you, for all practical purposes, could burn a tax year and receive no benefit today. [LB34]

SENATOR HARR: Would you be willing to sit down and talk and work on maybe a way to find a solution to that? [LB34]

DOUG EWALD: Sure. We could talk about that. [LB34]

SENATOR HARR: Okay. All right. I appreciate that. And I guess my last question is, and this is possibly premature but it's something I'd like you to be thinking about, and it's something that we can talk off record on is, the Governor has proposed a very bold tax plan. And we're going to have discussion on it, but one thing I worry about is some of the unintended consequences, and we've already seen it somewhat, and what I'm referring to is, we will have more sales tax. And so the sales tax exemption of the Nebraska Advantage Act will become that much more important. And we're going to have cities, more cities possibly because more...cities won't necessarily know until afterwards if a person applies that they then owe back money. I call it the Sidney Cabela's issue. Is there a way as sales tax becomes more important (a) to cities, and

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(b) to the businesses as far as using the Nebraska Advantage Act? Can we work to find a way to...and I don't know the answer, to be honest with you, to avoid the Sidney problem where you have huge amounts of money, state sales, or city sales tax, local option sales tax, going back to that business and them not necessarily having notice or a pool or maybe we want to set out guidelines of, hey, you want to protect X amount? I don't know the answer. But as we go forward on the Governor's bold plan, I just want to make sure that we are considering how this act affects those municipalities. [LB34]

DOUG EWALD: Right. I know there's a piece of legislation that was passed last year with respect to it's greater than 25 percent, I believe, from that standpoint and we kind of...the state acts as a bank for a year with the localities in that particular situation. So, I guess that was a start or a step in that direction to address that issue. And I believe it also addressed the issue allows the cities to send somebody in to look at the records that we have with respect to businesses that exist within their city limits and what they're collecting or remitting and that type of stuff. [LB34]

SENATOR HARR: And I know we're very early into this as far as that bill, but how has that worked? How well has that worked, in your opinion? [LB34]

DOUG EWALD: I think we've had a...probably just a handful of cities request to come in and look at records from that perspective. I don't know that we've had anybody yet that's triggered that greater than 25 percent threshold that where we're going to act as a bank from that perspective. [LB34]

SENATOR HARR: Okay. Okay. And I...yeah. I guess I just want to talk to you about that off record again, as far as maybe lowering that or I'm not sure what. Just so we make sure we don't have our cities on the hook because I do think this is a very good piece of legislation. I think the overall, and I'm glad you're doing something to improve this. We have to find ways to, as a state, to remain competitive. I think this bill goes a long ways towards that, and I'm glad to see that you are critically analyzing it and trying to find ways to improve it, and for that I would thank you very much. [LB34]

DOUG EWALD: Thank you. [LB34]

SENATOR SCHUMACHER: Thank you, Senator Harr. Senator Pirsch. [LB34]

SENATOR PIRSCH: Yeah, and I'll try to be brief. I don't have a problem with the...Senator Harr's first line question was about with respect to the definition of the term "presumption." I think, to me, it seems like a very subtle change insofar as I think it still...whoever has...it's still a preponderance of the evidence, 51 percent, I guess you could envision that. So if the way it currently exists now is, it's assumed that the department's interpretation is correct until the other side can show 51 percent and it would, even with this change, I think if you could show 51 percent, I don't know that it

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subsequently matters much. But in any case, I guess it's more the term "interdependent" is used by Senator Harr that to me brings up...I wish I could flesh out a little bit more the meaning of how you currently view that word, "interdependent." You do conduct field trips, you said, now to determine interdependency. So without respect to how this new act would affect it, but just with respect to the way you interpret interdependency now, is there a particular test used? Like you said, it's...I don't know, it's not defined, right, anywhere in the act, so it's kind of just a reasonable person interpretation. And so, you mentioned one standard could be, or one facet could be, as their common management of, in your example, those three, the creator of the parts, the assembler, and the distribution center. There might be other tests, product exclusivity if you're utilizing the parts of other companies or whatnot. Is there one or is it...? I mean, how do you go about and determine right now when using the interdependency test, how do you do that? Is it... [LB34]

DOUG EWALD: Well, we...I'll say this. We consciously look for ways to get to yes with respect to qualifying businesses. Like I say, we go out there, we do the field trips, we look at the extent of operations, and what the interaction is amongst those facilities. And I'll give you a good example. I guess I'll refer to my railroad days at Union Pacific. You have a dispatch center in Omaha that dispatches train crews across the entire system. Well, UP may have a project or you have a project that could include the track out in western Nebraska and the train crews out in North Platte. Well, how is that related to the dispatch center in Omaha? Well, without that dispatch center calling crews to operate trains heading out of North Platte, so there's that interdependence there from that standpoint. Then what they do at the dispatch center interacts with and causes something to happen at one of the other facilities. [LB34]

SENATOR PIRSCH: Yeah. [LB34]

DOUG EWALD: So... [LB34]

SENATOR PIRSCH: Well, I mean, and so that's why I'm trying to...is there a specific test? In other words, say in your illustration, Union Pacific, but for the existence of this other facility we would not be doing...so you could have a but for test... [LB34]

DOUG EWALD: Correct. [LB34]

SENATOR PIRSCH: ...we would not exist, but it could be that Union Pacific also performs in that second facility a majority of their work for other railroads or for other customers. [LB34]

DOUG EWALD: Sure. Right. [LB34]

SENATOR PIRSCH: And so there's two different tests may come up with two different

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conclusions as to whether or not it's interdependent. [LB34]

DOUG EWALD: Right. Exactly. And I guess as long as we have one item that links them together, we're going to...we're willing to hang our hat on that to say, okay, yeah, that qualifies. [LB34]

SENATOR PIRSCH: Okay. Okay. That helps. Thanks. [LB34]

SENATOR SCHUMACHER: Any other questions? I just have one follow-up question to what Senator Harr was alluding to. In the last few years, the discrepancy between number of applicants and number of approvals seems fairly large. A fair amount of interest in the program, not so many people approved. What would you attribute is a weak link to that and how do we fix it? [LB34]

DOUG EWALD: Well, I think a lot of it was the...number one, it's the economic conditions that probably existed. And if you look at the average number of applications that we received in 2005, the first year, from that standpoint, we have a big spike, then we have 60 and then you have 45, 45, and then it drops down to 20, 25, and I don't...Senator may have...there's a chart on our Web site. And then you see an uptick the last couple of years here. And actually, we saw companies that applied for benefits early on actually withdraw their applications because the economic downtime things went south on them, they didn't add the employment investment. It's easier for them just to...they made a conscious business decision to pull their application and maybe start over. So they restarted that base year period or their new project because they weren't going to meet the minimum requirements within the statutory time period. So they made a conscious business decision to withdraw, reapply, in that situation. So I think...I'm pretty confident based on what I've seen here as of late that you're going to see a lot of things ramp up with respect to qualifications and where we're asked to go out and audit projects for a qualification, so. [LB34]

SENATOR SCHUMACHER: Thank you. Any other questions from the committee? [LB34]

SENATOR HARR: I just have one. Have more projects been...since this report was done for 2012, do you have any idea how many projects were qualified? [LB34]

DOUG EWALD: Well, we received...I know that the report we put out in June is as of through, I think, 12-31 of '11... [LB34]

SENATOR HARR: Yeah. [LB34]

DOUG EWALD: ...from that standpoint. I don't know that I have the numbers for approve. I know we received about 45 to 50 applications of which I think we got like 15

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of them in the month of December from that standpoint. So it's typical that we see a lot year-end because people say, well, how well did I do during the course of the year? How many jobs did I add, from that standpoint? I don't have data but if I have it, I'm willing to share that with you for where we stood for who qualified in '12 from that respective. [LB34]

SENATOR HARR: Okay, great. Thank you. [LB34]

SENATOR SCHUMACHER: Any other questions from the committee? Thank you, Commissioner Ewald. [LB34]

DOUG EWALD: Thank you. [LB34]

SENATOR SCHUMACHER: Any other proponents? [LB34]

RON SEDLACEK: Thank you, Mr. Vice Chairman and members of the Revenue Committee. For the record, my name is Ron Sedlacek, and it's spelled S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce, and then have also been requested by the Greater Omaha Chamber of Commerce, as well as the Lincoln Chamber of Commerce, to also appear and sign in on their behalf. To save the committee a little bit of time in testimony and to expedite the process, to say that we are in support generally of the concepts that are contained in LB34, particularly the simplification of...simplification in administration and clarification of a number of items that have been of concern that have already been described by Commissioner Ewald. We certainly appreciate the Department of Revenue looking into the administration of the Nebraska Advantage Act and to see what ways in which it can be better administered both on...both in regard to that application process and then ease of use by the taxpayers. So in that regard we are supportive. Secondly, an issue was raised in regard to sunsets. And we had asked the committee to perhaps seriously consider looking at that provision while issues dealing with Nebraska Advantage are open at this time. Sunset date for some tiers is December 31, 2015. If you're in the process of doing site selection this year, it might take a couple of years to get ready for application, and so we are coming to a point where it is going to potentially affect the conduct or the apprehension of a potential applicant. So it's something that we would like to further discuss with you. Finally, I'd like to note that there is another bill we see in the Legislature, LB572, which was introduced today. It also seeks to clarify some issues in regard to Nebraska Advantage takes...there are three or four issues in there that I know of that we are supportive of dealing with E-Verify issues and so forth that have been previously discussed in questioning. So...but also ask the committee to take into consideration that other bill and then perhaps to come up with a comprehensive piece of legislation to be considered on the floor this session. And with that, I'll conclude my testimony and be happy to answer any questions. [LB34]

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SENATOR SCHUMACHER: Do we have any questions? Seeing none, thank you for your testimony. [LB34]

RON SEDLACEK: Thank you, Senator. [LB34]

SENATOR SCHUMACHER: Any other proponents? Any opponents? Anybody neutral? Seeing none, Senator Hadley. [LB34]

SENATOR HADLEY: I will close. The mention was of the bill that was put in today, I believe it was Senator Harr's. Is it LB572, Senator Harr? [LB34]

SENATOR HARR: Yes. [LB34]

SENATOR HADLEY: We will hold this bill and not act on this particular bill until we have heard that bill and see where the commonality is and where the differences are and work through it as a committee to be sure that we're doing the right thing for this act. So you can rest assured that we will not be in the position of putting something to the floor that later we want to come back. So we'll be scheduling that bill in the future and we will hold this bill to make sure that the good parts of both of them that we can work through, so. [LB34]

SENATOR SCHUMACHER: Does it appear that there are only two bills that are dealing with this? [LB34]

SENATOR HADLEY: I believe that, to my knowledge, there are only two bills that I know of. [LB34]

SENATOR SCHUMACHER: Anything else for Senator Hadley? Thank you, Senator. [LB34]

SENATOR HADLEY: Seeing nothing else to come before the committee, just so people in the audience know, we will try to Exec on Wednesdays to have a set date for "execing" on bills as we have hearings. So if you have a particular bill and are interested in it, please let us know so that we can help you, if you're interested in a particular bill, to get it going. We'll try and have that. With that, I will close the hearing and we'll see you tomorrow. Thank you. [LB34]