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Executive Board Committee
January 24, 2018

[LB751 LB935 LB936]

The Executive Board of the Legislative Council met at 12:00 p.m. on Wednesday, January 24, 2018, in Room 2102 of the State Capitol, Lincoln, Nebraska. Senators present: Dan Watermeier, Chairperson; John Kuehn, Vice Chairperson; Kate Bolz; Sue Crawford; Dan Hughes; Tyson Larson; John McCollister; and Jim Scheer. Senators absent: Ernie Chambers and John Stinner.

SENATOR WATERMEIER: Welcome to the Executive Board committee hearing. My name is Dan Watermeier from Syracuse and I represent the 1st Legislative District. I serve as Chair of the Executive Board. Our hearing today is your public part of the Legislature process and your opportunity to express your positions on proposed legislation before us today. The committee members may come and go during the hearing. We get called away for various reasons. It is not an indication we are not interested in the bill. It's just part of the process. To better facilitate today's proceedings, I ask that you abide by the following procedures. Please silence or turn off your phones. The order of testimony will be introducer, proponents, opponents, neutral, and closing. I have a little bit of different format today where I'm going to have the introducer and I have invited testimony by the division head directors today or those individuals from the division. If you are testifying, please make sure you fill out a green testifier sheet, and they are located outside the entrance to this room. When you come up to testify, please hand the green paper and handouts to our page. Please state and spell your name for the record at the start of your testimony. Each testifier will have five minutes to speak. After four minutes, you will get the yellow light and one minute will be the red light. If you are not testifying but you want to go on record as having a position on the bill heard today, there is a white sign-up sheet in the entrance where you can leave your name. Written materials may be distributed to committee members while testimony is being offered. Please hand these to the page and have 12 copies when you do so. If you have written testimony but don't have 12, we can get that for you. To my immediate right is legal counsel, Janice Satra. To my immediate left is the committee clerk, Laura Olson. And the committee members with us today, I'll ask them to start and introduce with Speaker Scheer.

SENATOR SCHEER: Jim Scheer, District 19: Madison and just a little bit of Stanton County.

SENATOR McCOLLISTER: John McCollister, District 20: central Omaha.

SENATOR BOLZ: Senator Kate Bolz, District 29: south-central Lincoln.

SENATOR HUGHES: Dan Hughes, District 44: ten counties southwest Nebraska.

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SENATOR WATERMEIER: Senator Crawford.

SENATOR CRAWFORD: Thank you. Good afternoon. Senator Crawford, District 45, which is eastern Sarpy County.

SENATOR LARSON: Tyson Larson, District 40.

SENATOR KUEHN: And John Kuehn, District 38.

SENATOR WATERMEIER: All right. Thank you. We'll start with LB751, Senator Kuehn.

SENATOR KUEHN: (Exhibit 1) Thank you. Good afternoon, Chairman Watermeier and members of the Executive Board. We'll pass around some testimony. For the record, I am Senator John Kuehn, J-o-h-n K-u-e-h-n, and I represent District 38. I'm before you today as the Chairman of the Legislative Performance Audit Committee to introduce LB751. The committee has introduced LB751 to make some changes in the way that state agencies report to the Legislature on rules and regulations that they are required to develop. To give you some background: In 2011, the Legislature passed LB617, a Performance Audit Committee priority bill, requiring agencies to meet deadlines for developing regulations when those regulations were required by law and also to report on regulations to the Legislature. LB617 was introduced in response to a Performance Audit Committee memo that identified several regulations required by legislative bills that had not been promulgated years after the bills had been passed. In practice, some of the provisions of LB617 turned out to be unworkable. For example, the law requires agencies to report to the Performance Audit Committee on the status of all regulations, not just the ones required by legislative bills, and that became a burden for both the agencies and the Audit Office, which received the reports. Additionally, agencies are required to report some information about regulations to the Audit Office and some to the Executive Board and standing committees, which became confusing and is probably more complicated than necessary. LB751 would make changes to simplify these processes while preserving the accountability that the Legislature was looking for in the original bill. To do this, LB751 makes two changes. First, it changes the reports to the Legislative Performance Audit Committee from all regulations to only regulations that are required by legislative bill. These are the regulations of greatest concern for the Legislature when the reporting requirements were adopted, and it makes sense to focus our efforts on them. Second, for mandatory regulations that have not met statutory deadlines, LB751 eliminates the requirement that agencies report explanations about the delays to the Executive Board and the standing committee. Instead, agencies would be required to include that information in the reports they are already providing to the Legislative Audit Office. This would streamline the process by allowing the Audit Office to ask for information up front, rather than following up after receiving initial regulation reports from agencies. The Executive Board and

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standing committees could also request that information from agencies if they chose to do so. I do thank the committee for their time and attention today to LB751. I'm happy to answer any questions that you may have, but also Fran from the Audit Office is here and she will be able to provide you with detail to the practical applications and procedures that are addressed in streamlining this very important accountability process in LB751. [LB751]

SENATOR WATERMEIER: All right. Thank you, Senator Kuehn. Further questions for the senator? All right. At this point, I'm going to open it up for invited testimony from the division head so whoever from Performance Audit wants to come forward is fine. [LB751]

FRANCESKA CASSELL: Good afternoon. For the record, my name is Francesca Cassell, F-r-a-n-c-e-s-k-a C-a-s-s-e-l-l. I don't have any prepared testimony. I just wanted to offer myself up for questions if you have any about our process and the changes that we'd like to make. [LB751]

SENATOR WATERMEIER: Okay. Senator Crawford. [LB751]

SENATOR CRAWFORD: Thank you, Chair Watermeier, and thank you, Fran, for being here. I guess one of my concerns is the information not necessarily getting to the committee or bringing it to the attention of the committee. Is there any part of your process whereby you forward that information to the committee of jurisdiction? [LB751]

FRANCESKA CASSELL: Our...we haven't formalized exactly what our process is going to be going forward. But it's our intention for the committee to sit down and develop that process. We haven't decided whether or not it's just forward the information directly to the committee counsel as soon as we get it, prepare a formal report from the committee; but, yes, our intention is to provide that information to the standing committee. [LB751]

SENATOR CRAWFORD: To the committee counsel, to committee members... [LB751]

FRANCESKA CASSELL: That hasn't been decided yet. We're looking at a number of pros and cons with each option. But I think in the end probably the committee chair at the very least will get that information. [LB751]

SENATOR CRAWFORD: I guess I'm just, for the record, I think it's very valuable for all committee members to receive it. Different committee members have different... [LB751]

FRANCESKA CASSELL: Sure. [LB751]

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SENATOR CRAWFORD: ...rules that they're following, different issues. And so to make sure that goes to all committee members I think would be valuable. [LB751]

FRANCESKA CASSELL: I'll make sure to put that in the recommendation for the committee. [LB751]

SENATOR CRAWFORD: Thank you. [LB751]

SENATOR WATERMEIER: All right. Thank you, Senator Crawford. Senator McCollister. [LB751]

SENATOR McCOLLISTER: And when would this report be forwarded? [LB751]

FRANCESKA CASSELL: Well, that's one of the things we're looking at. The information could be directly sent to the committee counsel basically the minute that we get it. The only concern is that we might be able to do follow up and get more information from the agency about why and what's going on, what the process looks like. So the committee is going to sit down and talk about what that...sort of what that process will look like. I prepare a memo every year for our committee. There's no reason that that couldn't just be forwarded on to the chairs as well. They just need to decide what they'd like to do. [LB751]

SENATOR McCOLLISTER: Thank you. [LB751]

SENATOR WATERMEIER: All right. Senator Bolz. [LB751]

SENATOR BOLZ: I have a question about narrowing it to regulations only...only those regulations required by legislative bills. And I appreciate the point that that helps clarify and streamline. The issue I'm wondering about is when we have like a waiver renewal and rules and regulations need to follow, if those rules and regulations aren't timely promulgated that could theoretically put us in peril for a federal clawback or repayment or something. [LB751]

FRANCESKA CASSELL: Sure. [LB751]

SENATOR BOLZ: Is there an alternative way to address that concern to make sure that the Legislature and the administrative agency are working together to avoid those problems? [LB751]

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FRANCESKA CASSELL: I'm sure that we could come up with one. [LB751]

SENATOR BOLZ: Uh-huh. [LB751]

FRANCESKA CASSELL: The biggest concern that I think we would have is actually just the amount of time that it takes to process that information. [LB751]

SENATOR BOLZ: Um-hum. [LB751]

FRANCESKA CASSELL: When I started looking at the reports a few years ago, we were still getting reports that were all the regulations. And it just wasn't feasible for me to sit down and provide a context for each and every bill that we were receiving information on. I'm just not able...I'm not a subject matter expert in all those things. [LB751]

SENATOR BOLZ: Sure. [LB751]

FRANCESKA CASSELL: And basically this is something I do on the side when my audit work sort of allows. [LB751]

SENATOR BOLZ: Um-hum. [LB751]

FRANCESKA CASSELL: That's not to say that there isn't something that could be put into place. I'm just not sure that maybe our office is necessarily the best repository for that information. [LB751]

SENATOR BOLZ: Yeah. Well, and I wouldn't want to put you in the awkward position of trying to discern what is likely to get a federal pushback... [LB751]

FRANCESKA CASSELL: Sure. [LB751]

SENATOR BOLZ: ...and what is not likely to get a federal pushback. But I'm specifically thinking about a developmental disability waiver where the CMS had not approved our rate methodology, which resulted in a hefty fine and wondering if there's anything better that could be done. But that's probably an off-the-mike conversation. Thank you. [LB751]

FRANCESKA CASSELL: No problem. [LB751]

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SENATOR WATERMEIER: Thank you, Senator Bolz. Further questions? All right, thank you, Fran. [LB751]

FRANCESKA CASSELL: Thank you. [LB751]

SENATOR WATERMEIER: Is there anyone else from the Performance Audit Division that needs to testify? Okay. We'll open it up to proponents for LB751. Are there any opponents to LB751? Anyone to testify in the neutral? Okay. I do have one letter from David McBride from the Nebraska Optometric Association in support of LB751 (Exhibit 2). Senator Kuehn to close. [LB751]

SENATOR KUEHN: Just briefly. Thank you to the committee for consideration. This is a really important process and is one of concern for a number of members and really appreciate all of the feedback on how best to get this information in the hands of committee members, committee chairs regarding these unpromulgated rules and regulations. [LB751]

SENATOR WATERMEIER: All right. Thank you, Senator Kuehn. Is there further questions for the senator? All right. We'll close the hearing on LB751, open the hearing for LB935. Go ahead, Senator Kuehn. [LB751]

SENATOR KUEHN: (Exhibits 1 and 2) Good afternoon, Chairman Watermeier and members of Executive Board. Again for the record, I'm Senator John Kuehn, J-o-h-n K-u-e-h-n, representing District 38. Again, I'm before you today as Chairman of the Legislative Performance Audit Committee to LB935. I'm handing two things around. One is a copy of my testimony. The other is a page which is just a "printoff" of a summary from the tax incentives report which was produced by the Department of Revenue showing the benefits of all approved and all industries 2006 to 2016. So as we begin the discussion over the next two bills, I want everyone to keep in mind the dollar magnitude of the issue that we are talking about before us. And so I felt this was a handy table from the Department of Revenue so everyone was clear on the importance of the issues we're addressing today. As you know, the Legislative Audit Office has been required to conduct tax incentive performance audits since 2015. One of the requirements for the audits is that the Audit Office recommend statutory or other changes that would make it easier to evaluate tax incentive programs into the future, including changes to data collection, reporting, sharing of information, and clarification of goals. This bill, and the Performance Audit Committee's other bill which will follow, LB936, both contain these kinds of recommendations based on the three tax incentive performance audits that have been completed to date. LB935 implements recommendations regarding the data that we need to make the evaluations better and more meaningful to members of the Legislature. It applies to the eight tax incentive programs that they are required to audit as well as any new programs similar to those established. Broadly speaking,

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the bill would: (1) allow certain data sharing between the Department of Revenue and the Department of Economic Development; 2) require the agencies that administer these programs to retain certain program data for five years after the last participating company ends their participation; and 3) require that participating companies provide additional information beyond what is currently required. Section 1 of the bill allows the Department of Revenue and Economic Development to share identifying information with each other. We need to be able to match as much data as possible between these two departments for several reasons. First, our committee has been interested in whether companies that receive benefits under one audited programs has received other state economic development benefits. For example, the 2016 Nebraska Advantage Act audit reported that the number of Advantage Act participants who also received benefits from four Revenue Department programs and four DED programs. However, during the recent audit of the Research and Development tax incentive, the Audit Office discovered that DED could not be given a list of companies that participated in the R&D program because the company names are considered confidential taxpayer information that DED is not authorized to review. This bill allows DED and Revenue to share identification information for tax incentive evaluations, while requiring that DED maintain the confidentiality of that information. No credit or benefit information would be allowed to be shared, only identification information. This would help the Audit Office identify companies that participate in multiple programs, as well as help us identify companies for matching information with the Department of Labor for other metrics. Next, the bill would require agencies that administer the incentive acts to retain data for future use. Currently, there are no statutory requirements on how long administering agencies are required to retain tax incentive information. LB935 would require them to retain all program information until five years after the last participating company ends their participation. This is to ensure that all future audits have the data that is necessary to review these programs in their entirety. The remainder of the bill would generate vital data that the Audit Office needs that is not currently available by other means, by requiring participating companies to report additional information. For programs that have an application process, like the Advantage Act, additional information would be required on the application and also in yearly surveys. For programs that do not have an application process, like the Research and Development Act, the information would be filed with a company's claims for program benefits. Let me give you a concrete example of why we need this additional data. The Advantage Act allows for compensation credits based on project employees, that is, employees in the specific project approved for benefits, not all of the company's employees. During the audit, it was extremely difficult, and sometimes impossible, to process and isolate project employees from the rest of the employees in a company because the information companies report is not broken down in that manner. So for a large company with multiple locations, we were often unable to determine where the incentivized employees were located or how much they were earning. As you know, that information is important as a \$40,000 a year incentivized job may mean something different in Omaha than it does in Holdrege. And that kind of information would help us determine where economic benefits might be found and how much economic impact they may have. I would also

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like to report that in a recent site visit to one Nebraska Advantage participant in my district, Royal Engineered Composites in Minden, Nebraska, I specifically discussed the need for additional reporting and data. They welcomed the opportunity, as have other companies, to demonstrate the impact and value of the taxpayer investment via the Advantage Act and were willing to provide whatever data was necessary to assist in that evaluation. I want to be clear that these additional data requirements are for both current and future participating companies. We feel that it is absolutely necessary that current participants provide this data. For example, with the Advantage Act, excluding current participants would mean no new data for the 403 actively signed agreements in place at the end of 2016. Instead, we would only have additional information for the handful of new agreements signed each year and, generally speaking, those agreements can last from 12 to 15 years. So in that sense, it would be a very long time before we had enough data for the meaningful analysis that this Legislature is requesting. Some may argue that it may be unfair to add additional requirements to existing contracts. However, I would like to point out to this committee that LB161 from last year, which passed this Legislature with 44 votes and was signed by the Governor, amended existing contracts by changing the carryover period for current Tier 6 companies. If we are willing, as established by precedent, to change existing contracts to allow companies more time to receive benefits, I don't feel we should shy away from changing them to require the central data that we need to evaluate the effectiveness of these programs. I would like to wrap up by saying that the committee would intend for one or both of the bills dealing with tax incentives, LB935 or LB936, to be designated as Performance Audit Committee priorities. The Audit staff will be following me as invited testimony to provide additional expertise. Anthony and Martha have lived and breathed all of the ins and outs of these legislatively required audits by statute over the last several years and can certainly address additional questions about the technicalities of the information we are asking. So thank you for your time. I'll be happy to answer any questions that you may have for me. [LB935]

SENATOR WATERMEIER: Thank you, Senator Kuehn. Questions? Senator Crawford. [LB935]

SENATOR CRAWFORD: Thank you, Senator Watermeier. And thank you, Senator Kuehn. So on the line of asking people who are currently and have agreed with the department to provide this information, I understand the logic of the argument that you are laying out. Didn't know if you had any follow-up in terms of the feasibility of requiring that information from any of the parties. [LB935]

SENATOR KUEHN: We've gotten some feedback in order to continue, I think, to discuss with Department of Revenue about how that reporting would occur. Certainly I've had some informal communications from program participants that they understand the need for the information and are willing to provide it if it's not cumbersome and doesn't dramatically restrict the process. I think everyone is concerned about wanting to streamline the process and make it as effective as

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possible. But to date, we'll see what may follow behind me, but I've not received significant opposition to the idea of the reporting requirement. [LB935]

SENATOR WATERMEIER: Thank you, Senator Crawford. Senator McCollister. [LB935]

SENATOR McCOLLISTER: Yeah. I'd like to thank you, Senator Kuehn, for bringing this bill. The lack of disclosure with our incentive programs is one of the major problems that we're facing in this state. I also wanted to remind everybody that LB565, the transparency bill, is currently on General File. And we'll do our very best to harmonize my bill with what you're doing with this effort. So once again, thank you and I'm grateful. [LB935]

SENATOR KUEHN: Well, I can't take any credit. The staff of our Performance Audit does an outstanding job and has really done the best they can within the current statutory framework, and the committee has done a lot of work on this for years preceding me so thank you. [LB935]

SENATOR WATERMEIER: Thank you, Senator McCollister. Further questions? All right. At this time, we'll move in to invited testimony from the Performance Audit division so whoever, one or two...you want to come up together? [LB935]

MARTHA CARTER: (Inaudible) come up? [LB935]

SENATOR WATERMEIER: If you're planning on it, that's fine. We can get you another chair here, Martha. Welcome. [LB935]

MARTHA CARTER: Thank you, Senator Watermeier, members of the committee. For the record, my name is Martha Carter. I'm the Legislative Auditor so I've been overseeing and in some cases hands-on working on these audits for the last few years. And I'll let Anthony introduce himself. And as with the previous bill, we don't have a prepared statement. We're just available to answer questions. [LB935]

ANTHONY CIRCO: Hi, I'm Anthony Circo, A-n-t-h-o-n-y C-i-r-c-o, and I'm specifically assigned to tax incentive performance audits. [LB935]

SENATOR WATERMEIER: Thank you. Further question...are there questions from the committee? Speaker Scheer. [LB935]

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SENATOR SCHEER: In regards to the request of information from existing participants, how do you enforce that? I mean if they say no, what's the recourse? [LB935]

ANTHONY CIRCO: Well, there are already requirements that companies provide certain information to the department. In the fiscal note, they had mentioned that they would do some...potentially do some follow-up in checking on the company's phone calls and that kind of thing to make sure that information is provided. [LB935]

SENATOR SCHEER: But what...we've already signed a contract. They're supposed to provide what they want to provide. Devil's advocate, if they say no, that's not part of the agreement, do we just move on and go to the next one or is there any way to enforce a request or is it just simply a request? [LB935]

MARTHA CARTER: I think we would need to look into that some more. I mean, there are actions that the Revenue Department currently can take in some cases if people don't provide information. I mean, they can withhold benefits if they feel strongly enough about it, you know, I mean if it's a statutory requirement that information be provided. [LB935]

SENATOR SCHEER: But we are changing that. [LB935]

MARTHA CARTER: Right. [LB935]

SENATOR SCHEER: And so that's not part of their agreements. [LB935]

MARTHA CARTER: Agreed. [LB935]

SENATOR SCHEER: So I'm not sure that that would be enforceable. So I'm just wondering...it may be we just hope they do. That's okay. I just wanted to know if there was something I missed. [LB935]

MARTHA CARTER: There's not something you missed. And I guess what I'm saying is we should look more into what they can do now and how this would fit into it. Beyond that if we can't make these new requirements fit into that, then what I would think we would end up doing is in our reports indicating, you know, maybe not be able to report individual companies that didn't provide the information but, you know, how many or that...how long they've been involved, that sort of thing. That would certainly be part of what we need to do just from a methodology standpoint to say we got the info... [LB935]

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SENATOR SCHEER: Okay. Thank you. [LB935]

SENATOR WATERMEIER: Thank you, Speaker Scheer. Further questions? Senator Crawford. [LB935]

SENATOR CRAWFORD: Thank you, Senator Watermeier. And thank you for all your work on these incentives and measurements, etcetera. Is there information we're currently asking them for that we could now replace or stop asking when we add these or are these all added? [LB935]

MARTHA CARTER: At this time, they are all added. I guess that's an interesting policy question in terms of there are a number of reporting requirements. And that would be a question of whether there are things that you are currently requiring companies to provide that you either just have, you know, with some experience have decided is not really crucial or would be willing to forgo in order to have this other information that we haven't actually looked at that. [LB935]

SENATOR CRAWFORD: I think that's an interesting question also in terms of the negotiation of people who currently have a contract and also just to make sure that we're making good use of their time and our time. [LB935]

ANTHONY CIRCO: And if I may, this is all information that during the course of the previous, especially the Nebraska Advantage Act audit and other audits, that we had tried to find. And we're not able to find or at least come to find any information that was satisfactory or provable or, you know, any information that we would be able to definitively say that we trust. And so that's where this bill comes from is the lack of information that we were looking for that we were not able to find in our process. [LB935]

MARTHA CARTER: And if I could just follow up on that, it's primarily related to the question that we have been asked about how many jobs are being created and, again, referring specifically to the Advantage Act, the Advantage Act requires companies when it uses a term "a new job," it's a new FTE. So in some cases, that is in fact what I think in common language we would think of as a new job or new position, but it is not always that. It can and is in some instances an additional amount of hours paid to people who, for example, are part-time employees. It's not a judgment one way or the other on our part about what is right or what is wrong, but the interim study process in 2014 that led to the statutory requirement that these audits take place included a number of metrics that we are required to at least try to use in these audits. And that was one that the committee was very interested in--how many jobs are being created. And we did our best to use information...matching information between the Revenue Department and the Labor Department to see if we could answer that question about actual jobs or positions, but that is very difficult to do. And it would be more accurate arguably to have people report the number of

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positions that they have rather than to try and piece it together. But that's where it all comes from. It's not something that we just thought up. It's something that's part of what we're required to try and look at. [LB935]

SENATOR WATERMEIER: All right. Thank you, Senator Crawford. Senator Bolz. [LB935]

SENATOR BOLZ: Can you help me understand the logic behind the references to the "average annualized wages" and they're on a couple of different pages. I'm looking at page 16. But why is there a statutory or policy reason for why we would not want to know "average annualized wages" over \$53,000? Why did you stop at \$53,000? [LB935]

ANTHONY CIRCO: That whole thing came from the idea of high-quality jobs and to find a way to be able to display or be able to report how many jobs of a certain...in certain wage tiers were being incentivized. And I came to those boundaries because those are the quartiles from the Bureau of Labor Statistics OES study, the latest ones for Nebraska, that had the average annualized wages. And so it's the \$53,000, it's \$53,000 and above is the last quartile. And so I just...we just used the medians that are used for quartiles in the BLS. If there's a different standard that you think would be appropriate, I think we'd be willing to explore that, yeah. [LB935]

SENATOR BOLZ: So the \$53,000 is--I don't want to put words in your mouth--is the average annual wage? [LB935]

ANTHONY CIRCO: That would be the cutoff for the highest quartile. [LB935]

SENATOR BOLZ: That's the cutoff that the Bureau of Labor Statistics... [LB935]

ANTHONY CIRCO: Yeah, yeah. [LB935]

SENATOR BOLZ: ...provides so...because Bureau of Labor Statistics doesn't break it out any further, you would suggest not. [LB935]

ANTHONY CIRCO: They do break it out further, but we didn't...we just wanted to be...well, the intent was to not ask for the 75th and 90th to 95th percentile. That seems to be a little bit more than necessary, at least from my perspective may have been a little bit more than necessary. But again, that's...if you would like to do that, we could enter those in as well. [LB935]

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SENATOR BOLZ: I'm asking because I think it leads us to a conversation about what is a high-quality job. And I've actually brought a bill to Revenue on that subject. And I realize what you're trying to do is to audit the effectiveness of the program. But I think that piece sort of tips over into defining what is and isn't considered high quality. And so that might be an issue for further conversation. [LB935]

SENATOR WATERMEIER: Thank you, Senator Bolz. Senator McCollister. [LB935]

SENATOR MCCOLLISTER: Yeah, just a quick clarification: \$53,000 is the minimum or is that the cutoff for the highest quartile? [LB935]

ANTHONY CIRCO: That's the baseline for the highest quartile so it would be \$53,000 and above would be the highest quartile. [LB935]

SENATOR MCCOLLISTER: Okay. Thank you. [LB935]

SENATOR WATERMEIER: All right, good question. Further questions? All right. Thank you for coming up. [LB935]

MARTHA CARTER: Thank you. [LB935]

SENATOR WATERMEIER: We will open it up for proponents of LB935. Welcome, Ms. Fry. [LB935]

RENEE FRY: (Exhibit 3) Thank you. Good afternoon, Chairman Watermeier and members of the Executive Board. My name is Renee Fry, R-e-n-e-e F-r-y, and I'm the executive director of OpenSky Policy Institute. Since our inception, we have been supportive of efforts to improve the effectiveness and return on investment of tax incentives. We recognize that tax incentives are an important economic development tool, but the research finds that tax incentives do not tend to pay for themselves and so there is a good reason to ensure that Nebraska's tax incentives are not only inducing the intended economic activity, but are also more cost-effective than other policy options and are a good use of taxpayer dollars. We support LB935's effort to better determine whether our incentive programs are producing high-paying jobs, full-time jobs, hiring previously unemployed workers, and if employees are being provided benefits. Based on research by both SRI International for the Governor and Dr. Timothy Bartik of the Upjohn Institute, I suspect we are going to find that our incentive programs are not creating a preponderance of high-wage, good-benefit jobs. So our only concern is that if we continue these programs, is that we continue these programs only to validate what we already suspect--that these programs aren't a good

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investment of taxpayer dollars. SRI found average annual pay in Nebraska to be 21 percent below the national average, with low wages particularly pronounced outside the Omaha area. To reverse this trend, SRI argues that Nebraska's economic development future cannot be based on growth that generates jobs of any kind, but rather growth that emphasizes high-quality jobs. Currently under Nebraska Advantage, jobs that pay annual wages of at least \$26,146 qualify for the program, even though at this level, families of three--the average family size in Nebraska--would still be eligible for low-income benefits including SNAP, free and reduced lunch, and children's health insurance. The minimum annual wage for jobs created under Nebraska Advantage would have to equal \$43,500 to disqualify a family of three from the majority of low-income benefits. If we are hoping to prompt economic growth that improves the lives of Nebraskans, we should reward firms for creating jobs that can sustain healthy, strong families and communities. And despite the low wage threshold for jobs to qualify for Nebraska Advantage incentives, the jobs come at a high cost of between \$24,000 and \$320,000 per job, according to the 2016 Performance Audit report. And according to the state's comprehensive annual financial report, in the fiscal year ending June 30, 2017, state business incentives cost taxpayers \$362 million, which doesn't include the cost at the local level. This is just \$30 million shy of the FY '17 General Fund appropriations for Corrections and the Supreme Court combined. Had our incentives programs gone through the appropriations process, I wonder whether the Legislature would have been willing to appropriate \$362 million to those programs. If we plan on incentivizing businesses, we need to make sure that taxpayers are receiving a good return on investment. At this time, the programs seem to come at a great cost and the benefits are questionable. So we support LB935's efforts to better analyze the impact of our tax incentive programs, but we do worry that we will just validate what we already know and hope that this process doesn't act to extend the life of ineffective programs. So with that, thank you for your time, and I would be happy to answer questions. [LB935]

SENATOR WATERMEIER: All right. Thank you. Questions from the committee? All right, thank you for testifying. [LB935]

RENEE FRY: Thank you. [LB935]

SENATOR WATERMEIER: Further proponents. All right, seeing none, opponents on LB935. Come on up. Welcome. [LB935]

CHAD DENTON: Good afternoon, Chairman Watermeier, members of the Executive Board. My name is Chad Denton, C-h-a-d D-e-n-t-o-n. I am here today representing the State Chamber, the Omaha Chamber, and the Lincoln Chamber. I serve as a board member and chair for the economic development council with the Nebraska Chamber of Commerce and Industry. We are here in opposition of LB935. Our position is not in opposition of your need to have information

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to analyze or assess the programs. But we are very concerned about further regulation when there is already a significant amount of detail provided by the participants. You speak with any economic development professional across the street at DED or any others across the state that compete to retain or grow their economic development base across other states. They will tell you the Nebraska incentives are already considered administratively difficult; and in national economic circles, the perception is the same. Case in point specific to the Nebraska Advantage, after qualification, it will take NDR on average 12 to 18 months to get through the information that the company participants provide to get through all those details. I don't want to bore you with too much, but I think it's important to list some of the items that are already provided by participants at various phases of the project. At application, and I'm speaking Nebraska Advantage, they do list all the entities with project activities along with their federal ID numbers. They list all the locations by United States Postal Service address. They are provided to register for E-Verify which a number of them have it which then requires them E-Verify all new employees they hire going forward. They identify qualified property. They correlate back to P&L statements to show that the categories of revenue are in the qualified activity. Industries, depending on their activity, they're required to provide sales analysis detail of all sales from Nebraska outstate by vendor, by location, all sales throughout the company. Depending on activity type two, they might have to provide service agreements that they have with their clients. Explanation of project forecast; forecast employment; investment; sales and use taxes; they have to provide their financials; federal income tax returns, which also include affiliation schedule which has a list of all entities within that taxpayer; Nebraska income tax returns; W-3 (inaudible). Then they have a 28-page annual filing. So after they file an application, they file a report. And it's not really the form itself but it's what goes into that form that they have to provide that will be provided at audit later on. It really has a payroll component, an asset component, and then a yearly requirement component. On the payroll component, behind the scenes, behind the forms I view it as a spreadsheet, an Excel spreadsheet by year. And this Excel spreadsheet, if they have 500 employees, they'll have 500 rows. If they have 500 employees and maybe 100 turn over that year, they'll have 600 rows. And then it gets extrapolated on the right-hand side by about 20-plus columns of additional payroll information that's required by each employee. These aren't...some of these might be coming from an ADP or their own internal, but they're coming from various reports throughout the organization, corporate, at the location, or whatnot. Those extrapolated columns on the end, each are step-like, qualified/nonqualified activity, the entity, the name of the person, the ID number, the Social Security number, employee status--are they exempt or nonexempt--hire date, term date, hours category. If we have three hours categories: regular, overtime, and other (inaudible), but if they have jury duty, sick, vacation, holiday, they have to separate those out by employee for the year. Then they mirror that by the wages so they provide all that information by the wages, also extrapolated on the side. And then there are totals...total taxable wages, Medicare wage total, state withholding wage totals. The company has to provide W-2s of all those employees. Those W-2s should tie to each row of that employee. The W-3N that's filed by the company at the end of the year for all

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taxpayers that have payroll within the state, those...if they are in that spreadsheet, have to total at the bottom of the page, the W-3N has to total that entire spreadsheet. They have to do E-Verify within three days so that's another component of this. They have to show that. If there's a conflict outside the three days, they have to go report why that conflict occurred. And then there's always the other part to that's the populated data requested, but what about the other things going on? What about pay periods, pay dates, description of work weeks, severance, time and a half, change in employee status--if somebody goes to exempt to nonexempt within a year? What if they spend some time outside the project, there's travel involved in their job, or installation, nonqualified hours that shouldn't count within this program? Those need to get documented too. [LB935]

SENATOR WATERMEIER: Mr. Denton, I see your red light is on. [LB935]

CHAD DENTON: All right (inaudible). [LB935]

SENATOR WATERMEIER: I'll let you finish it up if you got a way to close it up. [LB935]

CHAD DENTON: Okay. So then there's an asset piece that includes a spreadsheet that's just as detailed. There's a yearly reporting requirement that makes them go through all of that data, too, and answer yearly questions. And then there's the audit at the end that they provide all the information and then 12 to 18 months later they provide finished goods, then 12 to 18 months later the department has gone through everything, answered the questions, and they're done with the audit. So with the volume NDR gets, knowing that it takes 12 to 18 months, there's a lot of data being shared. So in closing, bored you with the details, but a significant amount of detail is already provided and it's transparent between company and NDR. Second, our Governor is pursuing to reduce regulatory burden and this seems like more regulatory requirements on top of what we already have. Does a solution provide or is there one out there based on what we already provide? Sorry. [LB935]

SENATOR WATERMEIER: That's fine. Thank you. Questions? Senator McCollister. [LB935]

SENATOR MCCOLLISTER: Yeah, thank you for testifying this morning. [LB935]

CHAD DENTON: Thank you for having me. [LB935]

SENATOR MCCOLLISTER: I see two issues. Are you uncomfortable with the disclosures that your...would be forced to make? Or do you find the reporting unnecessarily burdensome? [LB935]

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CHAD DENTON: The latter. I think senator said that he had gone out and talked to a community and that employer said, fine, tell me what I need to show it. I think that is a common response in that they all feel positive about the impact that these programs have on their business (inaudible) the cost of the burden of reporting this. [LB935]

SENATOR McCOLLISTER: Thank you. [LB935]

SENATOR WATERMEIER: Further questions? Senator Crawford. [LB935]

SENATOR CRAWFORD: Thank you, Senator Watermeier. And thank you for that comment and for sharing some of those pieces of information that are shared. But that comes back to the question of asking what we're asking and whether we may very well have now recognized different things that we need to be sure to ask. [LB935]

CHAD DENTON: Right. [LB935]

SENATOR CRAWFORD: It may be identifying some pieces that are not as necessary. [LB935]

CHAD DENTON: Right. [LB935]

SENATOR CRAWFORD: Thank you. [LB935]

SENATOR WATERMEIER: Further questions? All right. Thank you, Mr. Denton. [LB935]

CHAD DENTON: Thank you for the time, I appreciate it. [LB935]

SENATOR WATERMEIER: You bet. Are there further opponents to LB935? Seeing none, those in the neutral position? Senator Kuehn to close. [LB935]

SENATOR KUEHN: Thank you, Chairman Watermeier. Just a couple of comments based on some of the testimony that we heard and some questions from the committee. I do think, Speaker Scheer, that the questions about penalties and enforcement is one that we do have to address and how that would work. Certainly I think there are a number of companies that would be willing to look at an amended form, whether there's information we do or do not need. I do want to...I didn't bore the committee with the details of the specific things, the data questions that we're asking; but I encourage you to look at the bill. These are things like how many jobs so it's moving away from this idea of an FTE which has been very confusing as we have these specific

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series of questions that is asked. It's the quartile range. I don't think there's overly burdensome in terms of getting it down to every 5 or 10 percent group, but quartiles. It's the number of employees that are receiving benefits. Those are the key questions that this Legislature has been asking about the effectiveness. And I want to remind this committee we have statutorily placed that responsibility for answering those questions with the Legislative Performance Audit Office. These are not questions that they are or even the committee in general are just pulling out willy-nilly based on their individual ideas. These are statutorily required audits that statutorily define a series of parameters. And they have identified the roadblocks into answering those statutory questions. And so that's ultimately what LB935 is doing is attempting to identify the data that is necessary for them to perform their statutorily required obligation. If we cannot provide them that data, we do need to rethink what we are statutorily requiring them to do. The other...and I'm going to editorialize so I take off my Performance Audit Chair hat and be just a plain old senator here and that is I take issue at the idea of labeling this a regulatory burden. This is not a requirement which is placed upon all companies that have to now require reporting all this information. This is a requirement that we would be placing for companies who have voluntarily enrolled in a state program to receive monetary benefits. And the reason I handed out that sheet is if you look at the total credits earned, Ms. Fry referenced to the total credits used, but we're talking about total credits earned to date of \$842 million. So we have to weigh the idea of companies which are...have earned a benefit of almost a billion dollars that is not being utilized for other state uses, whether that cost justifies additional reporting. And so to talk about streamlining regulatory processes, certainly I'm sure there are processes and process improvement that can take place. But simply saying I want to receive millions of dollars of state tax credits, but oh, gosh, having to report how many full-time employees I had in response to that I think it's a little bit disingenuous to call that simply a regulatory burden. So I do think we need to think about that as a Legislature and as a committee from a policy perspective. So with that, any questions? [LB935]

SENATOR WATERMEIER: Thank you. Speaker Scheer. [LB935]

SENATOR SCHEER: Just a comment. Somewhat problematic, it does have a fiscal note that may impede its progress. [LB935]

SENATOR KUEHN: Right. And if you do take a look at the fiscal note, I think we need to sit down with Revenue and understand in a greater degree what is behind that fiscal note. And we'll certainly have those discussions as the committee moves forward. [LB935]

SENATOR WATERMEIER: Thank you, Speaker Scheer. Senator Crawford. [LB935]

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SENATOR CRAWFORD: Thank you, Senator Watermeier. And thank you, Senator Kuehn, again. Just one question on page 22 where you've got the categories of wages. I think you said those were based on quartiles or something like that. For the sake of not having to go back in over and over again, does it make sense to make those actually defined in terms of quartiles perhaps? [LB935]

SENATOR KUEHN: Yeah. [LB935]

SENATOR CRAWFORD: And then the second question related to that, so a previous testifier mentioned they're providing information on the wages of all employees. Is it...so is it the case that we...although they provide it, we can't get access to it to calculate the number that fit in each of these categories? Or is it the case that we're saying, you know, instead of providing that for each employee what we really just want to know is the number that fall into each category? Does that make... [LB935]

SENATOR KUEHN: Yeah, and I think the issue is the number that fall into the category and trying to churn through all that individual data. And Anthony will have to be the one to actually respond specifically to how that interface works as I haven't delved into that from a practical perspective. [LB935]

SENATOR CRAWFORD: All right. Thank you. [LB935]

SENATOR WATERMEIER: All right. Senator Bolz. [LB935]

SENATOR BOLZ: Just briefly, I appreciate that you address the discussion of reporting burdens and certainly we want every program to run effectively and efficiently. But it makes me want to comment that many government programs have all kinds of reporting requirements ranging from reporting your assets, your income, and your hours worked when you are a TANF or food stamp recipient to public schools reporting very detailed financial information as well as school test scores. So I think my question may be for off the mike or for follow up or for further discussion is in what ways is what we're asking through our tax incentive programs more or unfairly burdensome as compared to other government programs or is this in line with other government programs and we can do it more effectively or efficiently? So that's I guess taking my turn at editorializing. Thank you. [LB935]

SENATOR WATERMEIER: (Exhibit 4) Any further editorializing? (Laughter) All right. Thank you, Senator Kuehn. I do have one letter of support from Jenni Benson with the Nebraska State

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Education Association in support of LB935. With that, we will close the hearing on LB935 and open up LB936. Senator Kuehn. [LB935]

SENATOR KUEHN: (Exhibits 1, 2) All right, thank you. Again, everyone, I am John Kuehn, J-o-h-n K-u-e-h-n, and I represent District 38. I'm here again as Chairman of the Legislative Performance Audit Committee to introduce LB936. Like the bill we just heard, LB936 also comes out of recommendations from the Legislative Audit Office's first three tax incentive reports and is meant to improve future evaluations. The bill has four components that amend the Performance Audit Act's tax incentive audit process to increase the number of years the Audit Office has in which all of the tax incentive programs will be audited; to set a benchmark; to clarify a metric; and to define terms for use in evaluations. First, the bill would change the existing requirement that tax incentive performance audits take place at least once every three years and instead would require they take place at least once every five years. The committee considers this section to be the most important part of this bill. This year is the third year since the schedule was adopted and the Audit Office has completed three audits. The Nebraska Advantage Act was audited in 2016, and the Rural Development and Research and Development Acts were audited in 2017. There are five remaining programs, and the Audit Office will not be able to audit all of them in this coming year. There has been a learning curve that's associated with the first performance audit of each program; and it's possible that when the Audit Office has audited all of the programs at least once, they may be able to meet the three-year schedule. However, in the meantime, the committee believes it is appropriate to change the schedule rather than not meet the statutory requirement or to ask for additional staff. Even with this change, Nebraska would still be in line with the evaluation schedules found in other states like Indiana and Iowa, who also have five-year tax incentive evaluation cycles. Provisions two, three, and four of LB936 are designed to encourage the Legislature to weigh in on certain aspects of the evaluations and provide input into what the Legislature would like from these evaluations. The second part of the bill establishes a benchmark goal of 10 percent increased employment in participating companies for programs that have an employment benefit. This would only affect evaluations, and would have no impact on the program itself. This is establishing a benchmark to simply give the Legislature a means to assess what these programs need to accomplish. We selected 10 percent because in the Advantage Act audit conducted in 2016 in several industries, the companies participating in the Advantage Act had increased employment by at least 10 percent compared to nonparticipating companies. However, this is essentially a policy question--how much more employment the Legislature believes a participating company should have compared to nonparticipating companies. If the Executive Board would like to discuss a different percentage, the Audit Committee is open to that. The third part of the bill addresses an issue that came up when the office tried to analyze the cost-per-job metric for the Advantage Act. And I know all of you at your nightstand have the tax incentive audit reports dog-eared and written. But just in case, I provided for you a couple of pages from the cost per full-time equivalent from the Advantage Act. It's a front and a back. And the Audit Office did an outstanding job with the

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information they had available and the definitions in statute of trying to answer that perennial question that we always get which is: What is the cost per job for these incentives? The central issue is a philosophical distinction as to whether investment made by companies is separate from employment or whether it supports employment. In the Advantage Act report which I've shown you, the office used different methods to calculate cost per job in order to show how varied the cost-per-job results can be depending upon which method is used. This section allows the Legislature to confirm that it would continue to like to see both analyses or decide that it prefers one method over another. The last part of the bill seeks legislative input on several definitions that are used in the evaluations. For example, the Audit Office is required to examine whether or not a tax incentive is having an impact in a distressed area. The issue is that a distressed area is not defined, and the Audit Office could not find a usable definition of "distressed area" in statute. For previous tax incentive reports, the Audit Office has used what it calls "areas of substantial unemployment" as a stand-in for "distressed areas." The Department of Labor is required to find "areas of substantial unemployment" to comply with the federal Workforce Innovation and Opportunity Act, which is defined as contiguous geographic area with an unemployment rate of at least 6.5 percent and a population of at least 10,000. So similar to the cost-per-job methodology mentioned previously, this section allows the Legislature to either confirm that this is an appropriate method for identifying distressed areas or to amend the bill to provide the office with a definition it believes should be used for future evaluations. The other terms that the bill defines are full-time worker, high-quality job, high-tech firm, new business, renewable energy firm, and rural area. Except for high-quality job, for all of the terms that LB936 seeks to define, the definition that has been used in previous reports is what is found in the bill. The Audit Office has made an effort to come to reasonable and usable definitions for these terms, but they realize that the Legislature may have a different view of what these terms should mean. Again, this section allows the Legislature to either confirm that the definitions currently used are appropriate or that other definitions would be of more use to legislators. Thank you for your time. I'll answer any questions that you may have. And again, staff from the Legislative Audit Office will be available to answer specific questions about the application of these definitions as well. [LB936]

SENATOR WATERMEIER: All right. Thank you, Senator Kuehn. Questions for Senator Kuehn? Senator Crawford. [LB936]

SENATOR CRAWFORD: Thank you, Senator Watermeier. So is the distressed area the current definition that's used in the reports? [LB936]

SENATOR KUEHN: Yes. So with the exception of high-quality job, these are all of the current definitions that have been used in the previous three performance audit reports. [LB936]

SENATOR CRAWFORD: Okay. Thank you. [LB936]

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SENATOR WATERMEIER: Further questions? All right. Thank you, Senator Kuehn. We'll invite up the invited testimony. Welcome again. [LB936]

MARTHA CARTER: Thank you, Senator Watermeier, members of the committee. For the record, my name is Martha Carter, M-a-r-t-h-a C-a-r-t-e-r. I'm the Legislative Auditor supervising the Legislative Audit Office. [LB936]

ANTHONY CIRCO: And again, Anthony Circo, A-n-t-h-o-n-y C-i-r-c-o, and I'm a performance auditor specifically assigned to tax incentives. [LB936]

SENATOR WATERMEIER: All right, welcome. Are there questions? Just to prove we have no softball setup here, all right. Further questions or anything? All right. [LB936]

MARTHA CARTER: Thank you. [LB936]

SENATOR WATERMEIER: Very good, job well done, well covered. All right. Those wishing...those proponents of LB936. Proponents? Seeing none, those in opposition to LB936. Seeing none, those in a neutral position to LB936. Seeing none, Senator Kuehn to close. [LB936]

SENATOR KUEHN: Again, thank you. Just wanted to remind everyone if you do have further input on the bills, we certainly appreciate input from the body. This was a robust discussion last fall among the body as a whole, and I think it's continuing to be one of importance. So we appreciate your attention today with these issues. [LB936]

SENATOR WATERMEIER: All right, Senator Kuehn. Question, Senator Bolz. [LB936]

SENATOR BOLZ: I appreciate the fact that you had well-grounded policy justifications for all of your definitions. You pointed out previously that high-quality jobs was maybe the one that was the most difficult to define. And so I encourage us to have a further conversation about what that definition should be. And Senator Kuehn is laughing because I've brought a bill to his attention that's in Revenue Committee. But the real point is I don't want us to set that bar too low and have the evaluation reports articulate that something is a high-quality job that is not in line with a policy analysis of what high-quality really means. [LB936]

SENATOR KUEHN: Do you want to put the bill number in the record just so we get full advertisement here? [LB936]

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SENATOR BOLZ: If I could remember the bill number, I might. I'm actually...I wasn't self-promoting. I actually think it's an important policy issue. [LB936]

SENATOR WATERMEIER: Thank you, Senator Bolz. Further questions? All right. That will close the hearing on LB936 and close the hearing for today. Just for the members, tomorrow we have another bill hearing, is that correct, and Senator Bolz would like to Exec on her bill and an amendment to that bill. And I would like to Exec I think on LB744. I think we should get it out on the floor right away. So if there's any other questions, we'll meet tomorrow on adjournment. [LB936]