

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

[LB126 LB387 LB546]

The Committee on Revenue met at 1:30 p.m. on Thursday, February 9, 2017, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB126, LB546, and LB387. Senators present: Jim Smith, Chairperson; Curt Friesen, Vice Chairperson; Lydia Brasch; Mike Groene; Burke Harr; Brett Lindstrom; and Paul Schumacher. Senators absent: Tyson Larson.

SENATOR SMITH: Good afternoon and welcome to the Revenue Committee public hearing. And I know some folks are still walking in the door, but we're going to go ahead and get started. My name is Jim Smith; I represent the 14th Legislative District in Sarpy County, and I serve as Chair of the committee. The committee will take up the bills in the order posted on the outside of the room. Here today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. To best facilitate today's proceedings, I ask that you follow the following procedures. First, please turn off your cell phones and other electronic devices. As the chair becomes available, if you could just move up and into that chair so we can move through the testimony. The order of testimony will be introducer of the bill, proponents, opponents, those in neutral capacity, and then we'll have closing remarks from the introducer of the bill. If you'll be testifying, please complete the green form and hand it to the committee clerk when you come up to testify. If you have written testimony or exhibits for the committee and you would like to distribute those, please hand them to the page and we'll get those distributed. We will need 11 copies for all committee members and staff. And if you need assistance in making those copies, let us know, we can help you with that as well. When you testify, we will ask that you both state and spell your name for the record so it can be transcribed correctly into the record. We are going to use the light system, five minutes for testimonies. The green light will be on for four minutes, after which time it will turn to an amber color for the last minute. During that time if you could begin to wrap up your testimony so that when the red comes on you will have completed your testimony. If you would like your position to be known but do not wish to testify, please sign the white form at the back of the room and it will be included in the official record. The microphone is not for amplification, it's to transcribe your testimony for the record. And let me introduce staff with us. To my immediate right is legal counsel, Mary Jane Egr Edson. To my immediate left is research analyst, Kay Bergquist. And to my left at the end of the table is committee clerk, Krissa Delka. And committee members with us today, we're going to start with Senator Larson; he's absent currently. And next, Senator Groene.

SENATOR GROENE: I'm done with my nap. Mike Groene, District 42, Lincoln County.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SMITH: And Senator Groene is going to be opening on the first bill here in just a moment. We're going to have Senator Lindstrom join us here a little bit later; he's in Judiciary Committee currently opening on a bill.

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

SENATOR BRASCH: Senator Lydia Brasch, District 16, Burt County, Cumming County, and Washington County.

SENATOR SCHUMACHER: Paul Schumacher, District 22; that's Platte and parts of Colfax and Stanton Counties.

SENATOR HARR: Burke Harr, Legislative District 8, parts of Douglas County.

SENATOR SMITH: Very good. So, again, please do remember that senators may come and go during this meeting to introduce bills in other committees, so we appreciate your patience with that. And I believe we're ready to begin hearings for the day. We're going to begin with LB126 to be introduced by Senator Groene; relates to changing the sunset dates under the Nebraska Job Creation and Mainstreet Revitalization Act and the Nebraska Advantage Act. Welcome, Senator Groene. [LB126]

SENATOR GROENE: Thank you, Senator Chairman and members of the Revenue Committee. All right, I'm introducing LB126 which changes the sunset dates on the Job Creation and Mainstreet Revitalization Act, commonly known as the Advantage Act, from December 31, 2022, to December 31, 2020. And then the Nebraska Advantage Act, I guess it's two acts, back from December 31, 2020, to December 31, 2018. All contracts that are currently signed would stay in full force, but the application process and the program would end on the appropriate sunset date. During the 2016 Legislative Session, the Legislative Performance Committee requested that the sunset dates be extended one year on the Job Creation and Mainstreet Revitalization Act and Nebraska Advantage Act to complete their audits. The Executive Board extended the dates to 2022 and 2020 respectively. On November 23, 2016, the Legislative Performance Audit Committee released the performance report on the Nebraska Advantage Act. The report states that they were unable to address some questions and that the committee is working to complete its report. The one-year extension is ample time, we believe, to complete their work on these programs. This bill returns the dates to the Performance Audit Committee's original recommendation. It also provides ample time for the Legislature to address audit recommendations for changes to the act before a decision is made to continue the act. I would like to remind my colleagues that I fought the extension on the floor last year because of the way

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

it was done. It was referenced to the Executive Committee when it should have come to this committee, the extension. It was done correctly this year. If it would have been done last year, this bill of mine would have probably went to the Executive Committee. It belongs here. So I'm a rule of law guy. You know that. You do it right. You don't play games. Here's my testimony, my transcripts from the testimony on April 7, 2016. From the transcripts: "Thank you, Mr. President. Senator Watermeier and I sat down and discussed LB1022 and the Performance Audit bill. It's a good bill. It gives it more teeth, the Performance Audit more teeth to get more information than when they audit the Advantage Act and the economic development programs we have. I agreed to withdraw it with the understanding that I'm going to bring a bill next year to take the sunset dates back to what they were in the original bill, to 2018. And I hope at that time it is sent to the right committee, Revenue, because this is a Revenue issue." First step has been completed. We need to address the issues pinpointed in the Performance Audit. We need to adjust it. There's a reason, the original bill, we put sunsets in bill, so we adjust, we fix, we don't just extend. We need to do that with the Advantage Act. I'm not against free enterprise, I'm a free market guy, but everybody needs to be playing on the same field. We have to be very careful when we...a government gets involved and picks winners and losers. If you look at the report, the Advantage Act has turned into another TIF, everybody gets it--everybody applies, everybody gets it. The list grows and grows from bank tellers to putting in new branches of banks, they're getting the Advantage Act. That's normal growth. We need to fix it. We need to pinpoint the tax credits so it really works where it is supposed to. With term limits, we need to address change in the interim, in the year...this year while we still have one, two, three, four people who have knowledge of it. It could be addressed next year, putting a sunset on it forces that for us to address and fix the act. Also, in the midst of the economic downturn we are in, this is the time to make sure that any economic growth programs and the abatement of taxes are actually creating new jobs. Not jobs that would have been created by normal business practice, but new jobs. By looking at the present recipients, it proves--it seems everybody is getting it. You will hear testimony today about how taxation is a burden and without the Advantage Act, business will not survive. Well, sorry, folks, we all pay taxes, there's a reason. There is an awful lot of businesses paying their taxes, paying for their fair share for public safety, for the public schools, for the streets. Somehow we have to make sure that the taxpayer is getting a return on their investment. This is really an investment on jobs. We have to make sure we are getting that. So anyway, they're going to make my argument for us--why we need to cut taxes for everybody. Why we need to do property tax reform. Taxes are a burden. We shouldn't have winners who cannot pay their taxes when the rest of us are. So if we're going to buy growth with tax abatements, we need to address it and we need to look at it and we need to keep the sunset dates at a reasonable amount of time that this body can do the right thing. And if you look at the A bill, we can pick up another \$12.5 million in taxes that are now being abated if we...sooner, two years sooner it would be \$25 million if you let it...the sunset happen, which I don't agree with. I think we need to fix it. Thank you. [LB126]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SMITH: Thank you, Senator Groene. Do we have questions for Senator Groene from the committee? I see none. [LB126]

SENATOR GROENE: Don't look like 8:00 tonight. [LB126]

SENATOR SMITH: I assume you'll be here for closing. [LB126]

SENATOR GROENE: Oh, yes, sir. [LB126]

SENATOR SMITH: All right, we're going to open it up to proponents of LB126, those wishing to testify in support of LB126. Welcome. [LB126]

RENEE FRY: (Exhibit 1) Thank you. Good afternoon, Senator Smith and members of the Revenue Committee. My name is Renee Fry, R-e-n-e-e F-r-y, I'm the executive director of OpenSky Policy Institute. We are here in support of LB126, although we believe there is sufficient evidence that we should take a time out on Nebraska Advantage and would therefore recommend sunseting or freezing the program even sooner. We also support reviewing past revenue programs such as the mainstreet revitalization program to determine whether they are providing an adequate return on investment. 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 pay for themselves, and so there is 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 a good use of taxpayer dollars. There are several questions we should be asking when we evaluate business tax credits: Is the credit inducing the desired economic activity? How do they complement or detract from other goals of tax policy? Are they a more cost-effective means of doing so than other policy options? As I will discuss in my testimony on LB546, Dr. Timothy Bartick of the Upjohn Institute finds that Nebraska spends 79 percent more than the U.S. average on business incentives. Furthermore, the Legislative Performance Audit of Nebraska Advantage program found that while the program was initially estimated to cost between \$24 million to \$60 million a year, in 2013 the program cost the state \$109 million and is projected to hit this level again in the near future. The Department of Revenue projects that by 2025, state and local liability will be \$473 million without adding any new projects. This would rise to \$925 million if projects are added. In 2013 alone, business incentives through Nebraska Advantage and its predecessor, LB775, cost \$273 million. This is almost equivalent to the \$295 million, FY13 General Fund appropriations for Corrections, the Supreme Court, and the State Patrol. Had Nebraska Advantage gone through the appropriations process, would the Legislature have been willing to appropriate \$273 million to these programs? Given that the effect of a tax expenditure on the state's budget has the same impact as an

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

appropriation, shouldn't we be considering cuts to programs like Nebraska Advantage to help balance our budget? The irony is that we will end up making significant cuts to education, which could have long term negative impact on our economic growth, and yet could end up continuing to fund these programs which currently lack evidence that they are doing much to help grow the economy. Some state programs have a competitive proposal process whereby they review applications one to two times per year and pick the strongest proposals. We could structure a similar process to select the best proposals based on a rubric of factors such as highest return on investment, the incentives most likely to make a difference, those that contribute to a strategic vision of the state, or those that create high wage jobs or encourage growth in a distressed area. With that, I would encourage you to think about what we were trying to achieve through these tax incentive programs. What is our overarching economic development strategy? Are these incentive programs capitalizing on our state's advantage and needs? Is it our intent to reduce unemployment, is it to improve the quality of jobs available for our residents, or is it to recruit new residents to the state? And how do all of the other existing tax credits overlap with these incentives? Are they working together or at cross-purposes? If credits work and drive economic development, should we direct incentives to improve economic development in distressed areas or those with declining population where they could make a bigger impact? Until we answer these questions, we would support sunseting or freezing these programs. Thank you for your time. I'd be happy to answer any questions. [LB126]

SENATOR SMITH: Thank you, Ms. Fry, for your testimony. Senator Harr. [LB126]

SENATOR HARR: Thank you, Mr. Chairman. Have you looked at the fiscal note on this? [LB126]

RENEE FRY: I haven't. [LB126]

SENATOR HARR: Okay. Do you have it in front of you? [LB126]

RENEE FRY: I don't. [LB126]

SENATOR HARR: Okay. Thank you. I can answer Senator Groene in closing. Thanks. [LB126]

SENATOR SMITH: Senator Friesen. [LB126]

SENATOR FRIESEN: Thank you, Chairman Smith. You said sunseting or freezing; by freezing what do you mean? No more sign-ups for...leave the program in place, but just don't accept any new... [LB126]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

RENEE FRY: Yeah, just don't accept contracts for a period of time while we evaluate the program. [LB126]

SENATOR FRIESEN: All right. Thank you. [LB126]

SENATOR SMITH: Ms. Fry, I think from what I've read, freezing is basically what is being proposed in the bill, if I'm not mistaken. I mean, you just don't allow any more, so it's the same thing, right? [LB126]

RENEE FRY: Oh, I'm...yeah, I'm saying sooner than that though. [LB126]

SENATOR SMITH: Okay. [LB126]

RENEE FRY: Sooner than the sunset date. [LB126]

SENATOR SMITH: Okay, all right, very good. Other questions? I see none. Thank you for your testimony. [LB126]

RENEE FRY: Thank you. [LB126]

SENATOR SMITH: Next proponent of LB126. Seeing no additional proponents, we now move to opponents, those wishing to testify in opposition to LB126. Welcome, Mr. Young. [LB126]

JOSEPH YOUNG: Good afternoon, Chairman Smith and members of the committee. For the record, my name is Joseph Young, that's spelled J-o-s-e-p-h, last name Y-o-u-n-g. I'm the executive vice president of the Nebraska Chamber of Commerce and Industry here to testify in opposition to LB126 on behalf of my organization plus the Greater Omaha Chamber and the Lincoln Chamber of Commerce and Nebraska Bankers Association. Last year, as Senator Groene said, there was a bill to extend the original sunset...not the original, but the, I think, the second generation of the sunset date for the Nebraska Advantage Act from 2017 to 2020. We worked with the Legislature to get that passed. We are, obviously, very supportive of that for several reasons. As we all know, nothing makes business more nervous and reluctant to expand or grow or even relocate to Nebraska than uncertainty. I think it's fair to say that if this bill were to pass with a 2018 sunset date, which is one and a half, basically, legislative sessions from now, I think what you'd see is almost all of the projects that are currently looking at Nebraska be killed or at least postponed for two years until they knew the outcome of what the policy would be. We think that, obviously, have a detrimental effect on the state's economy and on short-term...at least short-term new jobs and investment growth in the state. From our perspective, we

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

believe that policies like the Nebraska Advantage Act, and every program, really, in state government, have natural sunset dates. You all can decide and the full Legislature can decide to end a program any year you'd like. And so from our perspective, we'd like to see no sunset date on the Nebraska Advantage Act because we think that would provide the most certainty for business moving forward. I know there are mixed reviews. I mean, we've seen the audit report. There are some things in there that we agree with; some that we don't necessarily. We don't really have a comprehensive analysis on the full economic impact of the Nebraska Advantage Act. But I can tell you that if you take all the taxes that businesses do pay and all the taxes that their employees pay: income taxes, property taxes, sales taxes, I think we'd be kind of staggered by that number. So, we, obviously, would be in opposition to this bill and would urge the committee not to advance it out to the full Legislature. And I'd appreciate it and I'd be happy to answer any questions that you all have. [LB126]

SENATOR SMITH: Thank you, Mr. Young, for your testimony. Senator Schumacher. [LB126]

SENATOR SCHUMACHER: Thank you, Chairman Smith. And thank you, Mr. Young. You mentioned that if we were to just terminate this program there would be a number of businesses which would just suspend their ideas of coming to Nebraska or of expanding in Nebraska. Is there a list of those we could evaluate whether they...their seriousness and whether or not there is a causal relationship between their thinking about Nebraska and the Advantage Act? [LB126]

JOSEPH YOUNG: Not that would be shared publicly. As you know, there's businesses, for many reasons, can't, oftentimes, share what they're looking at doing, what they're looking at expanding and where. So, I understand that frustration, but there are many reasons why a business wouldn't want to share that information. [LB126]

SENATOR SCHUMACHER: Well, that puts us in a really tough spot, because we've had a...as you know, a Performance Audit report that was somewhat less than stellar with regard to the Advantage Act. We hear these assertions that, gee-whiz, there's people lined up to come in and, boy, this will be the critical thing. And we have no basis for basing the valuation of whether or not this thing is doing any good or not. So that's really, really hard to say let's just extend it or modify it or abate it. They can waive; if they're serious they can waive those privacy things can't they? [LB126]

JOSEPH YOUNG: Sure, and sometimes they do. [LB126]

SENATOR SCHUMACHER: In order to keep this thing alive, has whoever is negotiating with these people asked them to waive and maybe share their information with this committee or

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

group of this committee so that we can perform an evaluation of whether or not we have a causal effect or not? [LB126]

JOSEPH YOUNG: I have not asked anyone to do that. As you know, the Nebraska Chamber is primarily an advocacy organization; we don't do economic development, per se. I can't speak for anyone else. But I know...and I think it's...you've probably been involved in some projects in your area and other areas, greater Omaha area, many companies will come out and say--here we are; we're really interested in your state. In fact, many have come to the Legislature for proactive legislation to see if they could qualify and the Legislature has been very proactive in that and we appreciate it. But it's not unheard of. But, and we know that the but/for test is very difficult to determine, and I'm not going to sit here and tell you that every single project that has gone through Nebraska Advantage Act wouldn't have come here otherwise. But I can tell you that most of them do; and most of them would tell you, yeah, you know, we chose this because Nebraska Advantage is a good program and the state has other things that we like too. [LB126]

SENATOR SCHUMACHER: Only a tiny percentage of the jobs created in the state are created by incentivized businesses, isn't that the case? Most are just by ordinary people who pay their taxes. [LB126]

JOSEPH YOUNG: That's fair. And we're supportive of small business as well. I will tell you that small businesses, once created, are very hard to sustain. And so when you're talking about one in ten or two in ten businesses that start, succeed; I think there's a case to be made for incentivized businesses, you know, really providing us a stability to the state's economy and I think it's well worth incentivizing many of those companies. That's just my personal opinion. [LB126]

SENATOR SCHUMACHER: Okay. Thank you. [LB126]

SENATOR SMITH: Senator Harr. [LB126]

SENATOR HARR: Thank you, Mr. Chairman. Mr. Young, are you familiar with the SRI Report that was done last summer by the Governor's Office? [LB126]

JOSEPH YOUNG: I am. [LB126]

SENATOR HARR: And could you tell the committee what the results of that study were? [LB126]

JOSEPH YOUNG: I can give you some highlights. [LB126]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR HARR: Please. [LB126]

JOSEPH YOUNG: I think the SRI report really highlighted that we need to modernize our incentive programs and in our job-creation programs, not just Nebraska Advantage Act, but others. They looked favorable upon the Talent and Innovation Act that was passed in 2011 and they thought we should beef that up a little bit. They thought even that we should maybe incentivize some higher wages. Right now in the Nebraska Advantage Act you can qualify for incentives if you're paying 60 percent of the average annual wage. They recommended something higher than that. I can't remember off the top of my head what it was, but...so, you know, they really push for a more modern incentive program and a higher wage threshold. [LB126]

SENATOR HARR: Okay. Thank you. [LB126]

SENATOR SMITH: I see no further questions, Mr. Young. Thank you for your testimony. [LB126]

JOSEPH YOUNG: Thank you. [LB126]

SENATOR SMITH: Next opponent of LB126. Welcome. [LB126]

DARIN SMITH: Thank you. Good afternoon, my name is Darin Smith, that's Darin, D-a-r-i-n, Smith, S-m-i-t-h. I'm a principle president of Arch Icon Development Corporation in Woodbine, Iowa. I'm here to speak specifically regarding the sunset...moving up the sunset on the State Historic Tax Credit program. Our experience has been in both Iowa and Nebraska working in...starting in Woodbine, Iowa, rural, and then moving to Woodbine, Iowa, mostly housing developers, both market rate and affordable, both new construction and historic. And most recently, we completed the Flats on Howard in Omaha. It was a \$19 million project; created 155 apartments, eight historic properties, 12 buildings in the 24th and Howard area near the Children's Museum and YMCA in downtown Omaha. We began putting the project together, assembling properties in April of 2011. We started construction in January of 2015. We completed construction last August. We looked at many different ways to finance the project as it came together. It grew and grew and grew. Long story short, it could not have happened as a market rate project without the State Historic Tax Credit. We looked at several different options: low income housing tax credits; HUD financing; that sort of thing. But the neighborhood, the buildings were largely vacant, underutilized for almost a decade for the most part. So I'm here to speak for the State Historic Tax Credit program. I would like to encourage you to not sunset it early. It's...we have evidence from UNL study that it does provide tremendous economic impact jobs. We had anywhere from 75 to 100 construction workers on site for a year and a half keeping

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

them busy. And we tend to work with the same subcontractors that flow from project to project with developers. And we're in the process now of looking at more historic redevelopment, both urban and rural. We were invited just two months ago to go down to Auburn. They've got some very nice historic buildings downtown. They have some solid industry, no housing. So we're working with them to develop sources and uses to pay for the preservation of buildings that have been on their main street for a century. Chances are that can't happen without State Historic Tax Credit. Being from small town Iowa, similar to small town Nebraska, about the only tool box...financing tool in the tool box that small towns have, if they use it, is tax increment financing. Short of that, the State and Federal Historic Tax Credit for the historic buildings on main street is extremely important. So that's why I'm here today to speak for the program, it's benefit; many, many, many states use it. I would just encourage this group to give the program time so that it can develop and improve over time and reach further out into the state, especially rural. I know of several projects that are in the hopper now with State Historic Preservation. [LB126]

SENATOR SMITH: Thank you, Mr. Smith, for your testimony. Senator Schumacher. [LB126]

SENATOR SCHUMACHER: Thank you, Chairman Smith. How much money in Historic Tax Credits in your project in Omaha that you described get? [LB126]

DARIN SMITH: Total allocation was \$3.3 million. And it was the first...it's eight separate historic properties. So in...it was done in two phases; it was the first to receive allocations from the State Historic Preservation Office. So there were \$3.3 million in credits. Equates to about...depending on...we haven't worked through all of the final numbers with the Department of Revenue yet, but it will contribute \$2 million to \$2.3 million in tax credit equity from investors. Which is about...it leaves about \$2 million in the project in owner equity, or about 10 percent. [LB126]

SENATOR SCHUMACHER: And what was the total size of the project? [LB126]

DARIN SMITH: Nineteen to \$20 million; about \$19.5 (million). [LB126]

SENATOR SCHUMACHER: So the taxpayers gave over 10 percent of it? [LB126]

DARIN SMITH: Yes. [LB126]

SENATOR SCHUMACHER: Okay. What is the relationship between history and the Historical Tax Credit Act? [LB126]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

DARIN SMITH: I don't think I follow. [LB126]

SENATOR SCHUMACHER: How long does the history of a building have to be maintained under that act? [LB126]

DARIN SMITH: Typically about 50 years. [LB126]

SENATOR SCHUMACHER: Would you believe if you read the act it said five? [LB126]

DARIN SMITH: The state act? [LB126]

SENATOR SCHUMACHER: The one that you're defending here today. [LB126]

DARIN SMITH: I guess I wasn't familiar with that. I mean, we're...I'm looking...most of the rules that we follow, follow the Federal Historic Tax Credit. [LB126]

SENATOR SCHUMACHER: But this particular act, it's five years. After that, you have no responsibility. [LB126]

DARIN SMITH: Correct. Oh, I see, I understand what...yes. [LB126]

SENATOR SCHUMACHER: And this bill...this is...are we on the same page? [LB126]

DARIN SMITH: Yes, I understand. [LB126]

SENATOR SCHUMACHER: The one that only requires the façade of the building to remain the same? [LB126]

DARIN SMITH: Right. Well, yeah. And typically we buy a building; we use State and Federal Historic Tax Credits to develop it. We're in it with partnership with investors and for five to seven years that building cannot be modified. Correct. [LB126]

SENATOR SCHUMACHER: And I believe it's five years. I take it you're not a lawyer involved in the application process or anything like that. [LB126]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

DARIN SMITH: I'm a developer involved in the application process with the State Historic Preservation Office. I'm not an accountant; I'm not a lawyer. [LB126]

SENATOR SCHUMACHER: Okay. I have some questions for them, but thank you for your testimony. [LB126]

DARIN SMITH: Sure. [LB126]

SENATOR SMITH: Senator Harr has a question. [LB126]

SENATOR HARR: Thank you. What was the development that you did downtown Omaha? [LB126]

DARIN SMITH: Flats on Howard. It's 155 apartments and eight different... [LB126]

SENATOR HARR: Yep. [LB126]

DARIN SMITH: We also are doing...or completed, it was a low-income housing tax credit project at 24th and Vinton, 20 apartments. It was the old Ak-Sar-Ben beef building, old Thiessen Pickle building. We were actually invited to D.C. to receive a preservation best award and to meet with a group on Capitol Hill to lobby for the Federal Historic Tax Credit program for the Flats on Howard project as well. [LB126]

SENATOR HARR: Okay. Did you use Historic Tax Credits on the low-income housing tax credit also? [LB126]

DARIN SMITH: Yes. [LB126]

SENATOR HARR: Okay. Thank you. [LB126]

SENATOR SMITH: Senator Friesen. [LB126]

SENATOR FRIESEN: Thank you, Chairman Smith. What is the smallest community that you've had a project in? [LB126]

DARIN SMITH: In Nebraska? [LB126]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR FRIESEN: In Nebraska. [LB126]

DARIN SMITH: In Nebraska we've only done Omaha. We did one before that, a smaller 12-apartment and commercial space using just the Federal Historic Tax Credit. In Iowa...I'm from Woodbine, Iowa, it's 1,500 people, it's not too different than Auburn, Nebraska; in a period of four years, we invested \$10 million in our downtown, created 12 new businesses, 38 jobs, 34 upper-floor apartments, and it...we have shown a model for how it can truly benefit, especially rural. The difficulty in rural Nebraska is getting into rural Nebraska, getting small town folks to understand the program, how it works, the complexity of the program. And without the State Historic Tax Credit program, that becomes even more difficult. [LB126]

SENATOR FRIESEN: Okay. Thank you. [LB126]

SENATOR SMITH: Senator Schumacher. [LB126]

SENATOR SCHUMACHER: Thank you, Senator Smith. Just following up on that, talk about the complexity of the program; have you read the statute? [LB126]

DARIN SMITH: Yes. The statute... [LB126]

SENATOR SCHUMACHER: This program is specifically written to be very simple to apply for, in its original intent, and that's so smaller communities could easily access the money. The resulting thing has been a 21-page mishmash of applications that you can't expect a small community to square with. [LB126]

DARIN SMITH: I understand that, and that's one of the things that I would encourage this group to do is to improve the program, work with State Historic Preservation Office and the Department of Revenue however possible to make it simpler. Or to incent small communities to be able to obtain the allocations in a simpler way. I...I... [LB126]

SENATOR SCHUMACHER: The statute is dirt simple. What is complicated is the way the Historic Office has implemented it. There's two pages of very simple requirements to get one of those grants. According to very specific language, and that's why I asked you whether or not you've read the statute, lots...there's barriers been put up that makes sure that small communities have a very difficult time accessing that money and really abandon the smaller grants that are made available in there because it's just too much headache. And that's not our fault. [LB126]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

DARIN SMITH: I agree that it's not your fault. I guess I don't have the same understanding of what it takes in a small community. The same thing is required for any project, as my understanding, with regard to the part 1, the part 2, following the Secretary of the Interior standards for historic rehabilitation. [LB126]

SENATOR SCHUMACHER: Our statute has nothing to do with the Secretary of the Interior standards. I mean, we're...maybe I'm mistaken, but where are you getting that from--the federal standards have anything to do with our statute? [LB126]

DARIN SMITH: Well, if it's just using State Historic Tax Credits and not Federal Historic Tax Credits then... [LB126]

SENATOR SCHUMACHER: Okay. [LB126]

DARIN SMITH: ...sure, I understand that. But, typically, I think, most use the state are also using federal. And by doing so, they have to follow the federal guidelines. [LB126]

SENATOR SCHUMACHER: Thank you. [LB126]

SENATOR SMITH: All right. I see no further questions. Thank you, Mr. Smith, for your testimony. [LB126]

DARIN SMITH: Thank you for your time. [LB126]

SENATOR SMITH: Next opponent to LB126. Welcome. [LB126]

TREVOR JONES: (Exhibit 2) Good afternoon. Chairman Smith, members of the committee, my name is Trevor Jones, T-r-e-v-o-r J-o-n-e-s, and I am the director and CEO of the Nebraska State Historical Society. And I'm here today to talk about the portion of the bill that deals with the Nebraska Job Creation and Mainstreet Revitalization Act which authorizes the Nebraska Historic Tax Credit program that my office administers. So what you have coming around to you is a study that the Bureau of Business Research at the University of Nebraska-Lincoln did for us to assess the first year's impact of the program. So this is not even a complete report for the first year. It really looks at 13 out of 45 projects for that first year. And our portion of the tax credit is fairly small. We're looking at authorization of up to \$15 million a year. And what we found from this report that UNL did for us is that the impact of the program was strong in its very first year. And so we had what they calculated as \$79.84 million of economic impact for Nebraska from that first year's investment. It was 1,033 full-time jobs in Nebraska; and over \$35 million in

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

wages for Nebraska workers from these projects. The tax credit contributed \$45.26 million to the state's gross tax product; and \$3.2 million in state and local taxes in that same period. We're working on a new study for the next year that would give us through 2016 that I hope to have available to you in March that will give us a full assessment. But we're thinking that these preliminary numbers are exceeding our expectations for the value of the tax credit program. And we would very much like to see it continue, because this is a program that takes developers a fairly long time to get going. They don't get to, sort of, hit the ground running. They have to have a building that has to be shown to be historic. A lot of them are stacking the state credit with the federal credits that they can do for economic development provides them a greater advantage so there are federal hoops that they have to jump through as well. We're seeing a lot of national register nominations which is the first step in the federal process that are coming through our office by developers who are hoping to rehab historic buildings moving forward. And so it takes several years for that to go. So if this sunsets early, our fear is that that pipeline will disappear. The developers who have things in progress or thinking about investing in Nebraska will be unwilling to do so at that point. So we feel this is a new program and needs more time to get going; it needs more time to hit that pipeline. We did 45 projects in 2015; 26 in 2016; and these are statewide projects. We have projects in Omaha, Red Cloud, Norfolk, Fairbury, Friend, Lincoln, Hastings, Chadron, Grand Island, and Pender, all completed or in progress and more on the way. So we're really excited about this program; feel it does everything that the state wants it to do. It preserves historic buildings, which is important for us; keeps things out of the landfill; preserves vibrant downtowns. If you know about the project that was in Omaha, the Burlington Station project, that was a building that was vacant for 40 years. And KETV moved into that building and their workers now work in that area; small businesses have opened around it. It preserves city centers and we're a big part of that and it's doing that not only in Omaha, but all across the state. So we would very much like to see this program continue beyond 2022, but sunsetting it two years early would certainly cause major damage to this program. Thank you. [LB126]

SENATOR SMITH: Senator Schumacher has a question. [LB126]

SENATOR SCHUMACHER: Thank you, Chairman Smith. What does the statute require for somebody to be qualified to get those grants, under what I seem to remember is a first come, first serve basis? Statutory. [LB126]

TREVOR JONES: Statutory requirements, I'm not an expert on how that part of the process works. I can tell you that the vast majority of our applicants are looking to stack with federal credits. [LB126]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SCHUMACHER: Okay. I'm not talking about the federal. We passed a law for mainstreet vitalization that was to be applicable in great intensity to some of our smaller communities. We had very few requirements, other than they be declared to be historic by the local authority, a very simple application process, and a first come, first serve basis; and I think even \$4 million reserved for those smaller communities that carries into the first three months of the next fiscal year. I personally contacted 100 cities, counties, and villages to promote this program. And they virtually called me a liar after I was done because they said--what do you mean this is simple? I said, it is simple. Your office, the Historic Society Office has very little discretion. It's spelled out to be simple and accessible for smaller communities, and not only for smaller communities, for the infrastructure supporting mainstreet activities. What they were greeted with is a 21-page thing which was irrelevant to our statute. And they basically said--you got to be kidding. We don't have the legal power in a small town to apply for \$100,000 project, \$25,000 grant, because of this barrier. Now are you the guy that cooked up that 21 pages? [LB126]

TREVOR JONES: No, sir, I'm not. [LB126]

SENATOR SCHUMACHER: Who did? [LB126]

TREVOR JONES: Certainly the...our Historic Preservation Office and it's...we're absolutely willing to look at the process and make it easy, because we would like people to apply for the credit. Our intent is not at all to create barriers. We really would like as much of this to get used. And I would say the evidence would supports people... [LB126]

SENATOR SCHUMACHER: And it is all used, isn't it? [LB126]

TREVOR JONES: Pardon? [LB126]

SENATOR SCHUMACHER: It is all used, isn't it? [LB126]

TREVOR JONES: We've been doing very well with that. And it's been through some of these smaller communities. We've worked with them on that process. [LB126]

SENATOR SCHUMACHER: And you have a 21-page thing that you greet people with. I've had engineers say--you've got to be kidding. I've had county attorneys, because they wanted to use some of it on the local courthouse, say--you've got to be kidding. And it appears the way the thing is structured contrary...or being administered is contrary to the original intent of that act that it be easy and accessible and fairly distributed across the state. And that it's structured so

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

that these particular big-show projects are the one who get the bulk of the money. And I...you know, if you don't realize it's working that way, then somebody in your office needs to clue you in. [LB126]

TREVOR JONES: Well, I would agree that the process could be simplified, but I would dispute the fact that it has not been used by smaller communities across the state. In the first year, it was used by communities primarily in Omaha, but there were other ones across the state. But the reason for that was those developers had seen the impact of the tax credit in Iowa. They knew the process. They had their ducks in a row. They were lined up and waiting. And so they took that \$15 million right out of the gate. In year two, what we seen was a much wider distribution of smaller and larger projects throughout the state; small communities coming in. And I feel like that first year was the aberration and now we're seeing a much broader thing. And as we go out further years in the future, we're going to see more and more smaller project as the impact of these are seen statewide. So, we could definitely simplify the process, but I dispute the fact that it hasn't been used by these smaller communities. [LB126]

SENATOR SCHUMACHER: You need to go find your Web page and find that 21-page document and get rid of it and read the statute, because we've done our simplification on this end. And it's your office that's standing in the way of a lot of people. And I've got a bill in just...that sunsets a thing faster than Senator Groene's to send a message. Thank you. [LB126]

SENATOR SMITH: Thank you, Senator Schumacher. Mr. Jones, how long have you been in your position? [LB126]

TREVOR JONES: Six months. [LB126]

SENATOR SMITH: Six months. Where you before? [LB126]

TREVOR JONES: I was...for the Kentucky Historical Society. [LB126]

SENATOR SMITH: Okay. Just a thumbnail sketch, what...how does that compare to what we're trying to do in Nebraska with this act? [LB126]

TREVOR JONES: We didn't have this similar program. [LB126]

SENATOR SMITH: You didn't have it. [LB126]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

TREVOR JONES: No, no. A good comparable for us would be Iowa, which is actually has a larger tax incentive, Historic Tax Credit program than Nebraska does and we've used a lot of comps from them. [LB126]

SENATOR SMITH: Okay. All right. Thank you, Mr. Jones. Next opponent of LB126. Welcome. [LB126]

DEBORAH EBKE: (Exhibit 3) Thank you. Good afternoon. My name is Debbie Ebke, Deborah Ebke, D-e-b-o-r-a-h E-b-k-e. I'm the treasurer for Bonham Theatre Project in Fairbury. I come to you today in opposition to LB126 in its current form. I think the sunset date of the Nebraska Job Creation and Mainstreet Revitalization Act, which created the Nebraska Historic Tax Credit program, should remain unchanged. I express no opinion on the early sunset of the Nebraska Advantage Act. To make my testimony briefer, I'm going to change that Job Creation and Mainstreet Revitalization Act to the Mainstreet Revitalization Act. So the Mainstreet Revitalization Act is distinguishable from the Nebraska Advantage Act in some significant ways. The only beneficiaries of the Mainstreet Revitalization Act are owners of historically significant real property. These properties are state treasures, which are deserving of preservation for all Nebraskans. However, the beneficiaries of the Nebraska Advantage Act most likely develop new or relatively modern facilities and they're often targeted for specific industries. The Mainstreet Revitalization Act has only been operative for two years, as we've heard just recently, whereas the Nebraska Advantage Act has been functioning for 11 years and it replaced LB775, which was enacted in 1987. The Mainstreet Revitalization Act is too young to judge its impact on the numerous small communities struggling to keep their downtowns viable. In the first year of the act, as we've heard, \$13 million of the available \$15 million of tax credits, approximately, went to projects in Omaha. Smaller communities are just now benefiting from the incentives of the act. Although it is impossible to know how many businesses utilizing the tax incentives of the Nebraska Advantage Act would have expanded or relocated in the absence of the incentives, the owners of historic properties often would not or could not make improvements without the tax credits. In 1987, I had the opportunity to be the vice president of finance for a large printing firm. That firm had plans on the table to expand prior to the passage of LB775 so the tax incentives were gravy for us. In my current position as the volunteer treasurer of the Bonham Theatre Project, which is a nonprofit 501(c)(3) entity, I know the tax incentives available through the Nebraska Historic Tax Credit program were essential piece of the funding to bring the 90-year old Bonham Theatre back to life. Owners of historic properties are revitalizing buildings often found in the core of Nebraska's downtowns. The Bonham Theatre is the only theater in Jefferson County and it's in...it's situation in Fairbury's downtown. According to the State Fire Marshal, neither the Bonham Theatre Project, as owners, or any business could obtain a certificate of occupancy for the Bonham Theatre building without substantial upgrades for fire, life safety, and the American with Disabilities Act regulations. The cost of the renovation is over \$700,000. Bonham Theatre Project is a beneficiary of some good monetary support and thousands of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

volunteer hours. But it was the mainstreet money that was a determining factor to make our project a success. The 20 percent tax credits which can be sold to for-profit entities are essential to revitalizing the Bonham Theatre as a going concern. Absent the tax incentives, the building would be an abandoned pigeon roost in downtown Fairbury. The impact of the Mainstreet Revitalization Act should not be cut short by advancing the sunset date. A study of the act's effect on Nebraska communities and achievement of its goals may even reveal that the sunset date should be extended. I ask the committee to maintain the sunset date of December 31, 2022, for the Nebraska Job Creation and Mainstreet Revitalization Act. And I thank you for your time and I'd love to answer some questions. [LB126]

SENATOR SMITH: Thank you, Ms. Ebke, for your testimony. Are you related to our own Senator Laura Ebke? [LB126]

DEBORAH EBKE: I knew it was coming, I get that question all the time. But yes, my husband and her husband are cousins. [LB126]

SENATOR SMITH: Okay, very good. All right. Well, we enjoy having her in the Capitol. [LB126]

DEBORAH EBKE: Thank you. [LB126]

SENATOR SMITH: Senator Harr. [LB126]

SENATOR HARR: Thank you. Do you know...you stated that these credits are for sale or are transferable. Do you know how much they sell for? [LB126]

DEBORAH EBKE: I have not talked to anybody for...since the very first year, since 2015, but at that...I talked to one of the CPAs that was instrumental in marketing them. And at that point, it was like 90 cents on the dollar. But I assume that they could be easily that high because if you have a tax liability of \$100,000 and you can pay it for \$90,000, you'd do it. [LB126]

SENATOR HARR: For a state tax credit sold, 90 cents on the dollar? [LB126]

DEBORAH EBKE: That's what I heard that first year, yes. So they would buy our tax credits if we were eligible for \$150,000 of tax credit, they'd buy them for 90 cents on the dollar to pay their liability. Does that make sense? [LB126]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR HARR: No, it doesn't. We'll look into that. Thank you. [LB126]

SENATOR SMITH: Senator Schumacher. [LB126]

SENATOR SCHUMACHER: Thank you, Chairman Smith. Thank you for your testimony today. What...did you have an attorney or an accountant or an engineer prepare this application for you? [LB126]

DEBORAH EBKE: No, I did it. [LB126]

SENATOR SCHUMACHER: Okay. [LB126]

DEBORAH EBKE: But I am a retired CPA. And so to address your concern with which the volume or the expanse of the application process, it is very intense, it's very detailed. I think it probably took me 15 or 20 hours to get it done. But with my experience as a CPA, it wasn't intimidating to me, but I do understand how it can very much be intimidating. [LB126]

SENATOR SCHUMACHER: And just so we're on the same page, your work began with this 20-some page application process from the Historical Society? [LB126]

DEBORAH EBKE: Well, it's all on-line nowadays. So I don't know how many pages it actually is, but you're documenting what your existing building looks like. Well, first, you have to tell them why you're eligible, so you have to meet the criteria for... [LB126]

SENATOR SCHUMACHER: And what criteria were you told? [LB126]

DEBORAH EBKE: Well, you have to be at least a 50-year-old building. [LB126]

SENATOR SCHUMACHER: Okay. [LB126]

DEBORAH EBKE: And it has to be on the National Register or it has to be eligible...in an eligible district. So we are in an eligible district. [LB126]

SENATOR SCHUMACHER: And the eligible district is just a motion passed by the town board, correct? [LB126]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

DEBORAH EBKE: No, ours is not. We are...I can't speak to whether that would qualify or not. Our downtown Fairbury is in a designated historic district... [LB126]

SENATOR SCHUMACHER: Okay. [LB126]

DEBORAH EBKE: ...and we're a contributing building to that district. [LB126]

SENATOR SCHUMACHER: Did you read the actual state law that was passed by the Legislature? [LB126]

DEBORAH EBKE: Yes. Yes. [LB126]

SENATOR SCHUMACHER: Pretty simple. They just have to...the town board has just got to pass a motion that to qualify your district. [LB126]

DEBORAH EBKE: Well, I have to take that back in the sense that I read the original law, but I understand that there was something that changed it last year, maybe. [LB126]

SENATOR SCHUMACHER: It just extended the deadline. [LB126]

DEBORAH EBKE: It just extended the date, because the original... [LB126]

SENATOR SCHUMACHER: ...and the insurance companies could invest in it. [LB126]

DEBORAH EBKE: I do have a copy of the original act here today, and it is extensive too. I mean, but... [LB126]

SENATOR SCHUMACHER: It was very simple really. In fact, a whole county has been declared a historic district to make it real simple. I'm just...somewhere out there, between what was intended as a very simple law and reality is some barrier that is being generated artificially. And I was just curious what...this should not have been hard for you. [LB126]

DEBORAH EBKE: I do think it's time consuming and I do think it's an intimidation...intimidating application for just a lay person to do. So I do think that the application was created by the Historical Society and, you know, although I don't think that...I think that there would be a better solution than pulling the rug out from under the whole act. A

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

better solution would be to change it so that their rules are not so onerous. That would be a better solution than (inaudible)... [LB126]

SENATOR SCHUMACHER: They have very little rule-making authority under that. [LB126]

DEBORAH EBKE: Oh, I thought the rule...I thought it said it gives the Historic Society the rule...the right to promulgate the rules and regulations. [LB126]

SENATOR SCHUMACHER: It can't override the statute. Thank you very much. [LB126]

DEBORAH EBKE: Okay. [LB126]

SENATOR SMITH: All right. Thank you, Ms. Ebke, for your testimony. Appreciate you being here. [LB126]

DEBORAH EBKE: That's it? Okay. [LB126]

SENATOR SMITH: Next opponent of LB126. Welcome, Mr. Levy. [LB126]

DAVID LEVY: Thank you, Chairman Smith, members of the committee. David Levy, D-a-v-i-d L-e-v-y, with the Baird Holm Law Firm testifying here before you today on behalf of Omaha By Design; the American Institute of Architects; and the Nebraska Association of Commercial Property Owners. I also, as many of you know, worked extensively on this legislation in its original journey to passage and worked with many of you on that and I appreciate that opportunity and that we were able to get this put into place. We also have represented many developers who have used these tax credits since they have come into law. You've heard much testimony today on support of the program, in other words, in opposition to LB126 which would shorten the life of the program by two years. And I don't want to repeat that, but I will emphasize a few things. As a 20 percent tax credit, that \$15 million...every dollar of that \$15 million requires at least \$4 of private investment. The first year this program was in place, the total investment, including the \$15 million, was over \$100 million. So the ratio of private dollars to the tax credits was even more than that 4:1. The report that Mr. Jones mentioned from the University of Nebraska, I'll just highlight one thing there, the projects contributed \$3.22 million in new state and local taxes. That's in that one year. That's going to happen year after year after year. So in five years, that \$15 million of foregone revenue by the state has generated over \$15 million in new state and local taxes. Those state and local taxes continue and continue and continue as that renovated and rehabilitated building stays there and continues to generate and help grow the economy which is fundamentally the goal, along with historic preservation and

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

revitalizing these downtowns. As I mentioned a number of times to you, I'm sure during the original legislative process on this, Rutgers University has tracked these programs. These programs exist today in about 38 states. Some of them have been around since 1990; Rutgers has tracked those, so they have a great deal of empirical data. And their empirical data shows exactly what we're finding here in Nebraska that that foregone revenue in the form of those tax credits pays back to the state in new revenues in five to seven years. We've done a little bit better given that over \$3 million for the \$15 million in year one. That will happen in less than five years. Just quickly, Iowa, just so you can see what we're...our folks here in Nebraska and what we're competing against and we have Nebraska developers who go to other states, Iowa has a \$45 million annual program with a 25 percent refundable credit. You turn in your receipts and you get a check from the state of Iowa. Kansas has a program with no cap, a 25 percent credit, 30 percent credit for nonprofits. Missouri has \$140 million program, 25 percent credit. Colorado has a \$15 million program with a 30 percent credit for the first \$2 million, 25 for the next 2, and 20 after that. This program has proven to work. It has generated jobs. It has generated economic development; it has helped revitalize downtowns. As you heard, yes, the first year's projects were largely in Omaha; they're starting to spread across the state. This program works. I would encourage the committee not to shorten its life, not to undermine its viability. I would welcome the opportunity to work with the committee and the State Historic Preservation Office and the Department of Revenue to make sure that this program works as it was intended and works better and more efficiently than it has. It has gotten better; it's a learning curve. This is the third year of the program. And I think... there's no question in my mind, and I think the university's study by the economists bears out that this program should continue. With that I'd be happy to answer any questions. [LB126]

SENATOR SMITH: Thank you, Mr. Levy. Senator Harr. [LB126]

SENATOR HARR: Thank you, Mr. Chairman. Do you know how much those credits sell for? [LB126]

DAVID LEVY: It varies by project. The credits...so, as you might recall, half of the credits are freely transferable. I've got this piece of paper I can sell it to you. Those credits sell for upwards of 90 cents on the dollar, almost dollar for dollar. Very low risk, very easy transaction, not a lot of money going to the lawyers and the accountants on that part of the transaction. The other half of the credits that have to be syndicated to be transferred bring less value to the project because the transaction costs are higher, they're more complicated, the risk is higher. Those tend to sell for more in the 50 to 60 cent range. So when you add those out, it's 75 to 80 cents, 70 cents on the dollar for all of the credits. We have one project where the developer is going to use the credits himself. So in that case, it's 100 percent value for the credits, or very close to it. [LB126]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR HARR: Okay. Thank you. [LB126]

DAVID LEVY: Sure. [LB126]

SENATOR SMITH: Senator Friesen. [LB126]

SENATOR FRIESEN: Thank you, Chairman Smith. The projects that you've done, do you normally partner with the national program too, or is it just the state? [LB126]

DAVID LEVY: I believe, I'd have to go back and check my list, I believe all of the programs that we are...or projects that we have worked on have also included the Federal Historic Tax Credits. [LB126]

SENATOR FRIESEN: So are there other tax credits...or tax incentive programs that you qualify for when you do these like TIF programs, any others? Are there multiple programs you can qualify for under this? [LB126]

DAVID LEVY: You can. It varies project by project. But a Historic Tax Credit project, for example, could use tax increment financing. [LB126]

SENATOR FRIESEN: Okay. Thank you. [LB126]

DAVID LEVY: But not all do. [LB126]

SENATOR SMITH: I see no further questions. Thank you, Mr. Levy. [LB126]

DAVID LEVY: Okay. Thank you all. [LB126]

SENATOR SMITH: (Exhibits 4, 5 and 6) Next opponent for LB126? Seeing no further opponents, we're going to move to neutral testimony; those wishing to testify in a neutral capacity. We do have some letters for the record in opposition: Jeffrey Clark representing The Wind Coalition; Christy Abraham, League of Nebraska Municipalities; and Mike Lang, City of Lincoln; all those folks sent letters for the record in opposition to LB126. And since there's no further testimony in the neutral capacity, we invite Senator Groene to close on LB126. [LB126]

SENATOR GROENE: Thank you, Mr. Chairman. I would like to remind the committee that we're still extending, with LB126, we're still extending the sunset dates from their

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

original...when the laws were originally passed. In fact, the Mainstreet Revitalization was at 2019, now it's going to be 2020. So when the originators of this bill, apparently Senator Schumacher was here, there was a sunset. And at that time it was deemed long enough to analyze if the programs were effective; we'll give them another year. And the Advantage Act was 2018. That is the one this body needs to address the soonest because it's the oldest. We're not addressing both. We have time to address the Mainstreet Revitalization Act; in fact, by extending it a year, it gives us more time, this body, to see if it's effective and necessary. I took economic in school, I'm a free market fan. What I heard from the chamber was we can economic incentive our way into prosperity. I heard how great the programs were. We're \$900 million in the hole in taxes. That should not be to what I heard testimony. So in order to get out of this \$900 million, according to that testimony I heard, we need more tax incentives. We need to give everybody a tax incentive. I'm hearing that nobody in town is paying taxes anymore. I understand why the farmer is. We're giving it all away. Where does it stop? Where does it stop? Now that said, we need tax incentives, but we need to pinpoint them. Everybody is using them, everybody. And I've never heard it said that before. And one marketing ploy is to give free beer. All right? And then to say we're going to cut it off at 9:00. Everybody rushes to the bar. I heard from the state chamber that everybody runs away from the bar if you tell them you shut it off at 9:00. And nobody will even apply for incentives because we're scaring them away. Well, that's not a marketing ploy I've ever heard operate that way. You would think when in economic crises and we put a...we move the sunset date. What better way to move up economic activity. Decisions will be made quicker, they'll rush to Nebraska before the bar is shut off. And we are not...once you put your application in, you've got...what is it?...once you're in, Tier 1 has 10 years; Tier 2 has 15; Tier 3 has 10; Tier 4 has 4; Tier 5 has 13 years; Tier 5 (inaudible) 10; Tier 6--15 years. All you got to do is have your application in. The sunset doesn't stop it. Once you're in the program, you're in it. So what we are looking at here, the sunset's purpose is is what the original sunset was--to see the effectiveness of the program; to see if it's working; to see if we need to pinpoint it. Some examples of last year's, I won't name companies, because I never blame a company that takes what a politician will give them free. I'm in ag: this is a crop chemical company--ten jobs in towns like Hemingford, Lincoln, and McCook. Folks, that company is here because the farmers are here. Those are sales reps. Cabela's, this is an interesting one, I'll say that one because they left us, I guess that company really don't exist anymore, it's Pro Bass (sic-Bass Pro)--Bellevue, Grand Island, Kearney, La Vista, Lincoln, North Platte. North Platte has a call center; they added some jobs to an existing call center. There isn't a company in here...very few that I could see are new. They're companies that exist here because the customer is here. You always have got to remember, retail goes to the customer, not to the tax incentive. Nobody builds a store because you got a tax incentive. They did their research and the customer base is there. I don't blame any of these businesses. But if you want to know why we're in a tax situation, high tax state, we have too many people in the life boat and very few of us rowing. That's what's wrong with part of Nebraska and our tax system. Also I heard from the chamber and a few others--without tax credits...without tax credits, and we know what a tax credit is, you're getting

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

back the taxes you paid, businesses can't build, (inaudible) can't be profitable. So I want to give a shout out to Senator Smith. That tells me our tax system is so onerous that the people paying taxes are going to go broke because these other folks can't even make a living, can't even exist, can't build a building. But out...not paying...it's basically an abatement. We got a problem, folks, if our tax system is so onerous that they cannot exist because the taxes are so high. We got a problem. So those of us who pay our taxes--farmers, small businessmen, we need a shout out for them. They're rowing really hard and there's a lot of people sitting in that boat taking advantage of all the public services, all in schools, that the rest of us are paying. Let's pinpoint these incentives to where they really create new businesses. I'm for them. No better time to look at them. No better time to develop them when you're in an economic crisis, unless you truly believe what you heard. We better pass every economic incentive program that's out there because we can incentivize out of this recession...which we shouldn't be in, because the incentives we have...what did I hear, four times the return on the investment. There was \$53 million last year, the Advantage Act was, four times that should have brought in another \$250 million. Guess we haven't collected it yet. So what I'm doing here is just extending the sunsets one year instead of two, what the original LB1022 did that Senator Watermeier drew up last year. Let's take a look at them with the great knowledge of Senator Harr and (Senator) Schumacher still in the body and we can do that this next year in the one hundred whatever it is legislative session. Thank you, Senator Smith. [LB126]

SENATOR SMITH: Thank you, Senator Groene, for your closing. Senator Schumacher and then Senator Harr. [LB126]

SENATOR SCHUMACHER: Thank you, Chairman Smith. Senator Groene, you obviously spent a lot of time thinking about these issues and issues of fundamental fairness. In the time I've been here, I've introduced any number of bills to mitigate or cut the corporate income tax. And I have yet to hear anybody from the organized business community come in, in support. They come in, in support of these specialized programs that only a few employers can take advantage of. And most employers, most job creators don't even get a smell of. Why do you suppose that is? [LB126]

SENATOR GROENE: Squeaky wheel theory...who pays the most money to the organization; who has the best lawyers. I really don't know. There's a lot of peripheral businesses that survive off of new businesses being started, so I'm sure the lawyers, the accountants, contractors, they push for that--it's new construction, if they can get new construction out of it. [LB126]

SENATOR SCHUMACHER: Do you know of any businesses in your district that has a gotten a smell of the Advantage Act? [LB126]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR GROENE: The Walmart Distribution Center, I believe, did get it. I think that's the one that probably dwarfs...what they got probably is more than everybody else combined. Cabela's put two jobs in the call center in North Platte, but it's not where the focus is; it's eastern Nebraska. [LB126]

SENATOR SCHUMACHER: Thank you, Senator. [LB126]

SENATOR SMITH: Senator Harr. [LB126]

SENATOR HARR: Thank you, Mr. Chairman. Thank you, Senator Groene. Have you looked at the fiscal note on this bill? [LB126]

SENATOR GROENE: Yes, I did. [LB126]

SENATOR HARR: Okay. So in 2021 or 2022, it has savings of \$12,500 each year, is that correct? [LB126]

SENATOR GROENE: Yes. [LB126]

SENATOR HARR: Do you know how that's broken out between the Nebraska Job Creation, the Mainstreet Revitalization, and the Nebraska Advantage Act? [LB126]

SENATOR GROENE: It doesn't explain it. [LB126]

SENATOR HARR: It doesn't, does it? [LB126]

SENATOR GROENE: I'm assuming the assumption is that there's going to be business built, the free market actually work, which I agree with, that businesses will be built because people live this time in their lives and they're going to...and they've got the entrepreneurial spirit and they're going to create businesses and there's going to be new businesses created even without incentives and they figure they're going to do it. You only got one shot at life in business and you're going to do it, with or without an incentive. [LB126]

SENATOR HARR: But you know what happens when you assume. [LB126]

SENATOR GROENE: I'm not going to fall for that one like you did. (Laughter) [LB126]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR HARR: Well, you said--I assume. I mean I really don't know. I would love if you could follow up with Department of Revenue and ask how this \$12.5 million each year comes in. Because you have three acts going away, but I have no idea what it's attributable to each one. [LB126]

SENATOR GROENE: Yeah. [LB126]

SENATOR HARR: Thank you. [LB126]

SENATOR GROENE: I understand that. [LB126]

SENATOR SMITH: Senator Groene, I see no further questions. Thank you for your closing on LB126. [LB126]

SENATOR GROENE: I just wanted to say I am for business; I'm for incentives. I'm not for giveaways. And I want everybody to be...have an oar in their hand when we're trying to get out of this recession. Thank you. [LB126]

SENATOR SMITH: I think you made that clear. All right, we're now going to move to our bill, LB546 to be introduced by Senator Watermeier; relates to changing the Nebraska Advantage Act. Welcome, Senator Watermeier. [LB546]

SENATOR WATERMEIER: Chairman Smith and members of the Revenue Committee, I am Senator Dan Watermeier, spelled W-a-t-e-r-m-e-i-e-r, representing District 1 in the southeast corner of the state and here to introduce LB546. LB546 would simplify the administration of the Nebraska Advantage Act. It does not affect the tiers available or the benefits that may be earned by qualifiers in any respect. It only affects the administration of the Nebraska Advantage Act and it simplifies the application process and the verification process, both elements that currently cause delays in approving applications and receiving benefits. LB546 would eliminate the concept of a project that must be defined by the applicant to encompass only qualified activities. Under LB546, the growth in investment and employment would be measured on the entire activities occurring at qualified locations, even if some of the activities would not have qualified on their own, but there still would be no added benefits. LB546 also provides an alternative method of verifying that a company has attained the required levels and is now eligible to receive benefits under the act. Under LB546, qualification for and calculation of the amount of benefits can be performed and certified by the Department of Revenue or a CPA that is hired for that purpose. Any later audit would be part of the normal audit process of the department. As previous Chair of the Performance Audit Committee, I was involved in the audit of the Nebraska

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

Advantage Act that reviewed project-received benefits between 2008 and 2014 and working to make improvements and increase transparency. Due to my interest in economic development and my work within the Performance Audit Committee on the Nebraska Advantage Act I agreed to introduce LB546. I believe that Courtney Dentlinger, the Director the Nebraska Department of Economic Development; Tony Fulton, the Tax Commissioner are here today to testify on this bill. Also will be testifying Glen White who is the Deputy Tax Commissioner is also here to answer questions and to offer some suggestions for a small amendment. I'm willing to work with the business community on technical issues as the intent behind LB546 is to streamline and simplify the process which will benefit both the applicants and the administration of the act. So although I would be happy to answer any questions, I do believe there are some testifiers behind me that will be much more qualified and better to answer the questions. I do intend to stick around. I need to hear this debate. I'm involved in this and I appreciate the department coming to me. And I know it's a complicated issue, but this strictly is about doing one thing and it's streamlining it. And it came from an awful lot of conversation between a lot of the business partners. And when the audit came out last year, it screamed at the fact that it needed to be simplified. And it was actually in the audit when we came out with last year. And the commissioner actually mentioned it in his comments, too, as far as let's get this application streamlined so they're not waiting for it. It just takes too long. Thank you, Mr. Chairman. [LB546]

SENATOR SMITH: Thank you, Senator Watermeier, for the opening on LB546. Questions for Senator Watermeier? Senator Schumacher. [LB546]

SENATOR SCHUMACHER: Thank you, Chairman Smith. Thank you, Senator Watermeier. You chaired the Performance Audit Committee when they looked through the Advantage Act. [LB546]

SENATOR WATERMEIER: Um-hum. [LB546]

SENATOR SCHUMACHER: Is there correlation between the criticisms of the Advantage Act in that report and this act, like, this criticism on page 3, the fix it is found on page 44? [LB546]

SENATOR WATERMEIER: There is; there is some correlations directly to those recommendations. I didn't bring the audit with me; I should have. But I think Glen White will be able to explain them a little bit better. But we did go back...they did go back and we explained about how some of those holes were being filled and the recommendations out of the committee. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SCHUMACHER: I noticed on page 45, there's interesting language where it talks in terms of...to the extent the credit used, the withholding of an employee's wages, does not constitute public funds or state tax revenue and does not constitute a trust fund owned by the state. The use by the taxpayer of the credit does not change the amount that would otherwise be reported by the taxpayer to the employee as income tax withheld and does not reduce the amount that otherwise would be allowed by the state as a refundable credit on the employee's income tax return. Can you explain to me what that does? [LB546]

SENATOR WATERMEIER: I can't, but what line were you at? I got to 45 and... [LB546]

SENATOR SCHUMACHER: It starts up about, excuse me, it starts out at line 3. [LB546]

SENATOR WATERMEIER: I won't be able to answer that, Senator Schumacher. "Withholding does not constitute public funds or state revenue and is not listed in a trust fund owned by the state." I wouldn't be able to answer that. [LB546]

SENATOR SCHUMACHER: Would that...maybe I can see if we can get on the same page. One of the problems that I think that...become apparent somewhere in the procedure was that under the current Advantage Act, an employer can withhold money from an employee's paycheck and keep it. And that is the state's money because it's withholding from the employee. And that belongs to the state. How is this language here make that not a withholding of the belonging to the state, and yet, seems to arbitrarily grant the credit to the employee against their income taxes which weren't a tax withheld? [LB546]

SENATOR WATERMEIER: I appreciate that comment, because you talk about does not constitute public funds. And you and I have had that conversation many times... [LB546]

SENATOR SCHUMACHER: Yeah. [LB546]

SENATOR WATERMEIER: ...about the withholdings...employees withholdings being able to use by the employer. And I struggle with that whole concept as well, too. But if we don't come up with the answers to that today, I'll try to address it in the closing, but I'll just guarantee I'll get to it. It won't be today though probably. [LB546]

SENATOR SCHUMACHER: No, probably not. But that's anomaly that we're... [LB546]

SENATOR WATERMEIER: Yeah. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SCHUMACHER: ...you get to take credit for somebody else's taxes. But thank you. [LB546]

SENATOR WATERMEIER: Yeah. [LB546]

SENATOR SMITH: Senator Harr. [LB546]

SENATOR HARR: And thank you, Senator Watermeier, for bringing this bill. I'll be excited when Commissioner Fulton comes up and we can talk about the fiscal note. But I want to ask you, are you willing to hold this bill and work out with the business community? [LB546]

SENATOR WATERMEIER: Yeah, I am. In fact, we did it today again. You have a bill coming up, I think, in two weeks. [LB546]

SENATOR HARR: Yeah. [LB546]

SENATOR WATERMEIER: And we're certainly going to try to talk about that as well. So we'll see which one is the best fit for the state. [LB546]

SENATOR HARR: I think it's a combo. And I appreciate your willingness to work and put that on the record. Thank you. [LB546]

SENATOR WATERMEIER: Yeah. I do have some issues with your bill, I'll tell you right up front, but two tracks is going to be an issue, but we can get to that. [LB546]

SENATOR HARR: Thank you. [LB546]

SENATOR WATERMEIER: All right. [LB546]

SENATOR SMITH: I see no further questions. Thank you, Senator Watermeier. [LB546]

SENATOR WATERMEIER: You bet. [LB546]

SENATOR SMITH: We now move to proponents of LB546. Proponents. Welcome, Director. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

COURTNEY DENTLINGER: (Exhibit 1) Thank you, Chairman Smith, members of the Revenue Committee. Appreciate the opportunity to appear before you today. For the record, my name is Courtney Dentlinger, C-o-u-r-t-n-e-y D-e-n-t-l-i-n-g-e-r. I'm the Director for the Nebraska Department of Economic Development. I'm here today testifying in support of LB546, which was introduced by Senator Watermeier at the request of the Department of Revenue and DED. My testimony will be at the level of an overview of the proposed bill, and will be followed by representatives of the Department of Revenue, so that any technical questions can be referred to Revenue as they manage the program. Over the course of many months, DED and the Department of Revenue have been meeting with economic developers, business advisers, and chambers of commerce representatives. These groups expressed a desire to have more clarity in determining which businesses and activities qualified for the program, and for processes that were not as lengthy or as time-intensive for business applicants. At the same time, we were also cognizant of the Legislature's expressed desire for increased transparency and accountability, in addition to the Governor's directive to increase customer service, efficiency and effectiveness, while being good stewards of taxpayer dollars. The purpose of LB546 is to simplify and streamline the process of applying and qualifying for benefits under the Nebraska Advantage Act. This bill is the result of all the discussions that I referenced, and was a collaborative effort by staff from three agencies: the Nebraska Departments of Revenue, Labor, and Economic Development. The three agencies worked out a new process designed to address as many of the procedural issues as possible without resulting in additional expenditures to the program. LB546 maintains the current structure of tiers and benefit levels in Nebraska Advantage including required wage and investment thresholds and maintains, as much as possible, the same qualified activities, and a similar ability to have projects simultaneously occurring in multiple areas of the state, or single statewide projects at the choice of the taxpayer. Qualified activities, except for projects where 75 percent of retail sales occurs outside Nebraska, will be defined in terms of what is excluded rather than what is included, and further, with an amendment to be proposed by the Department of Revenue, the bill will guarantee the current qualification of headquarters projects. The changes that greatly streamline the process will allow the Department of Revenue to cut the time allowed for approval of applications from the current 180 days to 60 days. In addition, under the proposed bill, either the Department of Revenue or an outside certified public accountant chosen by the taxpayer and approved by the Tax Commissioner can verify the levels of employment and investment and other requirements for the program have been met without increasing the risk that unqualified projects might unintentionally receive benefits. Changing to a model of defining which types of projects are excluded, rather than specifically listing which are included, will allow the program to be more flexible as technologies and business models change over time. Again, we were mindful of the state's current budget shortfall and designed this to be revenue neutral. The Nebraska Advantage Act, as amended by LB546, would maintain the same pay-as-you-go structure. Businesses would not receive tax credits until they've met their required levels of employment and investment, and they could not use the credits beyond the taxpayer's income and sales tax liabilities. This safeguards the state's budget by limiting the maximum

amount of incentives to the amount of sales and income tax the taxpayer would have paid in Nebraska had the taxpayer not qualified for the incentives. This also provides a predictable level of benefits for the attainment and carryover periods of the project, a benefit built into the tax code that cannot be changed with appropriations to the program. Credits earned by a taxpayer can be used up to the full amount of tax liability. Finally, DED and the Department of Revenue believe that utilizing employment data, most of which is currently collected by the Department of Labor in the unemployment insurance program, will satisfy most of the needs of the Performance Audit Committee's second and third recommendations in their November 2016 report, "Nebraska Advantage Act Performance on Selected Metrics." These recommendations relate to employment at projects, which would require businesses to provide information that would allow the Performance Audit Office to track employment between Department of Revenue and Department of Labor databases. We believe that the additional reporting requirements of hours and wages for Nebraska Advantage projects would represent a reduction in the reporting currently required for program qualification, and would be more aligned with the format businesses use to track employment and payrolls. The Department of Revenue will testify after me and will be sharing two proposed amendments to make a couple of specific changes to address unintended consequences of the current language in the bill. And we want to continue to work with the interested stakeholders to improve the bill and ensure that we have a bill that is widely supported. With that I would be happy to take any questions from the committee. [LB546]

SENATOR SMITH: Thank you, Director Dentlinger. Questions for...Senator Schumacher. [LB546]

SENATOR SCHUMACHER: Thank you, Chairman Smith. And thank you for your testimony. Has the department done any effort to see what the comparative effect would be, instead of these special programs with special rules for special things we do a...either a rate reduction or an elimination of the corporate income tax? [LB546]

COURTNEY DENTLINGER: I do not believe, at least not during my time with the agency, which has admittedly been short, that we have done that analysis. We did bring in SRI International, a firm to look at the overall picture, the economic climate of the state; compare us to competitive states and determine what do we need to do in order to make ourselves move competitive. What they came back with, with recommendations, in addition to addressing work force shortages and the housing shortage that we're experiencing in the state, was to take a look at our incentive program to make it a little bit more competitive with other states. There wasn't as much analysis on the tax situation in that report. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SCHUMACHER: Now is there anything, if we're going to monkey with the Advantage Act, is there anything that we could do upfront to screen out those companies which would come here anyway? One thing I think in mind I think there is a company that does fracking sand and that they use in these fracking wells out in the Sandhills. Apparently, this spot in the Sandhills is one of the few spots in the country where this kind of fracking sand exist and exist in a way where it's easy to get to. So they're coming regardless, they're going to be there. And yet, we gave them a tax incentive to do what they were going to do anyway. Does this cover or do we need to address how do we screen out the people that have got no alternative but to go to that spot in the Sandhills and dig the fracking sand up? [LB546]

COURTNEY DENTLINGER: We do. One of the ways that we do that, currently in the Nebraska Advantage Act, it lists the specific activities and types of businesses that qualify. And even in this bill, when we flip the model and instead have the presumption that companies will qualify and activities will qualify unless we specifically indicate that you wouldn't...that these (inaudible) wouldn't qualify, we look at things that have to be location specific to the extent that we can. Senator Groene mentioned earlier, retail, you have to be there. Retail is going to come to where the customer is. Nebraska Advantage doesn't apply to your retail unless 75 percent of their sales are actually outside the state of Nebraska. We also don't utilize Nebraska Advantage for things like mining unless it's a headquarters operation. Headquarters we treat a little differently because headquarters could be located in a number of different locations. But mining is specific to the where the resource is. So we try to do that. It's not perfect and we'd be, certainly, open to any thoughts or suggestions you might have. [LB546]

SENATOR SCHUMACHER: So you just raise the issue that retail doesn't qualify unless 75 percent of their sales...well, of course, somebody like a large chain saw...chain saw...chain... (laughter) chain store they will qualify because Nebraska is just a little smidgeon of their overall sales, but "Joe's Retail" who is 100 percent Nebraska won't qualify. [LB546]

COURTNEY DENTLINGER: We're only looking though at those operations that are located in the state of Nebraska. So we certainly have Walmarts all over the state; their headquarters is in Arkansas. They wouldn't qualify for the program. Their distribution center over here, did, but that's separate; that's distribution and logistics. Cabela's, however, because that is their headquarters and because of their catalogue and Internet sales, 75 percent of those sales are outside of the state of Nebraska and so a company like Cabela's would qualify, but that is the type of company you would want to locate here. [LB546]

SENATOR SCHUMACHER: Now, folks in your department, folks in the Revenue Department get to see the numbers and know the companies. But the folks on this end of the spectrum that are actually got to make a decision as to whether or not these programs are good by our own

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

fault say we can't see the numbers, we can't get into the data. How can we fix that so that the decisionmakers on this committee, it won't affect me very much because I'm out of here soon, so is Senator Harr, but the folks that remain behind can get the true...and Senator Smith, the true picture of what's going on here to make a decision. I mean, would it kill us to have some confidential review process by the Revenue Committee that has access to the true skinny? [LB546]

COURTNEY DENTLINGER: No, and I think that's part of what's trying to be accomplished here where we can actually collect more of the data, particularly through the Department of Labor, so that's available. It's interesting, Senator, that you say, you know, that I get to see the data and Department of Revenue, I can't tell you how many conversations I have with Commissioner Fulton where he says--how can I say this? What can I tell you? Nope, I can't tell you that. He's not even able to tell, per the existing statutes, a fellow department head, some of the information. We're privy, as the Department of Economic Development, only to information that the companies share with us. And so we don't manage all of those applications, Department of Revenue does. But we are trying to address that by actually gathering more data so that we can answer Department of Economic Development, Department of Labor, Department of Revenue the questions the Performance Audit Committee have. [LB546]

SENATOR SCHUMACHER: Shouldn't there be some mechanism where the Revenue Committee can get the core data and does not have to guess or, when I say take somebody's word for...so we can give a critical analysis as to whether or not that company would indeed be mining that sand in the Sandhills rather than saying, gee, let's just presume that that was okay and we'll count those jobs as a result of the act rather than the quality of the sand. [LB546]

COURTNEY DENTLINGER: I think, absolutely in the aggregate there needs to be more data that's able to be shared with the Legislature. Companies do have an interest in keeping some confidentiality. And I think there are a few companies and chambers that are here to testify today that can share their specific concerns, but we do need a bit more transparency. We want to be able to measure the effectiveness of the program, answer questions that the Legislature has with respect to the effectiveness of the program, and make sure that we're making good decisions when we are changing the program to ensure that we have it very specifically targeted to those businesses that we want to see grow in the state, recruit to the state, and that that wouldn't just happen naturally. [LB546]

SENATOR SCHUMACHER: Thank you. [LB546]

COURTNEY DENTLINGER: Um-hum. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SMITH: Thank you, Director. I don't see any further questions. [LB546]

COURTNEY DENTLINGER: Okay. [LB546]

SENATOR SMITH: Thank you for your testimony. [LB546]

COURTNEY DENTLINGER: Thank you, Senators. [LB546]

SENATOR SMITH: All right, we move to the next proponent of LB546. Welcome. [LB546]

GLEN WHITE: (Exhibit 2) Thank you. Chairman Smith, members of the Revenue Committee, my name is Glen White, G-l-e-n W-h-i-t-e. I'm the Deputy Tax Commissioner with the Department of Revenue. I'm here to testify in support of LB546 which was introduced by Senator Watermeier at the request of the Department of Revenue and the Department of Economic Development. LB546 would simplify the application and administrative aspects of the Nebraska Advantage Act by amending three areas of the program that caused some of the delays in approval of applications and benefits earned under the act. The three areas that this bill addresses are the concepts of qualified business, project, and the process for qualifying for benefits. Currently, under the Nebraska Advantage Act, there are only certain kinds of businesses that are eligible for benefits under the program. This requirement means that the Department of Revenue, before approving an application, must first determine which of the activities the business is conducting are qualified and which are not. Once the qualified activities are identified, we have to do a project definition. The program requires that a project be defined by the applicant through the application process. This can take a considerable amount of time. An applicant may want to include only a portion of the qualified activities at a given location. Applicants do this because they may be expecting a decrease in one activity at the location while they expect an increase in another activity at the same location. An applicant must create a project definition that clearly establishes which activities are in and which activities are out so that increases can be computed. In many cases, the applicant's recordkeeping system does not differentiate between the different activities because the location would have been treated as a single cost center for routine financial reporting purposes and may not have detailed information at the department level. As a result, even though the applicant can change its recordkeeping process going forward, computing what's called the base year is difficult. The reason for this is that the base year will have already occurred before the applicant modified its recordkeeping system in order to track the activities that were taking place. This bill solves all of that by simplifying the process of defining a project. Rather than having each applicant define its own custom project, the applicant must elect to either measure investment and employment growth statewide or to measure investment and employment growth in one or more development regions. This process insures that there will be increases either statewide or within one of the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

regions. The applicant will simply be able to check the appropriate boxes on the application. The tedious process of defining a customer project by activity will no longer be necessary. Since virtually all applicants keep records by location it will be much easier to calculate the base year and current year levels of investment and employment. Also, it will no longer be necessary to restrict projects to locations that are interdependent with each other. Qualified locations are all locations in the state or development region of the company where the predominant business activities that take place are not disqualified. The predominant business activities at any location are determined based upon the, what's known as the North American (Industry) Classification System, commonly referred to as NAICS code classifications. This is a well understood, universal standard. The current system is not as well understood and is unique to Nebraska. The NAICS classification is determined by the primary business activity at a single physical location: factory, mill, store, hotel, movie theater, mine, farm, sale office, warehouse, or central administrative office. The only question is: What is the predominant activity at this location? This predominant activity either qualifies the location or it doesn't. If it does, everything that occurs at that location is in and there is no need to establish interdependence and no need to separate payroll or expense information between the project activities and those occurring at the location that are not part of the project. Currently, the NAICS system is used for unemployment insurance purposes. As a result, information reported to the Department of Labor can be used for purposes of tracking hours. This will allow both the department and the taxpayer to more easily track employment levels. It will also significantly improve the Legislature's ability to evaluate the incentive program. Using NAICS will make the program much more transparent and understandable. While there are some differences between the current Nebraska Advantage Act definitions of a qualified business and the NAICS code classification, the intent in the drafting was to match the current qualified and nonqualified business activities as closely as possible. It was not our intent to change the types of businesses that qualify for benefits whatsoever. However, discussions and comments since LB546 have shown that headquarters operations, specifically, were not completely and accurately defined by the NAICS system. For most businesses, this is not an issue because often the headquarters are located at a facility whose predominant activity is a qualified business activity anyway. However, that is not always the case. The amendment that is attached to the back of my prepared remarks would add the current Nebraska Advantage Act headquarters language to the definition of qualified business in LB546. Amendment number two cures this shortcoming in LB546, while amendment one also would reinstate some provisions currently in the Nebraska Advantage Act that allow two kinds of off-site employees to count as new employees, the teleworker provision and those working at military installations. The other simplification aspect of LB546 is the option to dispose with the qualification audit by the Department of Revenue. Currently, the department must examine all the payroll and expenditure records of the company to determine if it has met levels and determine the amount of credits and refunds they have earned. Under LB546, the department will switch to a certification process where the taxpayer can elect to either have the department conduct the certification or hire a third-party CPA firm to do that. They can examine the records

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

and certify that the company has met levels and is qualified to receive benefits. The certification will involve a sampling of a limited number of transactions to determine an error rate. The acceptable error rate will be determined, in part, by reference to the amount that the taxpayer is over levels. The higher the taxpayer is over levels the higher the acceptable error rate will be. If the error rate is within acceptable parameters, the schedules will be certified and the taxpayer can claim benefits. The department would then audit only some of the Nebraska Advantage beneficiaries. The simplification will speed the process of receiving benefits and reduce costs associated with the current audit process for both the department and the program participant. That completes my prepared testimony. If you have any questions, I will be happy to answer them [LB546]

SENATOR SMITH: Thank you, Mr. White, for your testimony. Senator Harr. [LB546]

SENATOR HARR: Thank you. Thank you, Mr. White. I find it ironic that your name is a color, because I think you're color blind, maybe. Explain to me what your job is. [LB546]

GLEN WHITE: I'm the deputy tax commissioner with the Department of Revenue. [LB546]

SENATOR HARR: Okay. Do you work with the Nebraska Advantage Act? [LB546]

GLEN WHITE: Yes. [LB546]

SENATOR HARR: Okay. And are you probably the expert on the Nebraska Advantage Act in that department? [LB546]

GLEN WHITE: I'm not sure I'm the expert. There are several folks who are...well, there's at least one or two in the actual incentives group that are probably more familiar with it than I am. [LB546]

SENATOR HARR: Okay. So why are you here instead of them to discuss the changes? [LB546]

GLEN WHITE: Why am I here instead of them? [LB546]

SENATOR HARR: Yeah. [LB546]

GLEN WHITE: I'm not sure how to answer that question. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR HARR: Well, I'm trying...okay, well, let's move on from that. Do you understand the public policy reason behind the Nebraska Advantage Act? [LB546]

GLEN WHITE: The public policy reason? [LB546]

SENATOR HARR: Yes. [LB546]

GLEN WHITE: Yes. [LB546]

SENATOR HARR: Okay. Could you, for the record, state what that is? [LB546]

GLEN WHITE: It's to increase jobs and employment investment in Nebraska. [LB546]

SENATOR HARR: Okay, thank you. And do you get to look at the actual numbers for the businesses in the Nebraska Advantage Act? [LB546]

GLEN WHITE: Actual numbers, what do you mean? [LB546]

SENATOR HARR: The numbers that come in as far as new jobs that go into how much money is given back for incentives and all that stuff. [LB546]

GLEN WHITE: I see the refunds and benefits, yes. [LB546]

SENATOR HARR: Okay. Because we don't necessarily get to see that. So let me ask you this, because you have more knowledge than we do, but we're the policymakers, so I don't know. How do we address the gap between public policy and the actual business behavior? Because I think there's a...there might be...is there a disconnect, I guess is the first question, between what the public policy reason is and, you know, as Senator Schumacher said, there are people that were going to come here anyway, so how do we address that disconnect? [LB546]

GLEN WHITE: Well, so you mean the goals of the program to increase employment investment in Nebraska? [LB546]

SENATOR HARR: Well, I guess probably the easiest way to say this--how do we determine between what is growth that was driven by the incentives and what is just organic growth? [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

GLEN WHITE: Yeah. So that's the but/for test. Right? And I'm not sure anybody is going to be able to answer exactly that question because it's hard to say after the fact would they have come or not. And I think we have lots of economists that research that issue quite a bit. And in fact, I think we have a...we have some information in the annual report that goes into sort of what the economic results of the program are. And I would have to rely on that and our research group that come up with that. I'm not qualified to...I'm not an economist, I'm not qualified to exactly answer that question. [LB546]

SENATOR HARR: That seems to be our problem because we can't figure that out. No one seems to have that answer. My next question is, did you do the fiscal note on this bill? [LB546]

GLEN WHITE: No. [LB546]

SENATOR HARR: Okay. I'll let it go then. Thank you. [LB546]

SENATOR SMITH: Senator Schumacher. [LB546]

SENATOR SCHUMACHER: Thank you, Chairman Smith. And thank you for your testimony. Are the changes in this bill projected to increase or decrease the amount of tax expenditures under the Advantage Act? [LB546]

GLEN WHITE: I think it's to stay the same. [LB546]

SENATOR SCHUMACHER: Okay. Does it address the issue that we saw a few years ago with an employer...I mean, it was supposed to be to create high-paying jobs, which ended up being \$11, \$12 an hour. And...employment, and this particular Advantage Act beneficiary come Christmas time they were short on the required FTEs so they contacted all the school kids they had working for them, college employees, and said come on in, we have to meet our FTE requirements; we'll even throw in a little extra money in it at the end of the year so we get our numbers up. Clearly, not what was intended under the act. Anything in here that allows you to say--wait a minute, that's not what was intended? [LB546]

GLEN WHITE: So, LB546, although it does curb some of the potential for gaming the system, it doesn't quite address some of those issues. [LB546]

SENATOR SCHUMACHER: On page 45 of the act, of the same language I asked Senator Watermeier about, where it says that the employees' withholding...this is line 4....employees withholding does not constitute a public fund...or state revenue does not constitute a trust fund

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

owned by the state. The use by the taxpayer of the credit does not change the amount that the taxpayer can tell the state...reported by the taxpayer to the employee under this section is income tax withheld nor does it reduce the amount that will be allowed by the state as a credit on the employees' income tax return. What has that got to do with any of this other stuff? [LB546]

GLEN WHITE: Well, that's the provision that allows the...oh, and you may know this, that's the provision that allows the employer to take withholding from the employees and instead of paying into the state, keep it in satisfaction of the credits that they have...compensation credits that they have. [LB546]

SENATOR SCHUMACHER: Okay, but in the case of all other employees of companies, that money is held in trust by their employee for the state. [LB546]

GLEN WHITE: That's correct. [LB546]

SENATOR SCHUMACHER: And these employees who are not...didn't apply for anything under the Advantage Act, they're just ordinary employees, why are they treated differently? [LB546]

GLEN WHITE: The...I think the concept with that was to allow the employer to more easily utilize the compensation credits. [LB546]

SENATOR SCHUMACHER: So before this provision in the act, was this not being properly done under the act? Why do you need the additional language? [LB546]

GLEN WHITE: The additional language is to...because withholding... [LB546]

SENATOR SCHUMACHER: Okay. [LB546]

GLEN WHITE: ...is a trust fund held by the employer. And so the language in this act was to "untrust" fund it so it wouldn't be a trust fund. [LB546]

SENATOR SCHUMACHER: So up to this point, in fact, to this day that money is state money that is owed to the state of Nebraska that hasn't been sent in by the employer? [LB546]

GLEN WHITE: Right. And so this provision, what it does, is it...and so that the employer doesn't have to apply for a refund from the department, they just keep the money. So that's what this language does. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SCHUMACHER: Up to this point, have they been really sending in the money or have they just been keeping the money? [LB546]

GLEN WHITE: Up to...and this was part of the...I think they're part of the original LB312. [LB546]

SENATOR SCHUMACHER: This is underlined, so this is new language. [LB546]

GLEN WHITE: It is, and I think that this language was taken out...is part of the original act, LB312. [LB546]

SENATOR SCHUMACHER: This trust fund language? [LB546]

GLEN WHITE: I believe it is, yes. [LB546]

MARY JANE EGR EDSON: Yes. [LB546]

GLEN WHITE: So this is part of the original LB312. LB775 didn't have this provision, that came in with LB312 and the intent behind this provision was to allow employers to, instead of having to file a refund claim for the withholding monies using credits, they would just be able to keep it. [LB546]

SENATOR SCHUMACHER: If you could find me the...in the act that's enforced now, this language, and you don't have to do it now, I'd appreciate it, because it seems to me that if this language is needed on page 45 and if it's new then the state has got a claim against those employees...employers who have withheld that trust money from the state. [LB546]

GLEN WHITE: And part of the language is, and I haven't read this in its entirety, but I believe that part of this language says is that the employee can still get credit for whatever was withheld. [LB546]

SENATOR SCHUMACHER: But up to this point, if that's new language, then that's a change and somebody owes the state a lot of money for that withheld money that was not authorized. [LB546]

GLEN WHITE: And I understand what you're saying. I believe that this is not new. I think this from LB312. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SCHUMACHER: Well, if you show me where this particular language. [LB546]

GLEN WHITE: Certainly. [LB546]

SENATOR SCHUMACHER: I'd appreciate that. Thank you. [LB546]

SENATOR SMITH: Thank you, Mr. White, and just for the record, page 40, line 17, you'll find that original language where it begins. [LB546]

GLEN WHITE: Thank you, Chairman. [LB546]

SENATOR SMITH: Senator Friesen. [LB546]

SENATOR FRIESEN: Thank you, Chairman Smith. Mr. White, you were talking about if...I would assume, and you'll have to, since I don't have much knowledge of the Advantage Act, you were talking about a company that maybe is located in the state and they want to expand into other areas of the state and so they may chose to go into what you call different regions. [LB546]

GLEN WHITE: Yes. [LB546]

SENATOR FRIESEN: So you're going to track each region separately. And so... [LB546]

GLEN WHITE: If they apply that way. They can also apply for a statewide project as well. [LB546]

SENATOR FRIESEN: Right. So if they would choose to do a region, as they move jobs into that new region and qualify in that area but they're lowering the number of jobs over here, does that...how do you...are those treated separately or differently? [LB546]

GLEN WHITE: So, I understand your question is that...so if they...if they have an activity in, let's say Omaha, and then they're doing something else in Grand Island and so those are two different regions and they have two different...they have a project application for just the Grand Island region, they would be able to do their expansion in Grand Island and get credit for that despite reductions in Omaha. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR FRIESEN: So if they were actually moving jobs from Omaha to Grand Island, they're getting credit for those same jobs? [LB546]

GLEN WHITE: Yes, but they would not, if they had an existing employee in Omaha that they hired to move Grand Island, they would not...that would get added to the base year they would not get credit for that. [LB546]

SENATOR FRIESEN: Okay. Couldn't be a...you're going to track the employees and make sure they didn't just move. [LB546]

GLEN WHITE: Correct. [LB546]

SENATOR FRIESEN: They would be new hires. [LB546]

GLEN WHITE: That's correct. [LB546]

SENATOR FRIESEN: Okay. So in the big picture of the whole program when you're changing it, I know in the...when they did the audit, it looked like there were a lot of tax credits left over that companies were unable to use. Would this make it easier for them to use their earned credits at all? [LB546]

GLEN WHITE: I don't believe so. This bill...the goal of this bill was to simplify but keep it revenue neutral. And so it doesn't really give any additional benefits. So if...and if you look at the entire population of the incentive, you know, companies that are in it, you have some that are able to use pretty much 100 percent of their credits, and then others that use a significant...or lose a significant portion of them because they expire. [LB546]

SENATOR FRIESEN: And they earn the credits but couldn't use for whatever reason. [LB546]

GLEN WHITE: That's correct. And what we see is on the compensation credits, those are more fully used because you have the extra avenue of using them against the withholding. Whereas the investment credit, you'll notice that those are the ones that expire the most. And if you look at the annual report, you'll see that...and this is on page 17, and you'll see that the investment credit is quite significantly greater than the compensation credit. I think it's around \$550 million or something; the compensation credit is only \$118 million, \$119 million. So there's a lot more of the investment credit being created than the compensation credit. And we see a lot more expirations on the investment credit. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR FRIESEN: And so they just didn't earn enough income that they could offset those credits? [LB546]

GLEN WHITE: That's correct. And so you'll notice that companies that have a large conglomerate with lots of income tax will be able to more fully utilize those credits than something than a smaller one. [LB546]

SENATOR FRIESEN: Okay, thank you. [LB546]

SENATOR SMITH: All right, thank you, Mr. White. I don't see any further questions. Thank you for your testimony. [LB546]

GLEN WHITE: Thank you. [LB546]

SENATOR SMITH: Next proponent of LB546. Welcome. [LB546]

TONY FULTON: (Exhibit 3) Thank you, Mr. Chairman. Chairman Smith, members of the Revenue Committee, for the record my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I'm the Tax Commissioner for Nebraska. I speak in support of LB546, introduced by Senator Watermeier. One of the first things I heard when I became the Tax Commissioner is that companies seeking tax incentives in Nebraska have to hire lawyers, accountants, or consultants just to apply for and receive those tax incentives. If the goal is to entice businesses to the state requiring them to hire outside experts, probably hurts our efforts; and I've heard this numerous times, in fact, I heard it this morning. One of my goals as Tax Commissioner is to change that. I hope to simplify the process of applying for tax incentives. I want to reduce the cost of administering tax incentives, as well as the cost to applicants. And finally, when these companies do what they've promised and invested in increased employment in Nebraska, I want to simplify the process they go through to claim the benefits to which the law entitles them. LB546 simplifies this process. It was developed based on several meetings with representatives of the business communities, as well as the Departments of Economic Development and Labor. Some of these ideas, like using NAICS codes to determine qualified businesses and an alternative to qualification audits, came originally from the business community. LB546 is a step along the path to simplification, but I see that this may well be a longer path than I'd hoped, because I understand there is some concern with LB546 by members of the business community. Our aim in putting this bill forward was to simplify the statute while maintaining the status quo with respect to cost and the companies who qualify presently. So, certainly, if we collectively in the drafting of this legislation have erred in that, certainly we want to make that right. And Senator Watermeier touched on this that we certainly are open to working on that. That concludes my testimony. Just an explanation for the committee, Glen White, our Deputy Tax Commissioner, I asked him to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

come in first here to speak just because he's being humble, Senator, he actually is very knowledgeable about tax incentives and I put him right up there with anyone, that's one of the reasons why he's the deputy. But that being said, I'm going last so we can, hopefully, talk about things, more of your policy questions. Anyway, so I'm here; glad to answer your questions. [LB546]

SENATOR SMITH: Thank you, Commissioner Fulton, for your testimony. Do we have a question for the Commissioner? Senator Friesen. [LB546]

SENATOR FRIESEN: Thank you, Chairman Smith. I guess, going off of what Senator Schumacher was looking after and Senator Harr, I mean, is this going to give us more knowledge, I guess, to make decisions? Or do we still have to depend on whatever data you feed us...how do we make it more transparent so that we know that we're accomplishing what we want? [LB546]

TONY FULTON: Yeah. If nothing happens, then...I mean, if no bill is advanced this year, then, you know, nothing changes. There are...and this bill isn't specifically designed for that, but having utilized NAICS codes for instance, providing information to the Department Labor, some of that information is able to be seen by those outside the Department of Revenue. So that's one part of the answer. The second part, I will point out, that the Legislature does have access to this data through the Performance Audit's legislative Audit Office and that's part of the way that...well, that is the way that their report was able to be compiled. So with respect to branches of government anyway, the Legislature has that access through that limited, and that's statutory...that exists today. But I...having sat in your seat, I can see the difficulty. That's the way the statutes are and we...you know well in this committee we...the Department of Revenue recognize confidentiality and with respect to incentives have to honor the statutes. [LB546]

SENATOR FRIESEN: So do you think all the...the Nebraska Advantage Act, if we make these changes and it's as good as we can get for what we're doing as far as attracting companies, creating jobs, have we reached that level where we're satisfied? [LB546]

TONY FULTON: If LB546 were to move forward, first of all, I want to be clear that...and just for pragmatic purposes alone, it will make more sense to have those most affected by it, the business community as well taxpayers, there needs to be buy-in. And so I just want to be clear that there needs to be an agreement on the bill. That being said, LB546, if it were to move forward, I'm not saying that this will...this is not a cure-all. This is a step to the simplification of the process. I mean, you've seen the statutes, they look different when they're being looked at by the lens of policy than if you are applying and experiencing the act or, in my case, administering the act. I'm telling you, there's complexity here. And this is part of the reason why we have...why

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

there is time to get through the Nebraska Advantage Act, I think why we're hearing...why I'm hearing from businesses. Does LB546 solve all this? I can't possibly go that far. But I do think it's a step to simplification. [LB546]

SENATOR FRIESEN: Would you say it's almost impossible to tell if a company is going to come here or not just because of this? I mean, and I don't know if you can design something where you can weed that out. [LB546]

TONY FULTON: I thought about this long and hard. I don't believe that one can...that's a judgment call. I mean, really, that becomes a subjective judgment on the part of the person who's making the judgment. So if Company X is based in Nebraska and they expand and qualify for Nebraska Advantage and take advantage of the benefits of Nebraska Advantage, well, would Company X have done that anyway? You'd have to get in...first of all, you'd have Company X to know that for certain for...to be a senator and make that determination, that's a judgment call. And those are pretty hard to put into the statute. Yeah, best I can give you. [LB546]

SENATOR FRIESEN: Thank you. [LB546]

SENATOR SMITH: Senator Schumacher. [LB546]

SENATOR SCHUMACHER: Thank you, Senator Smith. Thank you, Commissioner Fulton. You've been on this side of the table and you know the struggles that we have and how those intensify when you get into a financial pinch. It almost appears now that we have several hundred million of these credits, which may or may not be claimed, but probably will if the businesses are clever enough to merge with somebody, to juggle their profits from one state to another in order to make the claim against those credits within whatever time they have. So if we have a few hundred million of tax liabilities out there...or state liabilities with one of these credits. And as I understand it, we have very little control over when they're cashed in. If the business is sitting on a pile of them and decides that this is the year to trigger some profits or just gets lucky and it's a year of profits and wants to cash them in, they're cashed in and that impacts our cash flow without any ability on our part to say, wait a minute, so many dollars worth of credits have been cashed in this year, you haven't cashed yours in yet, you're going to wait a year. And it looks like from the numbers that our corporate tax receipts are way down, that our corporate refunds are down, lots of these things that...just in ruffling through the numbers almost looks like on the order of a hundred million dollars of our present headache is due to the unpredictability of these credit programs and the biggest one, of course, is this one. How do we deal with that so we can say, wait a minute, don't go ahead...if we've got several hundred million of these things laying around, don't go ahead and hit them on us one year, so we got some

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

control. And should that be in here now that...it might be a lack of control is pinching us pretty tight. [LB546]

TONY FULTON: Yeah. Excellent question. The...this happens through the statutes. If that were...if that level of control...the only way that can happen is through the statute. So... [LB546]

SENATOR SCHUMACHER: So if what I described is accurate, and I'm not playing an accountant and I don't guarantee what my impression is accurate, but it looks to me it may be, that we need to, if we're going to do something this year, and we're going to try to protect ourselves from unpredictability and have, basically, a huge demand note that's sitting out there, we should probably put something in either this one or some of the other Advantage Act-like bills that are there so we don't get surprised. [LB546]

TONY FULTON: Yeah, Senator, that's not what LB546 contemplates. That's not included in LB546. I just wanted to respond to your question--how does one make predictability with respect to refunds being claimed. That doesn't just apply to Nebraska Advantage by the way. I mean, there are...we talked about this yesterday, you...very late, deductions, what deductions are taken, which ones are, which ones aren't, sometimes they do take them, sometimes they don't, sometimes there's a refund to which one is entitled and he doesn't claim it, that happens throughout the tax code. A way to control that is through the statute. I don't pretend to know how to control that. But you put forward a problem that's not just relegated to Nebraska Advantage. [LB546]

SENATOR SCHUMACHER: But it is kind of, because a deduction, only a dollar deduction will only get you 7 percent whammy on the tax bill. A dollar credit under the Advantage Act gets you a dollar whammy under the tax bill and that's a lot more than 7 cents. [LB546]

TONY FULTON: Yeah. [LB546]

SENATOR SCHUMACHER: And so...I mean, to the extent what we're seeing in the...in corporate tax submissions and refunds is tied to the Advantage Act, we need some controls so we aren't surprised by this. [LB546]

TONY FULTON: Yeah, I don't have advice for you on there in that respect, Senator. We cannot do it on the executive branch. The only way I can envision that is through the statutes. And even then, I don't know how... [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SCHUMACHER: And I recognize the only way is through the statutes, but was kind of trying to pick your brain here as to whether or not we should get our thinking caps on and figure out how to put some of those controls in these bills, which I think are within the scope of these bills, to protect us from the kind of mess that we're, apparently, sitting in. I think the presumption has been that this is due to a normalization of the ag economy from the unexpected peak from a few years ago. But maybe the hard numbers suggest that it's due to the Advantage Act. Do you know, that's a good question. [LB546]

TONY FULTON: I think there's...I think that the majority...I don't know the...with precision, I don't that it can be known with precision. I think you can make the argument you're making, but generally receipts to the treasury, this is...I say it and people get bored with the response, but it's commodity prices; it's the margin a farmer can make on his product. I mean, that's... [LB546]

SENATOR SCHUMACHER: So you don't think it's the Advantage Act? [LB546]

TONY FULTON: I'm sure the Nebraska Advantage Act has something to do with it, but it's not nearly the scope that that would be for farmers on incomes and how much they can earn. [LB546]

SENATOR SCHUMACHER: Are the farmers then going back and carrying the loss back and picking up some of the taxes they paid for two, three years ago? Have you looked at that at all? Maybe this is beyond the scope of this bill. [LB546]

TONY FULTON: Yeah, we would have that information. I can't answer it, I'd have to look at it. [LB546]

SENATOR SCHUMACHER: Thank you. [LB546]

SENATOR SMITH: Senator Harr. [LB546]

SENATOR HARR: Thank you. Thank you, Commissioner Fulton. You were here for Senator Watermeier's opening. [LB546]

TONY FULTON: Yes. [LB546]

SENATOR HARR: And you heard the question I asked if he was willing to work between my bill and your bill to try to find a solution. He said yes. Did you hear that? [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

TONY FULTON: Uh-huh, sure. [LB546]

SENATOR HARR: And I would ask you, are you willing to try to find a solution with the business community and with my bill as well? [LB546]

TONY FULTON: Most certainly. [LB546]

SENATOR HARR: And probably with the cities as well. I see Mayor Kindig behind you. [LB546]

TONY FULTON: I'm willing to work...as you well know, I think I'm pretty easy to work with. And also for the record, I think I had this in my testimony, but if not it needs to be emphasized. For several months, we did...our departments did work with members of the business community, economic developers, I mean, there was a lot of time put into this bill. [LB546]

SENATOR HARR: It went back to last summer, right? [LB546]

TONY FULTON: Indeed. Indeed. At the end of the day, we weren't able to come to...now clearly, we've not been able to come to a place...to come to an accord such that we have a bill before you, but I submit to you that a lot of what's in this bill has been discussed. And so to the end that we can get...if we can get to an accord where we all agree, I absolutely would like to, because from day one I talked with many of you senators, we've got to simplify Nebraska Advantage and that is...I'm going to keep saying that until we... [LB546]

SENATOR HARR: We're the say way as a body on rules right now. And I think the important thing just to keep talking. I appreciate that you're doing that. Thank you. [LB546]

TONY FULTON: Thank you, Senator. [LB546]

SENATOR SMITH: I see no further questions. Thank you, Commissioner Fulton. [LB546]

TONY FULTON: Thank you, Mr. Chairman. [LB546]

SENATOR SMITH: Next proponent of LB546. I see no additional proponents. We will move to opponents, those wishing to testify in opposition to LB546. Seeing none, we're going to move to neutral testimony, those wishing to testify in a neutral capacity on LB546. Welcome, Mayor Kindig. [LB546]

DOUGLAS KINDIG: (Exhibit 4) Good afternoon. Senator Smith and members of the Revenue Committee, I'm Douglas Kindig, K-i-n-d-i-g, mayor of the city of La Vista. I appear before you today on behalf of the United Cities of Sarpy County, which include Gretna, Springfield, Papillion, and La Vista. While we generally supported and understand the need for economic development incentives, I'm here today in a neutral capacity to share with you our concerns about the impact the Nebraska Advantage Act and its predecessor, the Employment and Investment Growth Act program have had on municipal jurisdictions throughout the state. As you know, several bills that relate to Nebraska Advantage have been introduced this session. To be frank, I can't speak to the merits of all of the proposals as there is so much we don't really understand about the program and where it may be heading, it makes it difficult to anticipate the impact of the proposals that you will be considering. What I can tell you, however, is that none of the proposals appear to address transparency which is what we believe to be the most significant deficiency in this program. Those of you who have been around for a while have likely heard me address the general lack of transparency in the state's incentive programs on multiple occasions. I can speak from first-hand experiences of the consequences of these programs that have affected the city of La Vista. Specifically, since 2014, we have had or are aware of approximately \$6.5 million in sales and use tax revenue that has been or will be withheld from the city. To give you some perspective, our current 2017 general fund is \$15.8 million; \$6.5 million is over 40 percent of our total annual budget for the city's general municipal services. Because we aren't provided with any program related information from the state until refund claims are actually made, it remains a challenge to anticipate such significant blows. In 2014, we went several months without receiving any sales tax revenue. As a result, we have found it necessary to set aside a significant portion of our sales and use tax funds in order to sustain our operation when claims are made. Having such a reserve for something completely unknown is challenging for a couple of reasons. How do you do long-range financial planning when one of your major sources of revenue--30 percent of our general fund budget--is so unpredictable? When we have to guess at how much money is necessary to reserve we lose the use of funds. So maybe there are some street repairs, maybe there's equipment, maybe there's a major sanitary sewer that we have to take care of in an older section of our town. How do we explain to the taxpayers why we have such a large reserve and we're not able to use it for those reasons and possible property tax relief? Over the many years we have been talking to you about the state's tax incentive programs, the United Cities of Sarpy County have remained staunch advocates of greater accountability and transparency. Our governing bodies take very seriously our responsibility to plan for and provide the essential municipal services that we need to be able to understand the availability of our resources. We hope that as you review and discuss these incentive programs, that you will work to ensure greater accountability and transparency. And, yes, Senator Harr, I had added a extra line during my testimony which said: If this bill is to be held, I ask Senator Watermeier and all the state departments to not only work with the business community, but with all city, villages, and townships in crafting a working proposal. Thank you

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

for your time and consideration this afternoon. I'd be happy to try to answer any questions you may have. [LB546]

SENATOR SMITH: Thank you, Mayor Kindig. Senator Schumacher and then Senator Harr. [LB546]

SENATOR SCHUMACHER: Thank you, Chairman Smith. Thank you for your testimony Mayor. Some of the, I would guess, bigger Advantage Act type programs have landed in your general area of the cities that you represent. When those programs are proposed and those companies are looking at the area, are you involved in the Advantage Act application process, encouragement process? Do you have a role? Do you have any better insight of what's going on than what we do? [LB546]

DOUGLAS KINDIG: No, sir. We...in July a report is put out which tells us the businesses that have been approved for the act. So once a year in July that report is put out. We do not hear from the state again until we receive a letter, which we got one last week for \$1.1 million, that that sales tax will start to be taken out of our monthly revenue sources. So we are not at the table at the beginning, Senator. [LB546]

SENATOR SCHUMACHER: You're obviously one of the fastest growing areas of the state. And probably destined, if the demographics look right, to continue that way for some time. [LB546]

DOUGLAS KINDIG: Hope so. [LB546]

SENATOR SCHUMACHER: Would these businesses settle there anyway without this or if we just did a general elimination of the corporate income tax? [LB546]

DOUGLAS KINDIG: I believe some businesses would have come anyway. I believe there's other businesses out there...and I have permission to talk about YAHOO publicly. They've been a great community partner. They have tried to help us understand how many credits that they have claimed. They don't come to Nebraska without Nebraska Advantage. They've got other choices. A data center can be put really where the communication infrastructure is in place. Nebraska is attractive because of Offutt, but they've also moved their trucking operation here and that had to do also with Nebraska Advantage. So how do you measure that? That's a question I ask, Senator. Of the seven questions that the committee had on the performance audit, they weren't able to get answers on five of them because of lack of information or funding information. If I had that concern, you have to have that concern. Financially I'm in for 1.5 percent, you're in for 5 percent.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

So we have to be able to have that information at all levels of government to be able to make the decisions. [LB546]

SENATOR SCHUMACHER: Well, like the employees that may be employed there, if they take...we say, well, the employees are paying taxes and even though we're giving the corporation the tax break, but if the employer is keeping the employees' withholding, those employees aren't paying taxes, at least income taxes. [LB546]

DOUGLAS KINDIG: Yeah, and that is a little out of my knowledge level on that, sir. Until today I really wasn't aware of some of those issues. [LB546]

SENATOR SCHUMACHER: Thank you very much for your input. [LB546]

SENATOR SMITH: Senator Harr and then Senator Friesen. [LB546]

SENATOR HARR: Thank you, Mayor Kindig, for taking time to come down here today. Cheaper, faster, better, simpler is the mantra of business and of the economy. And I've heard several times proponents speak about, this is a simpler bill that simplifies the process. Does it simplify it for you and if it doesn't, what would you recommend? [LB546]

DOUGLAS KINDIG: I don't feel it does simplify it for the cities. You've heard today from testifiers that this is a bill that simplifies it for the businesses, simplifies it for the Department of Revenue, for the Department of Economic Development. I don't think it does anything for our cities. If I had a wish list, Senator, on how Nebraska Advantage could be most beneficial for the cities, you have heard me many times testify in favor of incentives. Incentives need to be investments, not giveaways. You've all heard that. But to make this bill the best, in my opinion, I think the bill should be under one roof. I think it should be under the Department of Economic Development. I think the Department of Revenue should be the auditing arm of this bill. You've heard today the Department of Economic Development say that they can't get information. Well, if they can't get it, how can they share it us. So number one, I would put it under one roof to try to simplify it so that all the information can be used to judge this program. Number two, they say that they don't have a great way of figuring out how to give good information to you. What would be wrong with asking these companies to do a quarterly, a biannual, worst case an annual report which would tell us how many credits they plan to claim at a later date? You then could take those credits, withhold that cash from your General Fund so that when they do come due the money is available. That helps your long-term shortfalls. Number three, the city should be at the table. The municipality should be at the table. I will give up any power of signing off on it. I want to know it's coming. I agree with the bill, I want to know it's coming. And number four, in the best world of law, only 1 percent of our city sales tax would be used as an incentive. As you

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

know, the state gave us the power as a city to enact a 1 percent sales tax. La Vista has 2 percent. We took advantage of the extra half cent, we took it to our voters. The penny from...and to the penny and half was for public infrastructure. That's what the voters voted on. The penny and a half to two cents that La Vista have is specifically for our 84th Street renovation. It was stated in the ballot, the voters gave us approval. Both times that the voters gave us approval, neither one of those ballot questions said anything about state incentives. I believe that the city should be able to control the voter-approved half cent and in La Vista's case, one cent. [LB546]

SENATOR SMITH: I believe Senator Friesen has a question for you. [LB546]

SENATOR FRIESEN: Thank you, Chairman Smith. You know, a lot of cities would give their left arm to have growth like you are. And so, I mean, is it the timing of the incentives? Is it...you know, by having the creation of those jobs and all the other economic activity that it creates, it's supposed to make your area better. [LB546]

DOUGLAS KINDIG: Correct. [LB546]

SENATOR FRIESEN: And yet you're right, the city is getting only 1.5 percent hit on that and the state is taking a 5.5 percent. And so you're saying though in the end that you're worse off by having the development? Is it just the timing of the credits? [LB546]

DOUGLAS KINDIG: No, we're not worse off, it's the lack of reporting so that we can plan our long-term budget, Senator. If we knew what was coming earlier...it may be three to four years before they file. [LB546]

SENATOR FRIESEN: So it's the timing of when they may come? [LB546]

DOUGLAS KINDIG: Why can't we know from the very beginning, because then we'll take out what we need to take out. We'll save. We have, but right now we're guessing. So any of our use tax that comes in on a monthly basis we set it aside. Right now we've got over \$3 million in a separate fund in anticipation of Nebraska Advantage. Now I know there's a bill in front of you that's been introduced to limit the amount of reserves that cities can carry. That bill won't even allow us to carry enough to pay for Nebraska Advantage. So we have to have the information up front so we can explain to our taxpayers, this money is spent, we are just holding it in reserve. So it is a timing issue. [LB546]

SENATOR FRIESEN: When they first apply, is there an estimate then of what kind of credits they're going to earn? [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

DOUGLAS KINDIG: No. Once a year we get a report with estimated dollar figure of project. It doesn't tell us how many sales tax credits will apply to the local level or to the state level. We don't get that until the letter comes and says, we will be withholding sales tax from you, and this body through some changes in previous years has now given us one year to plan. Okay? That's a good move. We then hit up to \$2.6 million in one year. I can't save that much in a month or in 12 months to make that up. If we knew about it from the beginning and then there were quarterly or biannual reports stating the amount that those companies plan on applying for in credits at a future date, we could put it away as we go. [LB546]

SENATOR FRIESEN: Do these companies qualify for any other programs that you may have, TIF, other (inaudible) multiple incentives? [LB546]

DOUGLAS KINDIG: They do and I'll tell you that as far as the city goes, sir, we haven't ever done a TIF program. We're going to on our 84th Street redevelopment. We would ask that question of, what other incentives have you applied for? We do that when we screen our people. So to be honest, in some cases it's probably beneficial to double dip, but in other cases the taxpayer is really the one that pays the bill for that company maybe to a greater extent than those jobs being created are worth. [LB546]

SENATOR FRIESEN: Thank you. [LB546]

SENATOR SMITH: I see no further questions. Thank you, Mayor Kindig. [LB546]

DOUGLAS KINDIG: Thank you. [LB546]

SENATOR SMITH: Next neutral testifier. Welcome. [LB546]

RENEE FRY: (Exhibits 5, 6) Thank you. Good afternoon again. Senator Smith and members of the Revenue Committee, my name is Renee Fry, R-e-n-e-e F-r-y, I'm the executive director of OpenSky Policy Institute. Fundamentally, Nebraska Advantage has become an extremely expensive program and it's not clear we are getting a good return on investment, particularly as it relates to helping to create good paying jobs in Nebraska. While we appreciate efforts to improve the Nebraska Advantage Act, we fail to see that LB546 will address these shortcomings. One of the recommendations of the Performance Audit Committee was a serious study of the factors that attract businesses to the state. We believe far more study should be done before we invest more dollars in the Nebraska Advantage Act. For these reasons we are testifying neutral on LB546. In 2013 alone, Nebraska Advantage cost \$109 million and is projected to hit this level again in the near future. Furthermore, according to tax receipts in the first half of fiscal year '16 it

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

looks like our tax incentives could be significantly more than last year. Sales tax refunds under Nebraska Advantage were \$28.4 million more in the first half of fiscal year '17 than the first half of fiscal year '16. Additionally, gross corporate income tax receipts are down \$50 million, while corporate income tax refunds have also increased \$10.8 million over the same time period, putting net receipts \$60.8 million below what had been collected in the first half of last fiscal year, although it's not clear to us yet how much of this is due to our incentive programs. In a study of business incentive programs in 30 states, Dr. Timothy Bartik of the Upjohn Institute finds that Nebraska's business incentives are greater than the U.S. average by 79 percent. He suggests that Nebraska could reduce its incentives by about 40 percent or \$80 million and still be very competitive with the rest of the country. He also notes that high incentives have been a hallmark of Nebraska tax policy going back to the 1990s. And while business taxes have been reduced fairly substantially, incentives have remained high even as business taxes in the state have decreased. Therefore, he suggests cutting our incentive programs by at least 20 percent on net and finds that we would still have above the national average in incentives and below in net business taxes. Nor does LB546 adequately focus on incentivizing high wage jobs, despite recommendations from experts in economic development such as Dr. Bartik and SRI International, who was hired by the Governor to conduct an analysis of Nebraska's economic development ecosystem, both of whom recommended that Nebraska pursue economic development policies that result in higher wages, not just new jobs. SRI found average annual pay in Nebraska to be 21 percent below the national average. Low wages are 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 \$25,709 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 program. The minimum annual wage for jobs created under Nebraska Advantage would have to equal \$43,142 to disqualify a family of three for 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 Performance Audit report. If we plan on incentivizing businesses, we need to make sure the taxpayers are receiving a good return on investment. At this time, the program seems to come at a great cost and the benefits are questionable. We would therefore recommend freezing Nebraska Advantage Act benefits before committing any further taxpayer dollars to this program. Thank you for your time. I would be happy to answer any questions that you have. [LB546]

SENATOR SMITH: Thank you, Ms. Fry. Senator Harr. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR HARR: Thank you, Chair. So you were here yesterday on LB337, is that correct? [LB546]

RENEE FRY: Yes. [LB546]

SENATOR HARR: And you testified negative on that. [LB546]

RENEE FRY: Yes. [LB546]

SENATOR HARR: If you had a choice between LB337 and incentives, which would you think is better? [LB546]

RENEE FRY: I think that there is a proper place for incentives, but I think that they need to be highly targeted and they need to be really focused on high wage jobs and R and D and development. [LB546]

SENATOR HARR: And when targeting, is the only thing we should look for is high wage jobs or are there other criteria? [LB546]

RENEE FRY: So Dr. Bartik would recommend...and I think this is in the handout that I gave to you. I would admit I am not an expert in economic development, but I look to others. And so he would recommend that we look at: customized job training tied to high wages; we look specifically to applied research grants and loans for high tech; we look at customized services and high tech initiatives for small and medium-size businesses. So he also recommends that we focus on high quality labor and labor supply initiatives. He finds that there is a high bang for the buck in investment in early childhood in terms of labor supply. He finds customized job training to be very important. He recommends...I'm trying to think of the other...I have a list actually, I'd be happy to send to the committee. He put together several different job supply and job demand policies and the return on investment for each of those, so I'd be happy to follow up and send those. [LB546]

SENATOR HARR: Sounds great. Thank you very much. [LB546]

RENEE FRY: Thank you. [LB546]

SENATOR SMITH: Senator Groene. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR GROENE: Past testimony--maybe I'm dreaming it--but didn't you say once that your research had shown some folks can actually make money off all these...if they keep multiplying these tax credits, TIF, Advantage Act, plus other incentives, federal incentives, that at the end of the day they actually get more money back than they invested, as far as the taxes they pay? [LB546]

RENEE FRY: I think you're thinking of a different bill that we testified on, which was the Opportunity Scholarship program where you could actually do that. [LB546]

SENATOR GROENE: Have you looked at some of these where they've been TIFed, also "Advantaged" Act? [LB546]

RENEE FRY: So you know, because of confidentiality... [LB546]

SENATOR GROENE: LB840 all combined? [LB546]

RENEE FRY: Because of confidentiality we wouldn't know what jobs are receiving multiple benefits. But that was something that the Performance Audit report did find and that was why the cost per job ranged up to \$320,000, because several of these companies do qualify and do receive multiple credits from different programs. [LB546]

SENATOR GROENE: Did you ever get a chance to look at my A bill on my bill? [LB546]

RENEE FRY: Yes. [LB546]

SENATOR GROENE: Did you notice that '18 and '19, there '18, '19, '20, '21, there's nothing there? [LB546]

RENEE FRY: Yes. [LB546]

SENATOR GROENE: They forgot to do the fiscal note on the Advantage Act. It looks like they only did the market. I just wanted to make that point and put it in the record. It's not in there. [LB546]

RENEE FRY: So it may be because we're still obligated so it would...so, again, I mean, I would defer to the Fiscal Office, but to the extent that it would stop further investment or further

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

incentives. So we'd still be obligated for the incentives that we currently have through the date of the sunset, but the cost savings would be in the future years for those in the later years. [LB546]

SENATOR GROENE: I don't want to take up...that's one in my bill. I just thought maybe you noticed that. Thank you. [LB546]

SENATOR SMITH: Ms. Fry. [LB546]

RENEE FRY: Yes. [LB546]

SENATOR SMITH: Go back to your testimony, you gave us a written record of it? [LB546]

RENEE FRY: Yes. [LB546]

SENATOR SMITH: You state that Dr. Timothy Bartik of the Upjohn Institute finds that Nebraska business incentives are greater than the U.S. average by 79 percent. That's an alarming claim that's made there. Tell me how that comparison is made. What are you comparing in Nebraska to that average and how is that average made up? [LB546]

RENEE FRY: So he looks at our incentives compared to our gross taxes and our net taxes. And he finds that incentives as a percent of gross taxes are 79 percent higher. [LB546]

SENATOR SMITH: Incentives specific to this act, in total? [LB546]

RENEE FRY: No, he's looking at...I think he's looking at this program and LB775 as well. [LB546]

SENATOR SMITH: And then how does he...does he then try to create a comparable by each state and create their average or, you know, I'm not certain what...how is he making that comparison? [LB546]

RENEE FRY: This comparison is...so he has been working on a report looking at 30 different states. And he has provided to us the Nebraska specific--and that's the handout that I gave you, the three pages is the analysis that he provided us in the fall--and it's Nebraska compared to the national average. He does have his report that's going to be coming out I think at the end of February. I do not have...he provided us with the Nebraska specific report and I know that he has a draft of the full report. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SMITH: That would be interesting to have that report once it becomes available. [LB546]

RENEE FRY: Yeah, and I can find out if he has a draft that could be shared with the committee at this time, too. [LB546]

SENATOR SMITH: Senator Schumacher. [LB546]

SENATOR SCHUMACHER: Thank you, Chairman Smith. And thank you, Ms. Fry, for your testimony today. These things the longer I'm here begin to look more and more like a marriage; easy to get into and kind of hard to get out of. Have any states tried to back away from these things? And, I mean, there's huge liabilities, they last for years--worse than a minor kid--the 18 years of collectability maybe, long periods of time. How do you back out of it? Has anybody done it and just gone to something simple like a reduction in the corporate tax or something that's easy, uniform, and fair? [LB546]

RENEE FRY: So the Pew had done some work looking at what states were doing, particularly in the Great Recession. States were becoming very concerned about the amount that they were paying toward incentive programs and the Pew really recommended the utilization of sunsets, regular sunsets to continue to review these programs, doing regular reviews, such as the Performance Audit review that came about, and also to do caps and capping the amount of funding that a program could put out in any given year. And those were really the main tools. I know that states have been making changes since that time. I have not looked at the literature recently to see which states are doing what, but those were the primary recommendations from Pew were those three key components. But I can certainly check with Pew and see if we can have a list of states and what they've been doing. But I know that there has been, particularly since the Great Recession, heightened scrutiny over incentives and how much is being spent on them. It's not just Nebraska, but across the country there are concerns. [LB546]

SENATOR SCHUMACHER: Because the overall thing seems to just creep forward with an extension here, a lifting of a lid here, and it's in this really hard to determine whether you're getting anything for your money or not, and if you are, how much it's costing you. Thank you. [LB546]

SENATOR SMITH: Thank you, Ms. Fry. I see no further questions. Thank you for your testimony. [LB546]

RENEE FRY: Thank you. Thanks. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SMITH: Next person in a neutral capacity on LB546. Welcome. [LB546]

RANDY THELEN: Well, good afternoon. My name is Randy Thelen, R-a-n-d-y T-h-e-l-e-n. I'm the senior vice president for economic development at the Greater Omaha Chamber. And Senator Smith, members of the committee, thank you for the opportunity today. I present today, along with my partners at the Lincoln Chamber and the State Chamber on the position of neutral with concerns on LB546. I'd like to begin first by thanking Senator Watermeier for bringing this bill forward, as well as Senator Harr for encouraging continued dialogue on this need to sharpen our tool to improve our incentive program and, in particular, improve our process. As Tax Commissioner Fulton and DED Director, Courtney Dentlinger, both indicated, we spent uncountable hours working through this over the past several months. It's a complicated issue with many stakeholders trying to find what's best for Nebraska. We're committed to continue to work forward to find a compromise over the coming weeks. Heading up the economic development effort at the chamber, I have the opportunity to see firsthand the competitive nature of economic development presents for Nebraska. We compete hard every single day for some of the best projects considering our state. It's an intense competition and thankfully we've had the opportunity to win. Over the last couple of years we've led the projects to help land the headquarters of HDR, to see the Kiewit University Innovation Center take place, as well as a Fortune 600 headquarters with Green Plains. Some really exciting projects supported by these kind of incentives. We've also worked alongside our partners at DED to attract companies such as Costco, which is about to invest \$400 million into our state, bringing 1,000 new jobs into the market, and having an incredibly wide deposit of economic impact across our state. We understand what it takes to compete and, more importantly, we understand what it takes to win. But for every win, it seems there is a story of a missed opportunity or there's a story of the project that is spinning its wheels in the application process that we have for Nebraska Advantage. And too often, when it seems like a win, that's when the difficulties begin. And I would just say, while I was listening to the other testimony in the prior hearing, I went through my notebook--and this is what I use to take notes on all the projects we engage with--and just found a few over the last several months. Quotes from companies that we've worked with that have expressed their challenges with our system. One company...this was back in late August: This is by far the most complicated of any state, bar none. It's unprecedented in terms of how this is administered. The most painful process I've ever experienced, more prosecuted than audited. It is a difficult, difficult process. And I will tell you, we've worked with Tax Commissioner Fulton on a number of these, making him fully aware of the challenges. He understands it. As he said in his testimony, he's worked hard to try to address it. A number of these issues that the companies are feeling tremendous stress about, tremendous difficulties with, reside in the act and reside in the challenges presented there. And that's what we're working towards a solution. And recognizing that's what was presented here to day from the department, we've been working on our own bill, LB557, as well. And we're going to work very hard to find a common ground between the two. But as we assessed our competitive position, as we looked at some of the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

statements we hear from the companies that are considering Nebraska, it became clear that our incentive tool needs to be sharpened. We need to find a way to get better at what we do. And this belief is reinforced by the Economic Development study that came forward this summer by SRI that was brought forth by the Governor and the Department of Economic Development. It was also reinforced by the performance audit that identified the need to make some changes to Nebraska Advantage, including on transparency, which we agree. The challenge we have with LB546 is that our business members feel that it changes the problem, not necessarily fixes the problem. And so we are committed today to continue to work with the departments to find a way to get to a full resolution. Maybe just in closing, there's been a number of conversations around. There are a lot of questions from the committee today about a "but for" argument or what is really driving to decisions from business. And this year marks my 25th year as an economic developer and I've learned and seen a lot over those years and a lot of transitions. We started as companies making decisions based on real estate, projects led by real estate components within the company. We transitioned to an infrastructure assessment led by engineers. We transitioned from there in the 2000s into an incentive conversation where accountants led the project. And today it's really driven by HR and talent. To win and to compete for projects, it's all of those factors that come into play. We have to be competitive across that spectrum. And this incentive tool is imperative. It's imperative that we get better, sharper in implementing this tool. And that's our position. I'd be happy to take any questions. [LB546]

SENATOR SMITH: Thank you, Mr. Thelen, for your testimony. Senator Schumacher. [LB546]

SENATOR SCHUMACHER: Thank you, Chairman Smith. In anticipation of what probably is going to be some reduction in federal corporate tax, and assuming that that comes to fruition, what do you see...rather than mount these convoluted targeted programs, if we simply got rid of the corporate income tax, applied it to everybody, and tried to slowly disengage these type of programs, which help a few employers and some of them are pretty good employers, but do not help the bulk of the employers with jobs in the state? [LB546]

RANDY THELEN: And I would say, from our position as a chamber of commerce and our members, we would say we need both and we support both. We need comprehensive income tax reform in this state, corporate income tax reform as well, to get to be a more across-the-board competitive landscape. There will always be that need, however, for those marquee projects, those major, high-impact projects to compete with other states. And it's an incredibly aggressive competition for those. You should see...the competition for the Costco project was extraordinary. The compensation for Yahoo several years ago was extraordinary. Pacific Life, extraordinary. Frankly, the competition today to retain Sidney, Nebraska's, Cabela's operation, it's extraordinary. The folks in Missouri are waking up every day trying to find a way to lure as many of those jobs into their state as possible, and it takes a tool like this. I mentioned earlier the progression of sort of analysis that companies have gone through to make their economic

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

development decisions. And make no mistake, at the end of the day they do matter tremendously. We are on the cusp of landing one of the larger projects ever to hit the state of Nebraska and incentives were a major piece of that conversation. It matters at a competitive level. So we would argue, frankly, sir, there's room for both. We think incentives do help propel growth and they provide those anchor employers, no different than an anchor store at a retail center. You need those major employers to help support the surrounding stores. [LB546]

SENATOR SCHUMACHER: What would be a...let's say we ask for specifications of a narrow, targeted program with a top end budget so we can have some control over it. And then you could say, okay, these two projects a year, they're the cream of the crop. We're going to try to go for those. What kind of money we looking at, \$50 million a year? [LB546]

RANDY THELEN: Yeah, I would suggest Senator, though, we need to look at a larger pool than two projects per year if we're going to grow this state. I think part of our challenge that we face from a fiscal perspective today is based on our growth. We need to grow faster. We need to diversify the state even further. And we need to go find those projects that can help us do that. I would look at that Cargill campus in Blair. If you've had the chance to tour that facility, it's phenomenal. Twenty years or so ago we made a decision as a state to invest with incentives into that facility and today that project has gone from one facility for Cargill now to a \$2 billion campus that is providing a tremendous return on investment for the incentives that we offered. So we can assess. Other states have gone in different directions, Senator, where they are looking at a more capped program. We could consider that, but it's not...we need to grow. We need to grow quickly and these programs can help. [LB546]

SENATOR SCHUMACHER: But the best demographics that we've seen--and some of this is coming from the University of Nebraska-Omaha that we've seen in the Planning Committee--the state as far as population is not going to grow. Omaha and Lincoln may grow by attrition from outstate. But unless there's some mass migration, usually of immigrants or somebody...a high cost population, we're not going to see a whole lot more than equilibrium in the system. Certainly not enough to make dynamic changes in our revenues or economy. So are we talking growth in population? Are we talking growth in just the number of robots working in a factory? What do we mean by growth? [LB546]

RANDY THELEN: I'd say, yes. I mean, we need...have you looked at the fundamentals of our state? We need more people. We need more people making better wages. And we need more capital investment to provide a tax base for this state that diversifies our tax base. So we need...and I think by and large we have an incentive tool that is designed to do that. The challenge is the process in which is the elements of LB546. If you were to go back and revisit the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SRI report, it would outline many of those things, too. We need to focus on high innovation, high wage, high technology, high capital investment, I would agree. [LB546]

SENATOR SCHUMACHER: Again--and this is getting beyond the scope--but I'd like you to come to our Planning Committee and maybe we can shell out some of these ideas there and try to get something...I find this extremely frustrating, particularly when you don't know if they're doing you any good or not. Thank you. [LB546]

RANDY THELEN: Thank you. [LB546]

SENATOR SMITH: Senator Groene. [LB546]

SENATOR GROENE: As a rural senator, I see this for eastern Nebraska. We get a drop here now every once in a while. Because there's no transparency, I see this project list, I don't know if one is \$100 million credit, \$10 million, \$50. I'd like to know where all the money is going. I've got a pretty good idea. All right, so you get economic development in Omaha. You said the stores around there, the businesses around there do well. It used to be argued, well, at least we got the income tax from the employees that went into the coffers. That's already given away. You got sales tax, (inaudible) you got TIF, and I'm sitting out there in agriculture saying, wait a minute, we're paying for everything. Omaha is doing fine. You've got the jobs around there, the retail sales. What's the advantage for the rest of the state? It's good for Omaha, but if you moved that river a few miles, it really don't make a difference to me. [LB546]

RANDY THELEN: So a couple of things. The data that I've seen from the Department of Revenue, their annual reports and where they map local projects, it's roughly one-third of the Nebraska Advantage programs are in western Nebraska and about two-thirds will reside somewhere between Lincoln, Sarpy, Douglas Counties. [LB546]

SENATOR GROENE: What's the dollar amount? [LB546]

RANDY THELEN: That I don't know. And part of that challenge, and it's been discussed earlier in earlier testimony, the design of Nebraska Advantage, it's a tax program imbedded within our tax returns for our companies and we can all appreciate those need to be private documents. The department, as we heard earlier, protects that, as they should. [LB546]

SENATOR GROENE: I can go on a Web site and see every federal dollar...tax dollar that a farmer got. These are tax dollars those businesses are getting. They're paying them and they're getting them back. Once they're paid in and they're given back, that is a tax...that is a payment

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

from government back to them, as far as I'm concerned. So once it becomes a tax dollar, it's no longer private. [LB546]

RANDY THELEN: The way we're set up today, though, then the structure we've had historically has kept that private behind that curtain. [LB546]

SENATOR GROENE: Legally, I wouldn't know. I'm not a lawyer, but I'd like to see it challenged. Also, these poor folks, you said they feel prosecuted? [LB546]

RANDY THELEN: I'm just quoting... [LB546]

SENATOR GROENE: If I don't pay my taxes, what do you think is going to happen to me? [LB546]

RANDY THELEN: That stage, though, Senator, is not whether they're paying their taxes. That is a stage of the process where they're being...whether they're counting heads, how many people are in this room. In that process they're, how many FTEs do they have? Those things that are defined in the act are fairly gray, frankly. And the department has to make some judgment calls and the company has to do their best to align with that. That gray area is what causes that concern and that issue. [LB546]

SENATOR GROENE: It should, shouldn't it? They're getting the tax dollars back, there should be that feeling you're going to be prosecuted. It should be like the IRS on you. [LB546]

RANDY THELEN: I would argue that section though should not be gray. It should be more black and white. [LB546]

SENATOR GROENE: All right. You're going to need some more clarity. [LB546]

RANDY THELEN: It should be clear for the company, clear for the department. [LB546]

SENATOR GROENE: Again, I never blame a company or a businessman. He should be a shark. He should hit his dollars and his profits as high as he can. I blame us, elected officials, for allowing it. Thank you. [LB546]

RANDY THELEN: Thank you. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SMITH: Senator Harr. [LB546]

SENATOR HARR: Thank you. And thanks for coming and thanks for paying attention. I assume you were paying attention earlier when I asked Mayor Kindig, cheaper, faster, better, simpler, and I heard a number of the earlier proponents talk about this simplifies the process. Do you think these changes simplify the process? [LB546]

RANDY THELEN: So we've put in a good deal of work collectively on this effort, hours upon hours. I will tell you I've spent more time with Deputy Director Glen White than I care to admit or more time on the phone with him than I care to admit. This is a complicated bill and a complicated way to try to find ways to improve it. There are challenges that we see with this and some of it is nuance that we can sort of work though. Some of it's probably nuance we're probably going to have to arm wrestle through to find a resolution, but we're committed to do that. Just a couple of examples: You know, requiring a CPA to sign off on the...whether or not the company has hired the people or made the investment. Our question and the question of the business community is, if a company officer can sign off on a tax return, why do they need to hire out a CPA to sign off what is essentially a subset of a tax return. Those kind of things are things that we need to iron out and determine if we can find a solution. [LB546]

SENATOR HARR: And did you hear Mayor Kindig's four points of how he thought it would make the program better? And I'm going to ask you about the first one. [LB546]

RANDY THELEN: I did. [LB546]

SENATOR HARR: And he said it should be housed with the Department of Economic Development. What do you think of that? [LB546]

RANDY THELEN: So we did explore that. We had a lot of conversations around that and I think there's a path forward to consider that even further. I think one of the challenges of doing so today, however, would be the fact that this is structured as a tax program. And so it's imbedded within the tax return of a company more or less. And so putting that into the hands of a separate department you would have sort of a--I heard the phrase earlier--a dual track sort of approach that would put the two departments in sort of a dual track. And I think that...it would take a lot of work to figure out that path. [LB546]

SENATOR HARR: Okay. Thank you. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SMITH: Seeing no further questions, thank you, Mr. Thelen, for your testimony. [LB546]

RANDY THELEN: Thank you. [LB546]

SENATOR SMITH: Next person in a neutral capacity on LB546. Seeing no other people in the neutral capacity, we invite Senator Watermeier to close on LB546. [LB546]

SENATOR WATERMEIER: Thank you, Chairman Smith and the Revenue Committee. I didn't know for sure what I was getting into today here on this bill. A lot of good conversation. Some of the conversation involved outside of what actually LB546 does. I had to write a few notes down and I did. We have the concerns in changing this bill from the Business Committee. I'm certainly open and be working with this on a continual basis. And as I had mentioned to Senator Harr, we'll work with his bill and what really is the best fit. But I will make it very clear right now that this certainly does not belong in the Department of Economic Development. I mean, this is a...the Department of Economic Development is a recruiting arm of the executive branch of the state. The tax department, the Revenue Department is certainly an auditing, recordkeeping and a tax program. This would...I just wouldn't see any avenue to get this inside of the Department of Economic Development. A lot of the questions that you've asked today were about, is it worthwhile? That is our fault. As Senator Schumacher addressed and I think Senator Friesen brought up, it's our fault how we wrote these incentives years ago. There was hardly any reporting mechanisms in there. And some of the questions that came up, we'll have to do a better job on the next incentives that we write in the state of Nebraska. But keep in mind we can't just ask these companies to change how they're reporting today. We signed a contract...the state of Nebraska signed a contract with these companies and they were required to do some reporting, no more than that. To ask them to do so today would be outside of that contract. But I've got three performance audit bills in the system this year. One of them does mainly for internal mechanism inside the audit, this bill, and then I have LB543 which tries to address some of the concerns that came out of the audit last fall. One of them was--just an example I'll give you--is were the companies that we were incentivized actually new to Nebraska? And we're trying to put those mechanisms into what we do in the performance audit, but that comes back to what we're asking these companies to report. That's the key to it. It's difficult to change that today because they've signed these contracts years ago and we have these ongoing programs. So unless we want to create a new incentive with new reporting mechanisms, that's probably the key. I mean that to me is what I think is the key. But keep in mind, this LB is strictly towards streamlining this issue. And the mayor from La Vista, I appreciate his comments, but that's strictly what it was supposed to do. He felt like it was cheated out of him. Well, we had conversations in the last year or so about how to streamline this, because we have delays in getting the applications. We have delays knowing if they qualify. And so this is strictly to do that, for helping the department free up some reporting time and then for the companies that are making those applications. I'm working on an

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

economic development group right now. I've got it passed out of the Executive Committee, where I am trying to mandate the state that we bring together a working group between the executive branch and about six or seven senators who are forced to meet three times during the interim, not during the session. It's too late during the session. We're too reactive in this body to what the economic development is in this state. We had good conversation up till about Christmas on this bill, and it fell apart between now and then. I was somewhat had a sense as I could see this bill developing, I smelled it coming. They want this bill and they don't want this bill. Did you basically hear that from the chamber? They wanted these changes, they want to streamline it, but they're not quite happy. That's the reality of what we do in this business. We have got to be more proactive in economic development and it doesn't happen during the session. It happens on the interim. So that's what I'm proposing. That's where I'm going with my four short years left in this body is that we've got to be more proactive on these issues. And this is a little piece to it. But I think we can help streamline it, I really do. So thank you, Chairman Smith. [LB546]

SENATOR SMITH: Thank you, Senator Watermeier. You know, I do appreciate you bringing this bill and you talk about being proactive. I would hope that we do not completely dismiss the structure of economic development though, because if it is a developmental role, that is its purpose is to go out and recruit businesses and to grow businesses in the state and yet we have it under an administrative function of the state. I mean, it's almost to me...I'm likening this in a business operations, if we had a business development role versus an accounting role. Which one of those departments would be best at going out and soliciting and retaining and growing business for that company? I think the same thing would go for our state. And I think we have to be fairly flexible and dynamic in the way we're going after business. Maybe more latitude should be given to economic development with a particular budget and not constrained to an administrative role that we've seen in the past in the Revenue Department. And that's just a simple observation I've made, but I hope it's not just totally dismissed as not going to happen. [LB546]

SENATOR WATERMEIER: I appreciate those comments and I certainly didn't mean for my enthusiasm to say what I said in that regard. It would be more in along the lines of working with. But in my business, I mean, I look at these things and we have analysis work that we do all the time in my business and we just don't know. But we look at it as a dashboard. I mean, if all these indicators were looking at how things are moving around, we don't have this in this state. Performance Audit is giving a little window. But just to give you how difficult that is, even last year in the bill that I passed, in the writing of the bill we were so nervous about confidentiality we took out the fact that the Chairman of Performance Audit had at one time the ability to see confidential stuff. And I looked at that and I said, whoa, we got to get rid of that. So it's strictly in the Auditor's hands, but it's a tough thing to funnel all that information down to one committee

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

with the Auditors upstairs looking at this and then fan that back out to the policymakers. That's a difficult thing to do, but... [LB546]

SENATOR SMITH: Senator Watermeier, you did a very good job with that, too. You did a great job, so thank you. Senator Schumacher. [LB546]

SENATOR SCHUMACHER: Thank you, Senator Smith. And thank you, Senator Watermeier. One of the things you mentioned was, we can't do a lot of changing because this is under contract. Have you ever seen one of those contracts? [LB546]

SENATOR WATERMEIER: I haven't. I don't know if it's as bad as that main street development one you were talking about. I don't know, but I'm assuming there's probably a lot worse than that. [LB546]

SENATOR SCHUMACHER: Well, if we're presuming that we can't change it because it's nailed down in a contract, contracts are words and they're usually on paper and I don't know if it's the kind of thing that contains confidential information or not, but I suppose you could color it out to look at what the form is. It would sure be good if we, before we presume it to be in a contract, we know it's there. [LB546]

SENATOR WATERMEIER: Well, let me back up when I say you can't change on a contract on what we've done in the past to try to go back and reach back to see what...how things performed and to get to the dollar value of a new job. But anything we were to go on forward with, that's my focus is to make sure we write any new legislation will have the right reporting mechanisms in there to find out the...see, like right now you want the performance audit. We asked for FTEs, but we didn't ask for actual employees, so that was one example of the issues that we've had. [LB546]

SENATOR SCHUMACHER: But if we had an actual contract or their form--which certainly can't be private, it doesn't have any blanks filled in... [LB546]

SENATOR WATERMEIER: Right. [LB546]

SENATOR SCHUMACHER: ...we would have a general idea of what format we've made commitments. It's really something to be here and not know what commitments we've made. How tight are we tied down and can we change any of this because it's not included in the contract or it's subject to interpretation in the contract. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR WATERMEIER: That's a good point. I haven't looked at the contract. There's no reason to think we can't change it, starting right away with statute. [LB546]

SENATOR SCHUMACHER: But even if it's not covered in an old contract, then it's not covered and we maybe can ask. And the other thing is, when somebody comes in here and says, look at, under our deal, our contract--assuming that's the case--we would like to have more time. We would like you to change it to accommodate us. Well, then, that's fair game. If they're asking us to change something, we can ask them to change something. And what's our wriggle room there? Somewhere along the line we're not acting like Donald Trump and getting the best deal. The other quick thing, one of the things that the Performance Audit Committee report suggested is, okay, we're going to kind of pass the ball off to the Revenue Committee. [LB546]

SENATOR WATERMEIER: Yes. [LB546]

SENATOR SCHUMACHER: Well, that's kind of easy to say, but what mechanism do you suggest for us to receive that pass and what information comes with this so we're not just bungling around? [LB546]

SENATOR WATERMEIER: Well, we had the formality of the hearing in November, whenever it was, and we actually formally passed it off to the joint committees, Appropriations and Revenue. Other than that, my hope, my desire, my assumption was that individually the committee or some individual from the committee would pick it up and have some suggestions for something new. But that led me straight into what I want to have for an Economic Development Committee on the interim that's really a nonvoting but it's an educational group that we will bring in all these individuals, organizations one at a time, one every month if we can meet that often, and be forced to be proactive about it. I just think that's where we're missing the ball. We're missing it. [LB546]

SENATOR SCHUMACHER: I think you'll find, as probably some of us have, that your four years will become two years just like that. And then we can blame Senator Groene and Lindstrom for... [LB546]

SENATOR WATERMEIER: Yeah. Blame it on term limits. [LB546]

SENATOR SMITH: Senator Groene has a question. [LB546]

SENATOR GROENE: You said we can't change the contract with individual companies reporting their benefits from this, their abatement. But why can't we ask the Revenue Department

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

to break down how many dollars are in each county or each region? Set regions up and say, we would like a report of how many of these dollars are ending up in the Panhandle of Nebraska, northeast Nebraska, or legislative district, to where these \$58 million or \$278 million actually went of taxes that didn't help pay for my schools because we got to pay for them ourselves. I'd like to know where that money goes. I just don't understand. I understand we've got laws about the relationship...you can interpolate income taxes and sales taxes into sales and then competitively, but I can look at the Revenue Department under tax increment financing and see every single abatement, every county, every community where that money is going. I just don't understand why we can't get more accountability here. It's tax dollars. [LB546]

SENATOR WATERMEIER: Well, it's individual tax dollars, the corporate and personal income tax dollars rather than TIF project, which would be to a city or a state. That could be part of it. And certainly we can discuss that inside a performance audit, I mean we can do that. [LB546]

SENATOR GROENE: I don't understand, especially on the individual...the payroll taxes, it says it's taxes you paid the previous year that you can credit the following year. Once those tax dollars are paid, they're tax dollars, they're no longer a credit. And they were given tax dollars back as a credit the next year. To me, that's accountability. Tax dollars were given. And I'm trying to figure out why I...the public for transparency fact, I want to know who's getting a free ride and I want to know if I give them a free ride, when we stop once in a while are they going to pay for a tank of gas? It's called accountability, transparency. I don't understand, Senator Watermeier--I'm not persecuting you here, you just happen to be the guy sitting there while I'm lecturing--but anyway, I think we need to work for that, toward that, transparency. Anyway. [LB546]

SENATOR WATERMEIER: Well, let me maybe just clear, when we talk about these contracts that are signed, I'm thinking of the past. Anything in the future, we can change those requirements, get them in there if that's where you want to head, and we can do that. And I can make some inquiries inside the Performance Audit. [LB546]

SENATOR GROENE: If they can give me the numbers for statewide, the Revenue Department can, I don't understand why they can't give it to me county. That's not putting a name on it. I mean, I think we could easily do that. If it's confidentiality, then they shouldn't be able to give me the numbers for the statewide. [LB546]

SENATOR WATERMEIER: Okay, I'll look into it. [LB546]

SENATOR GROENE: They ought be able to give me county also, region. So thank you. [LB546]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR WATERMEIER: Yeah. [LB546]

SENATOR SMITH: Okay. Thank you, Senator Watermeier, for your closing. [LB546]

SENATOR WATERMEIER: Is it happy birthday? [LB546]

SENATOR SMITH: Yeah. Thank you. [LB546]

SENATOR GROENE: Thanks, Dan. [LB546]

SENATOR SMITH: Thank you. I have seven more hours to go before (inaudible). That closes the hearing on LB546 and we now invite Senator Lindstrom to open on LB387, which involves changing and eliminating provisions relating to various tax credit programs and economic development activities. Welcome. [LB546 LB387]

SENATOR LINDSTROM: (Exhibits 1, 2) Good afternoon. Thank you. Good afternoon, Chairman Smith and members of the Revenue Committee. My name is Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, representing District 18, northwest Omaha. LB387 is a bill from the Department of Economic Development that will help streamline the agency's administration and some of the programs that it administers. In broad terms, the bill would provide for additional flexibility and timeliness for the director in better organizing the agency to address challenges as they emerge. LB387 would also provide authority to distribute funds from the Affordable Housing Trust Fund in a more effective manner and minimize unintended consequences of strict interpretation of current statute language. LB387 removes ineffective definitions of distressed areas from three incentive programs, the Nebraska Advantage Microenterprise Tax Credit Act, the Angel Investment Tax Credit Act, and the Business Innovation Act. Currently, these definitions define either the entire state of Nebraska or very nearly all of the state as economically distressed. Besides the negative connotation and the unfortunate marketing consequences of most of the state labeled as distressed, it requires taxpayers to go through an unnecessary qualification step. It would also free up some staff time, as DED and the Department of Revenue that is currently used to annually update the list of distressed areas, produce maps, and review applications for no real purpose. Finally, LB387 changes the rules on confidential information for the department to provide more transparency for the Angel Investment Tax Credit program and to temporarily exempt from the public records requests certain information that is developed in the course of negotiations. I'm also offering an amendment to LB387 after working with the Center for Rural Affairs. I will defer questions to the center, as they are testifying behind me. It is my understanding that they've also discussed the amendment with the Department of Economic Development. There are testifiers behind me from the department who will answer more in detail any questions about the effects of LB387 on the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

department and our small businesses. With that, I'll take any questions you have. Thank you. [LB387]

SENATOR SMITH: Thank you, Senator Lindstrom. Senator Harr. [LB387]

SENATOR HARR: Thank you. This goes back to my school days. I hated when I'd do my homework and the teacher comes in and changes the text on me at the last second. Can you explain to me just briefly, and maybe I think in your testimony you want the Center for Rural Affairs to explain it, what the difference is because it strikes the original and inserts the following. What's different between the introduced bill and the amended bill? [LB387]

SENATOR LINDSTROM: The department would also accept applications for tax credits for taxpayers who are engaged outside of distressed areas, I believe is the change in that. But, again, you might want to double check. [LB387]

SENATOR HARR: Okay. And I'm going to go on the amended. [LB387]

SENATOR LINDSTROM: Sure. [LB387]

SENATOR HARR: On page 11, line 12 (sic: line 9)...we live in the world of Trump and Twitter. And on there it says, information...and it's section (12) (sic: section 8) and I'll read it to you and I'll give you the part I'm concerned about. [LB387]

SENATOR LINDSTROM: Can you...I'm sorry, where are you looking again? [LB387]

SENATOR HARR: Well, it's that whole section (12) (sic: section (2)) starting on line 9. And I'll read it and then I'll tell you the problem...area I have a problem with. "Information regarding business recruitment, location, relocation, and expansion projects conducted by or with the assistance of the Business Recruiting Division may be withheld from the public until a public announcement is made." In this world of Twitter, if I tweet something out, that's a public announcement and I may not be a authorized person. I think we need to clarify public announcement by whom, so that if it's just not a...there are a lot of rumor sites out there, right? And there are a lot of search sites out there. I think we need to tighten up that little bit, because if someone puts a tweet out there that says, hey, ARC, Inc. is moving to Nebraska, as I see this, then it becomes available for the public. [LB387]

SENATOR LINDSTROM: Yeah, I understand. [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR HARR: If we could just...we can tighten that a little bit, I think that will help it. Other than that, it looks fine to me. Thank you. [LB387]

SENATOR LINDSTROM: Appreciate it. Thank you. [LB387]

SENATOR SMITH: Senator Groene. [LB387]

SENATOR GROENE: Here we go again. You're going to take a third of mine away from Congressional District 3rd. Instead of allocated minimum 30 percent of the funds available to each Congressional district, you're going to say the best effort to allocate at least 30 (percent). Why not leave it alone? [LB387]

SENATOR LINDSTROM: Well, if you look at the map and most of it, if you look at the entire state, basically, is distressed areas. I think it's more about who's taking advantage of the different incentives, so it could be where the 3rd District might not be taking advantage of some of that. [LB387]

SENATOR GROENE: We'd save tax dollars that way, too. By being conservative, it don't get spent or given away. [LB387]

SENATOR LINDSTROM: Yeah and there...and I have to go back and look at the exact wording, but it would be at their discretion versus they would have to spend that. [LB387]

SENATOR GROENE: Yeah, I understand that. I'm just reading the fiscal note, what its words...just looked at that. I didn't reference it to the actual language, but anyway it's just one of those points again. [LB387]

SENATOR LINDSTROM: Thank you. [LB387]

SENATOR SMITH: Very good. Thank you, Senator Lindstrom, for your opening on LB387. Okay, was there another question? I'm sorry. I'm sorry. Senator Schumacher had a question. [LB387]

SENATOR SCHUMACHER: Thank you, Chairman Smith. Thank you, Senator Lindstrom. What's the...as I understand it the Angel Investment portion is now being changed from \$3 million or from 30 percent to 40 percent. Qualified investors eligible for refundable credit equal

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

to 40 percent of qualified investment under qualified. Is that...am I reading that wrong here...on page 7? [LB387]

SENATOR LINDSTROM: Are you saying on the Angel Investment? [LB387]

SENATOR SCHUMACHER: On page 7, is that Angel Investment? [LB387]

SENATOR LINDSTROM: Yeah, that's right. Everybody gets 40 percent now and the...I believe some distressed...let's see... [LB387]

SENATOR SCHUMACHER: It used to be only the distressed got that and the rest got the... [LB387]

SENATOR LINDSTROM: Now all would get it. [LB387]

SENATOR SCHUMACHER: It was my understanding that the angel investment money went pretty fast and there was high demand for it at us contributing only 30 percent. So why would we take our limited amount of money, which is whatever, \$4 million or \$5 million and if there's high demand and it goes fast anyway, why would we want to give it to fewer people? Why wouldn't we go the other direction and say, it's only 20 percent and spread it out over more people if there's demand for it right away and it's gone? [LB387]

SENATOR LINDSTROM: Yeah, and I am a proponent of looking at the Angel Investment Tax Credit. I believe Senator Morfeld may have a bill at some point. [LB387]

SENATOR SCHUMACHER: I think this is the Angel Investment Credit and if it's gone...if 30 percent is good enough to make it go quick, then why do we want to limit it to fewer people and make it...or fewer investments and take it up to 40 percent? [LB387]

SENATOR LINDSTROM: Sure. [LB387]

SENATOR SCHUMACHER: Thank you. [LB387]

SENATOR SMITH: Thank you, Senator Lindstrom. [LB387]

SENATOR LINDSTROM: Thank you. [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SMITH: All right. We now open it to proponents of LB387. Welcome back. [LB387]

COURTNEY DENTLINGER: (Exhibits 3, 4) Thank you, Chairman Smith, for having me again this afternoon, and members of the Revenue Committee. For the record, my name is Courtney Dentlinger, C-o-u-r-t-n-e-y D-e-n-t-l-i-n-g-e-r, Director for the Nebraska Department of Economic Development. I'm here today testifying in support of LB387, the department's streamline bill and I appreciate the opportunity to explain what it does and appreciate Senator Lindstrom for introducing it on our behalf. And I'm happy to pick up on some of the questions that were asked previously. Please remind me if I don't touch on those so that I can clarify. My testimony is being passed around, but what I want to call your attention to is as well are some maps that are at the back of it, specifically showing the current areas that would be defined as distressed under these three programs, so I just wanted to call your attention to those. First, LB387 amends Nebraska Revised Statute 81-1201.20 to make permissive the adoption of rules and regulations to carry out DED responsibilities in sections 81-1201.01 to 81-1201.20. Currently, DED is divided in statute into divisions, including a Business Recruitment Division and a Community and Rural Development Division. The statute as written makes it difficult to shift programs and operations between divisions without the time-consuming process of reissuing regulations. This amendment would help the agency streamline and improve our operations more quickly and efficiently. And I believe we're one of the last agencies to actually have our divisions specifically written into statute. Second, LB387 amends Nebraska Revised Statute 58-708, which deals with the allocation of funds among Congressional districts from the Affordable Housing Trust Fund. These funds come in from the Documentary Stamp Tax, specifically 95 cents of the \$2.25 per \$1,000. Currently, DED is required to allocate at least 30 percent of the funds to low-income housing projects in each Congressional district. DED is concerned that we might not have enough quality projects to meet that 30 percent threshold in one or more districts in a particular award cycle. If this were to occur, the remedy is not clear under the law, but one option might include reducing the amount awarded across all districts so that that 30 percent requirement could be met in the district with the smallest total applications, something we don't think the Legislature intended. Another option would be to award tax money to projects that DED feels have little chance for success in order to meet the distribution requirements. Again, not something we think the Legislature intended with that 30 percent requirement. The bill replaces the requirement with a direction for the department to make its best efforts to make that 30 percent allocation in each Congressional district. LB387 also amends three economic development incentive programs to remove references to distressed areas, and those are the maps that were included. Although the definitions are slightly different, all of the definitions are so broad that the entire state of Nebraska, or nearly the entire state, is defined as distressed. These programs are capped in terms of either the amount of tax credits that can be granted or the amount that DED can grant, and because these amounts are fully subscribed, there would be no impact to the General Fund. DED would like to remove the references to distressed areas for two primary reasons. The first is the obvious marketing issue of defining nearly the

entire state as economically distressed. The second reason is that removal would end a regulatory burden in the extra step that taxpayers must take to review eligibility for tax and incentive programs that affect almost no one. Sections 2 through 5 of LB387 amend the Nebraska Advantage Microenterprise Tax Credit Act to remove the references to distressed areas. In order to receive a microenterprise tax credit, businesses must be located in a distressed area. However, again the definition is so broad that nearly every area in the state qualifies. The current definition is that the business is located in a municipality, county, unincorporated area within a county, or census tract that meets one of the following criteria: has an unemployment rate greater than the statewide average unemployment rate; has a per capita income under the state average per capita income; or had a population decrease between the two most recent decennial censuses. So again, if you take a look at the map we've got them titled by the various programs. But you'll see for the Nebraska Advantage Microenterprise Tax Credit program, there are just two very small areas that wouldn't be considered distressed. For the Angel Investment Tax Credit Act, the entire state is distressed for those purposes. And qualified locations for the Business Innovation Act again is the entire state currently under the definitions. The Legislature's Performance Audit Committee found that in 2014, 99.24 percent of the state's population lived in a distressed area. For tax year 2017, DED and the Department of Revenue have determined that only three census tracts and part of a fourth are not distressed. Two are in Cheyenne County, and include the City of Sidney--that's on one of those maps--and two are in Washington County. Sections 6 through 8 of LB387 amend the Angel Investment Tax Credit Act also to remove references to distressed areas. The definition of distressed area in this act is the same as for the Microenterprise Act, except this act further defines as distressed any county with a population of less than 100,000. Under this definition, again the census tracts in Cheyenne and Washington counties deemed distressed for the Microenterprise Act are considered distressed for the Angel Investment Act. For tax year 2017, the entire state was considered distressed. Currently, investment in a qualified small business in a distressed area qualifies for a 40 percent refundable tax credit compared with a 35 percent credit in a nondistressed area. So I might pause in my testimony there to answer the question you posed earlier, Senator Schumacher. What we were intending to do right now, because everybody is in a distressed area they're getting 40 percent under the current statute. If they were in a nondistressed, they'd only get 35 percent. So it has been 40 percent. If the Legislature is interested in changing that amount to spread it out, we'd certainly be happy to speak with you about that policy change. But we were just looking to eliminate having to make the determination that everybody qualifies for 40 percent because they all qualify for 40 percent currently. LB387 would make all investments in qualified small businesses eligible for the 40 percent refundable credit, which is the same rate received by all applicants currently. Section 9 of the bill changes the confidentiality requirements for the program. Information about qualified small business would no longer be confidential in LB387. Information about the investors and the tax credits earned or used would remain confidential. The department believes this change would make the program more transparent and would make it easier to review the program's effectiveness. Section 9 amends Nebraska Revised Statute 81-1201.15 to allow the Business

Recruitment Division of DED to delay releases of public information about recruitment, location, or expansion until the business makes a public announcement of the project or at the conclusion of negotiations, whichever comes first. This change will allow the Business Recruitment Division to sign nondisclosure agreements with businesses and site selectors, and it eliminates situations where businesses are unwilling to work with DED staff on an expansion or recruitment project because of the lack of confidentiality during that delicate negotiation period. The longer time span allowed with this change would align public disclosure of DED-negotiated projects with the usual practice by the Department of Revenue under the Nebraska Advantage Act. Revenue advises that when an application to that program is filed, the name of the company, location of the project, and projected levels of employment and investment, are made public. Section 10 of the bill changes 81-1201.20 to read, the department may adopt and promulgate rules and regulations, rather than shall adopt and promulgate rules and regulations. We discussed that earlier. Finally, sections 11 and 12 of LB387 amend portions of the Business Innovation Act found in Nebraska Revised Statute 81-12,153 and 81-12,156 to remove the distressed area definition, again nearly identical to the Angel Tax Investment Act. Currently, there's a requirement that 40 percent of the grants awarded under the act go to businesses in a distressed area. Because the distressed area for 2017 again includes the entire state, this requirement is not operative. And, Senator Harr, I appreciate your comments with respect to how we might tighten up the bill a little bit more to avoid Twitter announcements by parties not so authorized. That concludes my testimony. I'm happy to answer any questions. [LB387]

SENATOR SMITH: Thank you, Ms. Dentlinger. Senator Schumacher then Senator Harr. [LB387]

SENATOR SCHUMACHER: Thank you, Chairman Smith. Thank you for your testimony. So basically, in response to my question, the reason that you're taking out the lower percentage and leaving everything at 40 (percent) is everybody is distressed in this state anyway? [LB387]

COURTNEY DENTLINGER: Everyone is currently qualifying for 40 percent. What we're asking is that we eliminate the step of determining if they're in a distressed area because the entire state is distressed per this statute. [LB387]

SENATOR SCHUMACHER: Well, and I understand your objective there, but, gosh, I seem to remember a floor debate or discussion in committee where the reason for the differentiation was we were going to try to make sure some of this money got deployed out to--whatever common parlance was--distressed areas. And either the sponsor of the bill or us didn't realize that, gee, everything was distressed. So we were really giving away 40 percent to basically some really undistressed areas in probably the Omaha-Lincoln metro area, which was at least my intent that

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

that gets some lower percentage. So this bill is before us. The section is open. Am I correct in thinking that there's a high demand for this money and it goes pretty quick? [LB387]

COURTNEY DENTLINGER: Yes, you're right. [LB387]

SENATOR SCHUMACHER: Okay. So if we took that number down in the whole distressed state to 20 percent it'd probably be gone lickety-split with a lot more investments. [LB387]

COURTNEY DENTLINGER: I image that even at 20 percent there would be demand. It wouldn't be as...considered as valuable a program perhaps to individual investors, so that may have some off-set. But 20 percent I would think we'd still have demand and it would be spread across additional projects. [LB387]

SENATOR SCHUMACHER: These are refundable monies, refundable credits, so essentially, they're money. Obviously, if there's less money there it would be less desirable, but it would still be pretty good. [LB387]

COURTNEY DENTLINGER: Yeah. Yeah. [LB387]

SENATOR SCHUMACHER: Okay. So do you see any impediment to us if we're going to say the whole state is distressed, we're not going to favor any area of the state and the money, there's a high demand for it, us dropping that to 20 percent? [LB387]

COURTNEY DENTLINGER: That's certainly at the discretion of the Legislature if that's what you'd like to do. [LB387]

SENATOR SCHUMACHER: But nothing jumped...from a Department of Economic Development perspective, nothing jumps out and says, oh, well, this program won't work at 20 percent. They won't even bother applying for 20 percent free money. [LB387]

COURTNEY DENTLINGER: I will have to get back to you. I'll talk to the staff that manage this program specifically and see what kind of demand we're getting. [LB387]

SENATOR SCHUMACHER: Okay. [LB387]

COURTNEY DENTLINGER: I do know it does go very quickly each year, and it is a limited amount of funds. There are just \$4 million available each year and so it does go very quickly.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

But I'd be happy to provide any issues that they might foresee with dropping this. And this bill is a streamline bill. All we were trying to do was make sure that we don't have statutory language that's causing department officials to do something that makes no sense. [LB387]

SENATOR SCHUMACHER: With the problem we have of not remembering what we did from year with the term limits and everything else, these bills are good bills because all of a sudden you say, oh, my gosh. I remember this isn't the way it was supposed to be. [LB387]

COURTNEY DENTLINGER: Right. [LB387]

SENATOR SCHUMACHER: And so if we can take the same amount of money and encourage investments in twice as many businesses, then I think it's something that should be on the table before it advances. [LB387]

COURTNEY DENTLINGER: We're happy to continue that discussion with you, Senator, and I'd be happy to talk with my staff and see what they think some pros and cons might be and what the magic percentage might be. [LB387]

SENATOR SCHUMACHER: Okay, thank you. [LB387]

COURTNEY DENTLINGER: Yeah, absolutely. [LB387]

SENATOR SMITH: Senator Harr and then Senator Brasch. [LB387]

SENATOR HARR: Thank you. Thanks for coming here today. So LB387 hits on the Affordable Housing Trust Fund. And I don't remember...I read the legislation. I can't remember who, but I think Senator Williams maybe has a bill regarding the Affordable Housing Trust Fund. [LB387]

COURTNEY DENTLINGER: Yes. [LB387]

SENATOR HARR: Does anything in this bill conflict with his bill as far as...housing is so important, especially, I'm sure Senator Groene's going to say, in the 3rd. Not that I mind stealing from him, but I do mind stealing from the 3rd. [LB387]

COURTNEY DENTLINGER: No. In fact, we've talked to Senator Williams about this very issue too. What happens, it's really typical statutorily created anomaly where the intent is that it's equally distributed. Right? There's a lot of need for affordable housing across the state in every

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

district. We don't always get year to year the same number of projects from each district. And so there might be a lot of really good projects in the 3rd or in the 1st and maybe we don't get a lot from the 2nd that year. If we don't, under the current statute we actually have to award the other two districts less in order to...or in, you know, occasionally, not often, but occasionally we get a project that isn't going to work out. We know it's not going to work out. It's not going to cash flow. We don't want to be forced to give tax dollars to something that's going to fail. It's not frequent, but that is one of the scenarios proposed here. But we have, in fact, been speaking with Senator Williams about this. It doesn't conflict with LB518. [LB387]

SENATOR HARR: Okay, thank you. [LB387]

SENATOR SMITH: Senator Brasch. [LB387]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Director Dentlinger, for coming forward. You are piquing my interest here because I represent Washington County. And I see that...can you explain to me again, it's Washington County is an exception except for an area within Kennard. And the whole state otherwise...and why is that or how is that determined or... [LB387]

COURTNEY DENTLINGER: So Kennard is distressed but those census tracts aren't. And so basically in the statute it's saying it has to meet just one of the three. [LB387]

SENATOR BRASCH: Okay. [LB387]

COURTNEY DENTLINGER: So in these two areas, they're doing better in those three than the rest of the state, so they're considered not distressed. [LB387]

SENATOR BRASCH: So with the exception of Kennard village and this portion of Sidney, everyone is distressed except most of Washington County? [LB387]

COURTNEY DENTLINGER: Yes. [LB387]

SENATOR BRASCH: Washington County is in better shape than every other county, with the exception of one little piece here and then... [LB387]

COURTNEY DENTLINGER: Just according to that...the current statutory definition, because it's so broad and it has an or, it's so broad it incorporates... [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR BRASCH: And so they will not get affordable housing assistance or what's the impact here? [LB387]

COURTNEY DENTLINGER: No, no, no. No one is excluded. No one is excluded under this. This is specific to the Nebraska Advantage Microenterprise Tax Credit. [LB387]

SENATOR BRASCH: Okay. [LB387]

COURTNEY DENTLINGER: The other two programs that we're discussing, everyone is included, including Washington County and Sidney. [LB387]

SENATOR BRASCH: All right. Specifically will not qualify for the microenterprise funds? Why are they in red? [LB387]

COURTNEY DENTLINGER: Purely because of data and how the statute reads. [LB387]

SENATOR BRASCH: And it makes them ineligible for...? [LB387]

COURTNEY DENTLINGER: For Microenterprise Tax Credit. [LB387]

SENATOR BRASCH: Okay. [LB387]

COURTNEY DENTLINGER: They would...the rest of the state would be at an advantage compared to these areas. And so that's why we thought that wasn't really fair to single out those two areas because... [LB387]

SENATOR BRASCH: So this will help them then to... [LB387]

COURTNEY DENTLINGER: Yes. Yeah. Yes. [LB387]

SENATOR BRASCH: Okay. All right. I did not get that, so. [LB387]

COURTNEY DENTLINGER: It would no longer disadvantage them, correct. [LB387]

SENATOR BRASCH: All right. Very good. Thank you. [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SMITH: Senator Groene. [LB387]

SENATOR GROENE: Thank you, Mr. Chairman. On this affordable housing, I'm assuming that that's an appropriation by the... [LB387]

COURTNEY DENTLINGER: That comes in from documentary stamps. [LB387]

SENATOR GROENE: Documentary stamps? [LB387]

COURTNEY DENTLINGER: Yeah. It's a percentage of the documentary stamps that come in each year. [LB387]

SENATOR GROENE: Statewide? [LB387]

COURTNEY DENTLINGER: Yes. [LB387]

SENATOR GROENE: All right. So it's not appropriated every year? [LB387]

COURTNEY DENTLINGER: Well, we get an appropriation to have the authority to spend, but this body doesn't decide what the amount is. It comes in through the doc stamps into a cash fund. [LB387]

SENATOR GROENE: Do you understand that in Congressional District 3 we're small businesses, we're not big? I'm starting to rename these acts as the "Attorney Employment Act" because in order to qualify for this, I could see a small businessman throwing his hands in the air and say, no way. But I can see big businesses in the east hiring a lawyer to sort through this stuff while they're doing their business and getting in the pool of the money quite sooner than the small businessmen in North Platte or a small town. [LB387]

COURTNEY DENTLINGER: And that's exactly why we want to streamline things and we want to make it easier so that it's more equitable across the state and you don't have to hire an attorney. [LB387]

SENATOR GROENE: How is it more equitable? You just said you're going to choose who comes in quickest, basically, with the best model...business model and you're going to give that money to them because now you don't have to split it up equally by Congressional district. [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

COURTNEY DENTLINGER: No. What we're saying...for the Affordable Housing Trust Fund, specifically? [LB387]

SENATOR GROENE: Well, on the other one, the ones we were talking about there. I guess I just switched on you. [LB387]

COURTNEY DENTLINGER: Yeah. Did you want me to address Affordable Housing Trust Fund first? [LB387]

SENATOR GROENE: Yes, first. [LB387]

COURTNEY DENTLINGER: So in the Affordable Housing Trust Fund we forecast how much is going to come in each year; typically around \$9 million from those doc stamps. Then we determine from that, what are we going to make available for award? We put out what we call a qualified action plan, and then we invite in applications. And we have applications from across the state and they're scored on a competitive basis. But our goal is to distribute that equitably across the three Congressional districts. Used to be in the statute there was a 25 percent...the statute indicated we had to give at least 25 percent to each Congressional district and we didn't have as many issues with that. Recently they moved that up to 30 percent and what we found, we had difficulty this last year and, in fact...two years ago. In fact, the State Auditor's Office came in and they said, you were just a little bit short here, you didn't quite get to 30 percent. Why was that? And it was because there wasn't enough demand from one of the Congressional districts. So we said back to the State Auditor's Office, we don't want to award less to the qualified projects in those other districts. And they said, then you need to get statutory relief. [LB387]

SENATOR GROENE: Are you...by statute, do you have to spend it every year or can you roll it over? [LB387]

COURTNEY DENTLINGER: No, it can roll over. [LB387]

SENATOR GROENE: Why don't you just roll it over into the...there might be a project come in my district that would consume that extra amount. [LB387]

COURTNEY DENTLINGER: I will say, Senator Groene, your district usually isn't the one we have any difficulty with for demand, so you are getting funded. What I don't want to see happen is us not being able to give your district enough dollars in one year. [LB387]

SENATOR GROENE: May I switch gears on you? [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

COURTNEY DENTLINGER: Absolutely. [LB387]

SENATOR GROENE: It says, grant or loan. How much of this is loan? [LB387]

COURTNEY DENTLINGER: For Affordable Housing Trust Fund? [LB387]

SENATOR GROENE: Housing Trust Fund, department shall announce a grant and loan application period. Is there any loans at all or is it all granted? [LB387]

COURTNEY DENTLINGER: I don't have all that information in front of me with respect to Affordable Housing Trust Fund. But I'd be happy to share that. [LB387]

SENATOR GROENE: My assumption is somebody is paying back the loans and it's a rolling... [LB387]

COURTNEY DENTLINGER: Yeah. Yes. But I'd be happy to follow up with your office. I can get specific numbers. [LB387]

SENATOR GROENE: So it isn't exactly \$9 million a year, because you're getting repayment of loans. I would hope you split this up in an equitable amount that you actually make folks pay some of it back and not just grant it all. But it seems like it's up to you to decide how much is granted and how much is loaned. [LB387]

COURTNEY DENTLINGER: I'll find out specific numbers for you. [LB387]

SENATOR GROENE: All right. Would you? [LB387]

COURTNEY DENTLINGER: Absolutely. [LB387]

SENATOR GROENE: And then the one here on agriculture, farm or livestock operation unless the person actively engaged in the operation of a microbusiness that has a net worth of not more than \$500,000. I would venture to guess a person in a small town that invests \$40,000 in a business is going to get more than that return on that \$40,000 than a small farmer who has \$500,000 invested, as far as an asset to create a business. Right, Curt? He's half asleep. I'll shut up. Thank you. [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SMITH: Thank you, Senator Groene. And thank you, Director, appreciate your testimony. And you almost tempted Senator Schumacher to weigh in on the attorney comment, so almost. [LB387]

COURTNEY DENTLINGER: Thank you very much. [LB387]

SENATOR SCHUMACHER: Senator Harr kicked me. [LB387]

SENATOR SMITH: Oh, okay. Thank you, Senator Harr. [LB387]

SENATOR GROENE: Never try to defend a lawyer, that never works. [LB387]

SENATOR SMITH: We now move to the next proponent of LB387. Proponent. Okay. We're going to move to opponents. Those wishing to testify in opposition to LB387. Seeing none, we go to neutral testimony, those wishing to testify in a neutral capacity on LB387. Oh, I'm sorry. Neutral or opposition? Okay. I didn't see you back there, sorry. Welcome. [LB387]

JORDAN RASMUSSEN: (Exhibit 5) Good afternoon, Chairman Smith and members of the Revenue Committee. My name is Jordan Rasmussen, for the record, J-o-r-d-a-n R-a-s-m-u-s-s-e-n, I'm testifying on behalf of the Center for Rural Affairs and would like to speak to the portion of the bill which pertains to the Microenterprise Tax Credit. The most effective and desirable economic development strategy for many rural communities is small entrepreneurship. Small businesses are especially important today as opportunities to attract large employers to remote rural areas diminish. For the past decade the Nebraska Advantage Microenterprise Tax Credit has played an essential role in helping these businesses get started while contributing to their revitalization of economically distressed areas through the creation of new or improved income, self employment, or other new jobs in the area. As was outlined by the director, once the conditions that were outlined for what is required to be considered for this credit, taxpayers are entitled to a refundable tax credit equal to 20 percent, the taxpayer's new investment or employment in the micro business during that year. The total lifetime tax credits claimed by any one taxpayer and any related person is \$10,000. From 2008 to 2013, the full \$2 million was made available by the Nebraska Advantage Microenterprise Tax Credit Act and was fully utilized. In 2015 and 2014 the funds were not fully utilized. LB387 and the amendments that were proposed address this by broadening the pool of eligible applicants. While we understand and support the logic behind the clarifications and the changes outlined in this bill, we are concerned that broadening the pool of eligible applicants to businesses in nondistressed communities undermines the spirit and intent of the act. We recommend this proposal be amended to allow microbusinesses and nondistressed communities to apply only for funds unused in the previous year. Under the original act, the amount available each year is \$2 million

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

plus the amount not granted in the previous year. Any unused portion of the \$2 million unutilized by businesses in distressed areas would carry over into the following year to be used by those in nondistressed areas. This change achieves the dual goal of ensuring the full amount available can be utilized while providing support for microenterprise business ventures in those communities who need it most. Moreover, we understand that distressed area as defined under this program is too broad to be meaningful. We are committed to working with the Department of Economic Development over the interim to address this and will propose a solution in the next session. Thank you for your time and I welcome your questions. [LB387]

SENATOR SMITH: Thank you, Ms. Rasmussen. Questions? Senator Schumacher. [LB387]

SENATOR SCHUMACHER: Thank you, Chairman Smith. Just briefly, so basically a small business that meets these qualifications just gets a refundable credit, also known as cash, from the state. [LB387]

JORDAN RASMUSSEN: Correct. That's my understanding, yes. [LB387]

SENATOR SCHUMACHER: And what has been the result of the program? [LB387]

JORDAN RASMUSSEN: So there's...it's been...I believe it's outlined in your letter that I provided, the amount of actual investment that's occurred as a result of this and also the compensation that's been added. So going back to 2014, there was \$5 million of actual investment in the community and compensation over \$4 million as well, so. And the program wasn't fully utilized in that year. [LB387]

SENATOR SCHUMACHER: And we got \$4 million compensation and we put \$2 million into it? [LB387]

JORDAN RASMUSSEN: Yes. But there's also the investment piece of it as well, so. [LB387]

SENATOR SCHUMACHER: Thank you. [LB387]

SENATOR SMITH: Very good. Thank you for your testimony today. [LB387]

JORDAN RASMUSSEN: Thank you. [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 09, 2017

---

SENATOR SMITH: (Exhibit 6) Next person in neutral capacity. I see none. Senator Lindstrom, as you're coming up to the table to close, we do have one letter to read into the record in support of LB387. And that is from Korby Gilbertson, representing Nebraska Realtors Association. You're welcome to close, Senator Lindstrom. [LB387]

SENATOR LINDSTROM: I really didn't have much else to say on the bill. I think everything has been discussed and we'll continue to work with the committee to address some of the issues that were brought up today with that. [LB387]

SENATOR SMITH: Thank you. Any remaining questions for Senator Lindstrom? Seeing none, that closes our hearing on LB387 and our hearings for the day. Thank you. [LB387]