



**New Markets Job Growth  
Investment Act: Performance on  
Selected Metrics**

**Performance Audit Committee  
Nebraska Legislature**

March 2020

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***I. Committee Recommendations***



# **Audit Summary and Committee Recommendations**

This section contains a summary of the report, the audit results, and the Legislative Performance Audit Committee’s recommendations.

## **New Markets Program Participation and Credit Use**

The structure of the New Markets Job Growth Investment Act (New Markets Act or Act) is more complicated than most tax incentive programs, which directly provide a benefit, such as a tax credit, to a business that meets a certain goal, like creating jobs. For simplicity’s sake, we focus on three main parties in the New Markets program: the Credit Investors, the Community Development Entities, and the Local Businesses.

Credit Investors make funds available for investment, often combining their money with funds from another type of investor called a “leverage lender.” The Credit Investors (who may or may not be in Nebraska) are then eligible for tax credits based on their investments. The investments are not made directly to the participating businesses. Instead, the Community Development Entities (CDEs) act as a middleman between the investors and the businesses. The CDEs receive the funds for investment, help identify businesses, and provide funds to qualified low-income local businesses.

Between 2013 and 2018, 13 CDEs participating in the New Markets program provided \$284.9 million in qualified investments to 39 projects in Nebraska. The Credit Investors used \$46.1 million of the credits earned on their investments. Figure A shows the breakdown by calendar year of these investments and credits used.

**Figure A. New Markets Investments and Credits Used**

<b>Calendar Year</b>	<b>Investment (in millions)</b>	<b>Amount of Credits Used (in millions)</b>
2013	\$68.3	-
2014	\$89.2	-
2015	\$16.0	\$6.7
2016	\$4.5	\$10.8
2017	\$1.3	\$15.6
2018	\$105.7	\$13.0
<b>Total</b>	<b>\$284.9*</b>	<b>\$46.1</b>

Source: Audit Office analysis of Department of Revenue data.

\*Total does not precisely sum due to rounding.

## **Audit Conclusions and Results**

While the majority of the audit results and recommendations are tied to the specific metrics, which follow, the Audit Office (Office) also identified two other areas that the Performance Audit Committee may wish to address regarding the New Markets Act.

**Finding:** Several of the goals stated during legislative debate of the New Markets Job Growth Investment Act are not reflected in the language or requirements of the Act, specifically the expectation that the state New Markets program would bring federal New Markets dollars to the state and create jobs.

**Recommendation:** If the Legislature considers attracting federal New Markets dollars and job creation, especially creating jobs with wage standards or in rural areas, as a priority for the New Markets Act, it may want to amend the Act to reflect these goals in participation requirements.

**Recommendation:** If the Legislature wants to know if and how many federal New Markets tax credit dollars are associated with state projects, it may want to amend the Act to require this information to be collected.

**Finding:** The Audit Office encountered difficulties in data matching between state agencies and unemployment insurance account analysis. Future performance audits will be improved if the relevant employment and wage data, or the identification information necessary to find it and perform our analyses, is readily available for use.

**Recommendation:** Future performance audits would be improved if the Legislature required CDEs to report specified information connected to New Markets tax credits such as unemployment insurance account information, the number of employees connected with investment projects, their wages, and the number of hours worked.

**Scope Question: Is the New Markets Job Growth Investment Act meeting the goals of strengthening the state's economy overall by attracting new business to the state, expanding existing businesses, increasing employment, creating high-quality jobs, and increasing business investment?**

### **Metric 1: How many jobs did businesses that received investment through the Act create? (pages 15-17)**

**Result:** For 35 businesses that received investment through the Act, we estimate that the businesses created 323 full- and part-time jobs in the local area of the sites that received the program investment.

Statewide, the businesses created 520 full- and part-time jobs. Of the statewide jobs, 368 were full-time jobs.

**Discussion:** For this metric, using Department of Labor (Labor) information, the Office reports jobs created in three ways: 1) total jobs (full- and part-time) created in the local area of the business site that received the program investment; 2) total jobs created statewide; and 3) “full-time workers” statewide, using the definition of full-time worker contained in the Legislative Performance Audit Act. As seen in Figure B, this analysis shows an increase of 323 local jobs, an increase of 520 jobs statewide, and an increase of 368 full-time jobs statewide.

The broadest definition of jobs, which gives companies the most generous view of employment increase, is statewide full- and part- time employment. Using this definition, businesses receiving investments created—at most—520 jobs. The other measurements can be seen as more specific subgroups of the companies’ total statewide employment.

**Figure B. Employment Change from Investment Date through 2018**

Type of Employment	Total Net Change in Employment*
Local Full- and Part-time	+323
Statewide Full- and Part-time	+520
Statewide Full-time Only	+368

Source: Audit Office analysis of Department of Labor data.

\*These are three distinct measurements that should not be summed.

**Recommendation:** Future performance audits would be improved if the Legislature established a benchmark for how many jobs it would expect participating businesses to create.

**Metric 2: How much tax benefit did participating companies receive for each new job created? (pages 18-19)**

**Result:** Depending on the method used for calculating job increases and how the “but-for” question is treated, businesses that received investment had an estimated cost per job range of \$87,607 and \$1,175,347.

**Discussion:** Our cost per job estimates take two factors into account: which job creation count is included in the equation and how many of the jobs created are attributed solely to the Act. We estimated the cost per job using all three methods discussed in the Job Creation metric. Taking these factors into account, we provide nine estimates for the cost per job.

### Estimates Using 100% of Jobs Created

The total credit use through 2018 was \$45.6 million.<sup>1</sup> If it is assumed that *all* of the employment increase is directly attributable to the Act—a 100% but-for assumption—the cost per job would be \$87,607 using all statewide jobs, \$123,793 using statewide full-time jobs, and \$141,039, using only local full- and part time jobs, as shown in Figure C.

**Figure C. Direct Cost per Job Estimate, 100% “But-For” Assumption, through 2018**

Type of Employment	Total Net Increase in Employment	Total Credits Used (in millions)	Cost per Job—100% “But For” Assumption*
Local Full- and Part-time	323	\$45.6	\$141,039
Statewide Full- and Part-time	520		\$87,607
Statewide Full-time Only	368		\$123,793

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

\*The percentage of jobs assumed to be created due to the program benefit.

### Estimates Using a Portion of the Jobs Created

However, according to subject matter experts, if the incentive did not exist, some of the jobs would have been created anyway. Academic research suggests that tax incentives are responsible for tipping 12%-25% of business decisions, meaning 12%-25% of location and expansion decisions would not have been made “but for” the incentive. We use these percentages to estimate what a reasonable employment increase and cost per job estimate would be.

If we assume that the New Markets incentive was responsible for 25% of the employment increase in businesses that received investment, the cost per job increases four-fold. In this case, the cost per job would be \$350,428 using all statewide full- and part-time jobs, \$495,170 using only statewide full-time jobs, and \$564,157 using local full- and part-time jobs, shown in Figure D.

Using a 12% but-for assumption would result in a cost per job of \$730,059 using all statewide jobs, \$1,031,605 using statewide full-time jobs, and \$1,175,327 using only local jobs, also shown in Figure D.

**Figure D. Direct Cost per Job Estimate, Research-based “But-for” Assumptions, through 2018**

Type of Employment	Total Net Increase in Employment	Total Credits Used (in millions)	Cost per Job Using Different “But For” Assumptions*	
			12%	25%
Local Full- and Part-time	323	\$45.6	\$1,175,327	\$564,157
Statewide Full- and Part-time	520		\$730,059	\$350,428
Statewide Full-time Only	368		\$1,031,605	\$495,170

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

\*The percentage of jobs assumed to be created due to the program benefit.

<sup>1</sup> This is the total amount of credits we could use for our analysis as explained on page 19 of the report.

**Recommendation:** Future performance audits would be improved if the Legislature established a benchmark for what it believes is an acceptable cost per job under the Act.

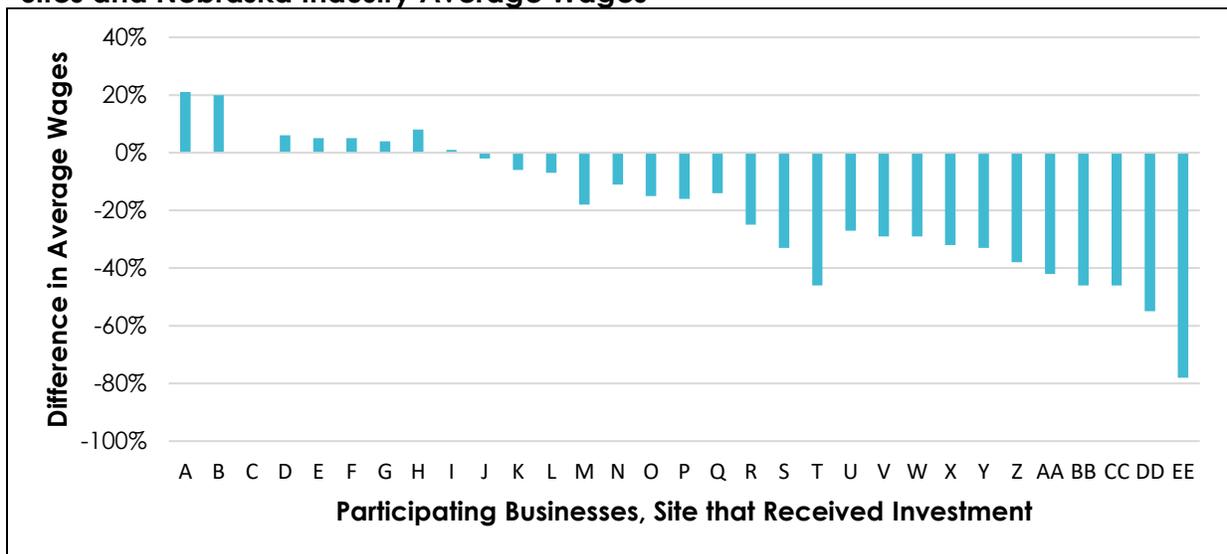
**Metric 3: Were the average wages at participating companies higher or lower than the average wages of all Nebraska jobs in the same industries? (pages 20-22)**

**Result:** Of the 31 businesses’ local sites that received New Markets investments, 8 (26%) had average wages that were higher than the Nebraska average wage for their industries, while 23 had lower average wages than their comparable industries’ average wages.

Of the 7 businesses with additional sites throughout the state, 3 had higher average wages compared to industry standards than the average wages at the local sites. For the other 4 businesses, the local sites had lower average wages compared to industry standards than the business statewide.

**Discussion:** For the eight businesses that were higher, the wages ranged from 1% to 21% above the Nebraska industry averages. For the other 23 businesses, the local site had lower average wages, ranging from -2% to -78% below the industry averages. To give a further idea of the proportion of highest wages compared to lowest, we note that while 2 of the sites had average wages that were 20% or more above the statewide industry average, 14 sites had average wages at least 20% below the industry average. The complete breakdown is shown in Figure E.

**Figure E. Difference in Average Wages between the Participating Businesses’ Local Sites and Nebraska Industry Average Wages**

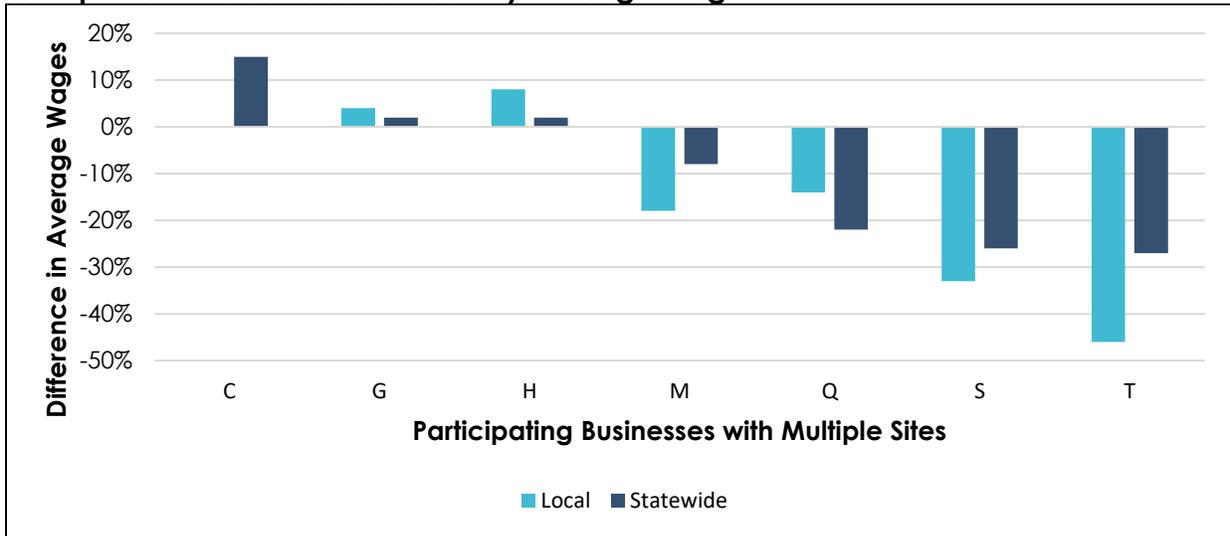


Source: Audit Office analysis of Department of Labor and Department of Revenue data.  
 Note: There is no line for company “C” because the difference between the average wages was zero.

Seven of the 31 businesses had additional sites across the state. In three of the seven, the statewide average wage was higher compared to the industry standard than the average wage of the local site compared to the industry standard. The difference ranged from 2%

to 8% higher than for the local sites. In the other four, the statewide average wage was lower compared to the industry standard than the average wage compared to the industry standard. The difference ranged from -7% to -19% less than for the local sites. The differences between the local and statewide averages are shown in Figure F.

**Figure F. Difference in Average Wages between the Participating Businesses' with Multiple Sites and Nebraska Industry Average Wages**



Source: Audit Office analysis of Department of Labor and Department of Revenue data.

Note: The Local Site amounts are the same as in the previous figure.

Note: There is no Local line for company "C" because the difference between the average wages was zero.

Because industry average wages vary from industry to industry, we are also providing data on the federal poverty level for a family of four in 2018 (\$25,100) for comparison. Of the 31 businesses included in this analysis, the highest average wage paid was \$81,073, or 323% of the Federal Poverty Level (FPL). The lowest average wage paid was \$7,530, or 30% of the FPL. Only two companies paid average wages that were less than \$25,100.

Using only the businesses' local sites, 177% of the FPL (\$44,466) is the point at which half the average wages were above and half below (the median). If the additional sites from the 7 businesses with additional sites are included, the median is 190% (\$47,663).

**Recommendation:** If the Legislature considers higher wage employment a priority for the New Markets Act, it may want to amend the Act to add wage levels as participation requirements.

**Metric 4: How many employees filed for unemployment in the year *prior* to being hired and in the two years *after* being hired at a participating local business? (pages 23-24)**

**Result:** Looking at 35 of the businesses that received investment, 22 companies hired 198 individuals who had established unemployment insurance claims in the year *before* they were hired. Of those same 35 businesses, 26 companies had 224 former employees who established unemployment insurance claims in the two years *after* being hired.

**Discussion:** The majority of the 198 individuals that had established unemployment insurance claims in the year prior to being hired were employed by participating businesses in the Construction and Manufacturing industry sectors, as shown in Figure G, utilizing the North American Industry Classification System (NAICS) of numeric codes. Hiring people who previously filed for unemployment is one indication participating companies are bringing new people into the workforce, not simply hiring people who were already employed elsewhere.

**Figure G. Unemployment Insurance Claims One Year Prior to Being Hired at a Participating Business through 2018 by Industry**

NAICS Code & Industry Sector Description*	Number of Claims
23 Construction 31-33 Manufacturing	99
42 Wholesale Trade	26
51 Information 52 Finance and Insurance 53 Real Estate, Rental, Leasing 54 Professional, Scientific, and Technical Services	4
62 Health Care and Social Assistance	69
<b>Total</b>	<b>198</b>

Source: Audit Office compilation of project NAICS codes from Departments of Revenue and Labor data. NAICS code descriptions from U.S. Census Bureau.

\*Sectors combined to protect taxpayer confidentiality.

As shown in Figure H, the industry sector with the largest number of established claims by former employees of a participating company was Manufacturing, with Health Care and Social Assistance close behind. A person who files for unemployment within two years after being hired by a participating company is one indication that jobs at these companies are not stable. However, because many factors can influence job stability, this indicator should be viewed with some caution.

**Figure H. Unemployment Insurance Claims Two Years After Being Hired at a Participating Business through 2018 by Industry**

NAICS Code & Industry Sector Description*	Number of Claims
31-33 Manufacturing	104
42 Wholesale Trade	14
51 Information 52 Finance and Insurance 53 Real Estate, Rental, Leasing 54 Professional, Scientific, and Technical Services	7
62 Health Care and Social Assistance	99
<b>Total</b>	<b>224</b>

Source: Audit Office compilation of project NAICS codes from Departments of Revenue and Labor data. NAICS code descriptions from U.S. Census Bureau.

\*Sectors combined to protect taxpayer confidentiality.

**Recommendation:** None

**Metric 5: How many local businesses that received investment were new to the state? (pages 25-26)**

**Result:** Of the 39 businesses that received investment through the Act, 11 project investments were in companies that met our definition of new to Nebraska. Those projects received \$74.3 million in investment. The remaining 28 projects were for expansions of existing businesses and received a total of \$210.7 million in investment.

**Discussion:** The Legislative Performance Audit Act defines a company as being “new” to the state when a person or unitary group did not pay income taxes or wages in the state more than two years prior to submitting an application to an incentive program. This definition generally refers to the credit-earning entity. However, due to the structure of the New Markets Act, the local businesses that were invested in by the credit-earning entities were instead measured for this metric. For purposes of this analysis, a local business was considered “new” if they did not pay income taxes or wages in the state more than two years prior to receiving their first state qualified investment from a CDE participating in Nebraska’s New Markets Act.

Using a slightly modified version of the definition, the Office found that 11 (28%) of the 39 participating businesses that received investment met the definition of new to Nebraska. This definition includes start-ups and companies that moved to Nebraska from another state.

**Recommendation:** Future performance audits would be improved if the Legislature established a benchmark for what it believes is an acceptable number of new businesses receiving investments.

**Scope Question: Is the New Markets Job Growth Investment Act meeting the goal of revitalizing rural and other distressed areas of the state?**

**Metric 6: To what extent are tax credits being utilized in connection with businesses in rural areas? (pages 27-30)**

**Result:** Of the 39 businesses that received investment through the Act, 12 projects in rural areas had investments totaling \$98.8 million. The net employment change in rural areas was between -75 to -78 jobs, depending on the measurement used.

**Discussion:** For the purpose of tax incentive evaluations, rural areas are defined as “any village or city of the second class in this state or any county in this state with fewer than twenty-five thousand residents.” Twelve businesses located in rural areas received a total of \$98.8 million in investment under the Act. The other 27 businesses, located in urban areas of the state, received a total of \$186.1 million. These breakdowns are shown in Figure I.

**Figure I. New Markets Act Project Locations and Investment through 2018**

Type	Number of Projects	Amount of Investment (in millions)
Rural	12 (31%)	\$98.8 (35%)
Urban	27 (69%)	\$186.1 (65%)
<b>Total</b>	<b>39 (100%)</b>	<b>\$284.9 (100%)</b>

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

As shown in Figure J, using local employment, participating rural businesses had a net loss of 75 jobs, meaning that, overall, the participating companies had fewer local employees at the end of 2018 than they did at the date of investment. The participating urban businesses’ change of employment was a net increase of 397 jobs using this same manner of determining employment.

For companies that received investments in rural areas, their statewide employment—total employment at the company in Nebraska—also dropped. There was a decrease in the total employment of 78 fewer employees, as shown in Figure J. In contrast, for urban investments, statewide numbers were higher, a net increase of 598 jobs.

As shown in Figure J, using the full-time employment determination, for investments in rural areas of the state, there was a net decrease of 76 jobs, while urban areas showed an increase of 444 jobs.

The broadest definition of jobs, which gives companies the most generous view of employment increase, is statewide full- and part- time employment. Using this definition, businesses receiving investments created a net total of—at most—520 urban and rural

jobs. The other measurements can be seen as more specific subgroups of the companies' total statewide employment.

**Figure J. New Markets Act Local Employment Changes through 2018**

Type	Net Change in Local Employment	Net Change in Statewide Total Employment	Net Change in Statewide Full-time Workers
Rural	-75 (-23%)	-78 (-15%)	-76 (-21%)
Urban	+397 (+123%)	+598 (+115%)	+444 (+121%)
<b>Total</b>	<b>+323* (100%)</b>	<b>+520 (100%)</b>	<b>+368 (100%)</b>

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

Note: These are three distinct measurements that should not be summed.

\*Total does not precisely sum due to rounding of quarterly average employees.

**Recommendation:** Future performance audits would be improved if the Legislature established a benchmark for the amount of business activity it would like to see in rural areas.

**Metric 7: To what extent are tax credits being utilized in connection with businesses in distressed areas? (pages 31-32)**

**Result:** Of the 39 businesses that received investment through the Act, 22 projects were in distressed areas. Investments totaled \$147.2 million and employment increased by 144 jobs for the 35 businesses that we were able to match with the Department of Labor.

**Discussion:** Using the Legislative Performance Audit Act's definition of distressed, 22 projects and \$147.2 million in investment—more than half of the total projects and investment—occurred in distressed areas. The number of projects and the amount of investment in non-distressed areas was 16 projects, with an investment of \$131.5 million. These breakdowns are shown in Figure K.

**Figure K. New Markets Act Project Locations through 2018**

Type	Number of Projects	Amount of Investment (in millions)
Distressed	22 (56%)	\$147.2 (52%)
Non-distressed	16 (41%)	\$131.5 (46%)
Unknown	1 (3%)	\$6.2 (2%)
<b>Total</b>	<b>39 (100%)</b>	<b>\$284.9 (100%)</b>

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

While there were more projects and investments made in distressed areas by New Markets Act participants, more jobs were created in non-distressed areas, shown in Figure L. The increase in employment in distressed areas was 68 jobs and the increase in employment in non-distressed areas was 255 jobs.

**Figure L. New Markets Act Project Locations and Employment through 2018**

Type	Net Change in Local Employment
Distressed	68 (21%)
Non-distressed	255 (79%)
<b>Total</b>	<b>323 (100%)</b>

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

**Recommendation:** Future performance audits would be improved if the Legislature established a benchmark for the amount of business activity it would like to see in distressed areas.

**Scope Question: What are the New Markets Job Growth Investment Act’s economic and fiscal impacts?**

**Metric 8: What is the cost to administer the Act? (page 33)**

**Result:** The program is administered chiefly by one individual in the Department of Revenue. According to Revenue, administration only requires part-time attention from the employee.

**Discussion:** Once the program was operational, according to the Department of Revenue, one person has handled the day-to-day management, including drafting Letter Rulings, setting schedules, calculating credits, and maintaining records for the New Markets program. This employee does not dedicate their full time to administering the New Markets credit, according to the Department.

**Recommendation:** None.

**Scope Question: Are adequate protections in place to ensure the fiscal impact of the New Markets Job Growth Investment Act does not increase substantially beyond the state’s expectations in future years?**

**Metric 9: What protections are in the Act to ensure its fiscal impact does not increase beyond expectations? (pages 34-35)**

**Result:** The New Markets Act meets six of the eight applicable recommendations from the Pew Charitable Trusts for tax incentive fiscal accountability. Because there is a hard cap on the program, the risk that the program will exceed the Legislature’s expected costs is low.

**Finding:** There are sufficient protections to prevent an increase of the New Markets Job Growth Investment Act’s fiscal impact beyond the Legislature’s expectations.

**Recommendation:** None.



***II. Legislative Audit Office Report***



*Legislative Audit Office Report*  
**New Markets Job Growth Investment Act:  
Performance on Selected Metrics**

***March 2020***

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***Prepared by***  
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## **Compliance Statement**

We conducted this performance audit in accordance with generally accepted government auditing standards, with two statutory exceptions regarding continuing education hours and peer review frequency.<sup>1</sup> As required by auditing standards, we assessed the significance of noncompliance on the objectives for this audit and determined there was no impact. The exceptions do not change the standards requiring that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives. The methodologies used are described briefly in each section of the report.

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<sup>1</sup> Neb. Rev. Stat. § 50-1205.01.

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# INTRODUCTION

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In 2015, the Legislature passed LB 538 which required the Legislative Audit Office to conduct a performance audit of each business tax incentive program at least once every five years.<sup>1</sup> In 2016, we released the first performance audit under the requirement. This year, we release the performance audit of the New Markets Job Growth Investment Act, the first such audit of the Act.

## **New Markets Job Growth Investment Act: Measuring Effectiveness**

The New Markets Job Growth Investment Act (New Markets Act or Act) was passed in 2012. It was inspired by the federal New Markets program, which gives tax credits to taxpayers who invest in a community development entity, which in turn invests in businesses in low-income areas.

Section I describes the New Markets program, gives an overview of program participation and use, a review of program goals, and provides an overview of evaluations of New Market programs nationwide. Section II contains our analysis of the metrics.

In previous reports, the Audit Office (Office) has noted that it is difficult to determine whether Nebraska's tax incentive programs are effective because the laws creating them do not have clear goals and specific measures for achieving those goals. To address these issues with assessing effectiveness, the Performance Audit Committee introduced and the Legislature passed a legislative resolution (LR 444) which authorized an interim study that identified metrics for tax incentive performance audits. LB 538, passed in 2015, required the Legislative Audit Office to perform ongoing tax incentive audits, using the LR 444 report's recommended metrics when possible.

Not all LR 444 metrics are applicable to all tax incentive programs for various reasons. The Office identified 14 metrics from the report that can be used in evaluating the New Markets program. When applicable, we also use metrics derived from the statutes that created the incentive program and/or discussed in the legislative history for legislation that created or updated the program, as well as metrics found in § 50-1209 of the Legislative Performance Audit Act. On the following page are the metrics used in this audit and their sources.

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<sup>1</sup> The review period was changed from once every three years to once every five years by LB 936 (2018).

**Metrics for New Markets Job Growth Investment Act Audit**

<b>Source</b>	<b>Description</b>
LR 444	Cost per job
LR 444	Wages
LR 444	Unemployment insurance claims
LR 444	Cost for agency to administer and promote the Act
LR 444	Cost for businesses to comply with the Act
LR 444	Cost-benefit analysis
Legislative History	New investment
Legislative History	Federal credit brought into Nebraska
Audit Statute	Job creation
Audit Statute	New to Nebraska
Audit Statute	Distressed areas
Audit Statute	Economic and fiscal impacts
Audit Statute	Fiscal protections
Audit Statute	Rural areas

Source: Audit Office.

**Acknowledgements**

The Legislative Audit Office extends special thanks to Tax Commissioner Tony Fulton and Commissioner of Labor John Albin. We also appreciate the assistance of Tom Milburn, Liz Gau, and Kate Knapp at the Department of Revenue and Scott Hunzeker at the Department of Labor.

## **SECTION I: New Markets Job Growth Investment Act**

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This section provides basic information about the New Markets Job Growth Investment Act and how it functions to help readers understand the metric results presented in the next section of this report. It also provides data regarding investments and benefits under the Act.

### **How the New Markets Job Growth Investment Act Works**

The New Markets Job Growth Investment Act (New Markets Act or Act) was passed by the Legislature in 2012 and will sunset at the end of 2022.<sup>2</sup> It was inspired by the federal New Markets program, which gives tax credits to taxpayers who invest in a community development entity, which in turn invests in businesses in low-income areas. Fourteen states currently have a state-level New Markets tax credit program.

In Nebraska, investors can earn credits up to 39% of investments in a community development entity, which are spread out over seven years. The total amount of credits awarded for the program are capped at \$15 million per year. These tax credits are non-refundable, which means that an investor must have tax liability to use them. They are also non-transferrable, i.e., the tax credits cannot be sold. When credits are issued, investors have five years to use them.

The general theory behind the New Markets tax credit concept is that it facilitates investment in businesses in low-income areas. These are typically loans that are either at below-market rates or that may not have happened at all.<sup>3</sup> This investment should then stimulate economic activity in desired areas.

The mechanics of a New Markets tax credit agreement can be very complex. In our evaluation, we focus on results of the program as much as possible and speak to the complexities and design when necessary.<sup>4</sup> However, in order to fully understand the results of the metrics we have analyzed, we must discuss some of the more important aspects of how the program works. The following is a simplified representation of the main players in a New Markets tax credit agreement and what their roles are.

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<sup>2</sup> Nebraska Laws 2012, LB 1128.

<sup>3</sup> United States Government Accountability Office, *New Markets Tax Credit: The Credit Helps Fund a Variety of Projects in Low-Income Communities, but Could Be Simplified*, January 2010, p.15, Nebraska Legislature, *LB 1128 (2012)* Remarks by Senator Brenda Council, March 20, 2012, p. 58.

<sup>4</sup> For a thorough discussion of the mechanics of the program, see Maine Legislature, Office of Program Evaluation & Government Accountability, *New Markets Capital Investment Program—Current Portfolio of Projects Produced Positive Outcomes; Cost-Effectiveness Could be Improved*, March 2017. The design of Maine's New Markets Capital Investment Program and the participant community development entities are very similar to Nebraska's New Markets Job Growth Investment Act.

## **Level 1: Credit Investor**

The entity, or entities, that ultimately receive tax credit from the program are the credit investor(s).<sup>5</sup> The credit investor can use tax credits on corporate income tax, financial institutions tax, or insurance premium tax liabilities. For Nebraska's New Markets program, most of the credits have been used to offset insurance premium taxes (see Figure 1.4 on page 7 for exact numbers).

The credit investor typically combines their investment with investments from a "leverage lender," which is usually a large financial institution such as a national bank. The combined investments are then provided to a community development entity. The combined investments, called a qualified equity investment (QEI), are used to calculate the credits that ultimately go to the credit investor.

The credit investor can earn tax credits up to 39% of the total QEI over seven years. The first credits are earned two years after the date of the investment and are equal to 7% of the QEI. The remainder of the credits are earned on the next four investment anniversary dates and are each worth 8% of the QEI. So a qualified investment made in 2012 would earn 7% credit in 2014, and 8% credit in 2015, 2016, 2017, and 2018.

## **Level 2: Community Development Entity**

The community development entity (CDE) is the entity that deals with the state. They are responsible for applying to the Department of Revenue for participation in the program and complying with statutory requirements. In order for a CDE to participate in the Nebraska program, it must have an active allocation *agreement* with the federal Community Development Financial Institutions Fund that includes Nebraska in its potential investment area.<sup>6</sup> It is not required to have a *project* in Nebraska that receives federal credits.

The CDE is also the entity that is responsible for finding local businesses in which to invest and then for maintaining a certain level of investment.

## **Level 3: Local Business**

The local business is the entity that the Act is intended to help.<sup>7</sup> In order for a credit investor to earn credits, at least 85% of the purchase price of the QEI (which is used to calculate credits) must be invested in qualified local businesses. These investments are typically loans but can also be equity investments.<sup>8</sup> A local business qualifies by meeting

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<sup>5</sup> Often referred to as the "equity investor." We chose to use the term "credit investor" for simplicity and ease of communication.

<sup>6</sup> The Community Development Financial Institutions Fund is the agency within the U.S. Department of the Treasury that administers the federal New Markets Tax Credit Program.

<sup>7</sup> In statute, the term used is "Qualified Active Low-Income Community Business." We chose to use the term "local business" for simplicity and ease of communication.

<sup>8</sup> United States Government Accountability Office, *New Markets Tax Credit: The Credit Helps Fund a Variety of Projects in Low-Income Communities, but Could Be Simplified*, January 2010, p.15.

requirements set forth in federal law and Nebraska-specific limitations.<sup>9</sup> In general, they qualify based on business activities in low-income communities or, less commonly, with designated populations.<sup>10</sup> No local business can receive more than \$10 million in qualifying investments. They can use the investment for any business purpose they deem necessary, including using the funds as gap financing or operating capital; facility improvements or acquisition; refinancing other debt; and/or reimbursing parent companies.

## New Markets Program Participation and Credit Use

Between 2013 and 2018, 13 CDEs participating in the Nebraska New Markets program provided \$284.9 million in qualified investments to 39 projects in Nebraska. Figure 1.1 shows the breakdown by calendar year of these investments.

**Figure 1.1. New Markets Investments**

Calendar Year	Investment (in millions)
2013	\$68.3
2014	\$89.2
2015	\$16.0
2016	\$4.5
2017	\$1.3
2018	\$105.7
<b>Total</b>	<b>\$284.9*</b>

Source: Audit Office analysis of Department of Revenue data.

\*Total does not precisely sum due to rounding.

We identified the industry sector of each participating company using the North American Industry Classification System (NAICS) of numeric codes.<sup>11</sup> Manufacturing (NAICS 31-33) saw the most investment as a sector, with 16 projects, followed by Health Care and Social Assistance (62), with 9 projects, as shown in Figure 1.2. Investments were also made in 10 other sectors.

<sup>9</sup> *New Markets Tax Credit, U.S. Code 26 (2000) § 45D and 26 CFR 1.45 D-1 (2004)*. Neb. Rev. Stat. 77-1108 excludes businesses or projects that “derive fifteen percent or more of its annual revenue from the rental or sale of real estate”.

<sup>10</sup> All of the local businesses in Nebraska that received investments through the state program qualified as a low-income business based on qualifying census tract characteristics. A census tract can qualify by meeting any of the following criteria: 1) Having a poverty rate of 20% or more; 2) Having an average of 80% or less of the statewide median family income; 3) Being in a metropolitan area, by having an average of 80% or less of the metropolitan area median family income; 4) Having a population of fewer than 2000, being located in an empowerment zone, and being contiguous to an otherwise qualifying area; or 5) Being located in a high migration rural county (10% population loss in the 20 years leading up to the most recent census) and having an average of 85% or less of the statewide median income. *New Markets Tax Credit, U.S. Code 26 (2000) § 45D and 26 CFR 1.45 D-1 (2004)*.

<sup>11</sup> This system uses numeric codes of up to six digits to identify industries—fewer digits reflect broader categories and more digits reflect narrower categories. We used Department of Labor information on investment locations and Letter Rulings provided to the Department of Revenue to determine each project’s NAICS code.

**Figure 1.2. New Markets Credit Investments by Industry**

NAICS Code & Industry Sector Description*	Number of Projects	Amount of Investment (in millions)
31 Manufacturing	7	\$57.5
23 Construction	3	\$10.8
32 Manufacturing		
33 Manufacturing	7	\$64.7
42 Wholesale Trade	5	\$30.0
44 Retail Trade		
49 Transportation and Warehousing		
51 Information	4	\$22.1
54 Professional, Scientific, and Technical Services		
56 Administrative and Support and Waste Management and Remediation Services	10	\$75.4
62 Health Care and Social Assistance		
71 Arts, Entertainment, and Recreation	3	\$24.6
72 Accommodation and Food Services		
81 Other Services (except Public Administration)		
<b>Total</b>	<b>39</b>	<b>\$284.9**</b>

Source: Audit Office compilation of project NAICS codes from Revenue Department data.

NAICS code descriptions from U.S. Census Bureau.

\*Sectors combined to protect taxpayer confidentiality.

\*\*Total does not precisely sum due to rounding.

Credit investors used \$46.1 million in New Markets tax credit from 2015 to 2018. The breakdown by each calendar year can be seen in Figure 1.3.<sup>12</sup>

**Figure 1.3. New Markets Program Total Credit Use, by Year**

Calendar Year	Amount of Credits Used (in millions)
2015	\$6.7
2016	\$10.8
2017	\$15.6
2018	\$13.0
<b>Total</b>	<b>\$46.1</b>

Source: Audit Office analysis of Department of Revenue data.

The majority of credits were used by insurance companies to offset insurance premium taxes. The rest were used by other program participants to offset financial institutions tax and corporate income taxes as shown in Figure 1.4.

<sup>12</sup> Credit use was provided by tax year. We consider credit to be used on the date that they are approved for use, and not the tax year for which they were claimed. In an interview and discussions with staff on September 19, 2019, we concluded that, by this definition, all credit use in the program occurred in the year following the tax year for which they were claimed.

**Figure 1.4. New Markets Program Total Credit Use through 2018, by Type**

Type of Tax*	Amount of Credits Used (in millions)
Insurance Premium Tax	\$33.4
Financial Institutions Tax and Corporate Income Tax	\$12.7
<b>Total</b>	<b>\$46.1</b>

Source: Audit Office analysis of Department of Revenue data.

\*Financial Institutions Tax and Corporate Income Tax were combined to protect taxpayer confidentiality.

### **New Markets Act: Goals**

The legislative history of the New Markets Job Growth Investment Act shows that senators and proponents intended for the Act to accomplish five goals:<sup>13</sup>

1. Bring federal New Markets tax credit dollars to Nebraska;
2. Create jobs;
3. Pay for itself;
4. Bring new investment to the state; and
5. Provide additional capital/gap financing for businesses in rural and urban distressed areas.

Following is a brief discussion of where the Act stands in relation to achieving these goals. Overall, we found that the language of the Act does not contain specific enough requirements to fully achieve some of the goals, as discussed further below.

**Finding:** Several of the goals stated during legislative debate of the New Markets Job Growth Investment Act are not reflected in the language or the requirements of the Act, specifically expectations that the program would create jobs and bring federal New Markets dollars to the state.

### **Federal Dollars**

Throughout the committee hearing and floor debate on LB 1128 (2012), proponents expressed the belief that the bill would attract federal New Markets tax credits to the state by inducing investors with federal credits to bring those investments to Nebraska. However, the design of the Act does not require Nebraska New Markets investments in local businesses also be federal credit-earning projects and therefore does not draw federal projects into the state in the way expressed by senators and supporters.<sup>14</sup>

<sup>13</sup> Nebraska Legislature, *LB 1128 (2012) General File Remarks*, March 20, 2012, pp. 50-61.

<sup>14</sup> CDEs can earn credit for investors through investment projects that are not connected to the federal program in any way. The CDE must be active and in good standing with the federal program, but that is as far as the connection goes. A credit earning state project does not have to be a credit earning federal project.

From testimony, it appears that proponents believed that a state program would draw federally-connected investments into Nebraska from CDEs with active federal allocations looking for investment opportunities.<sup>15</sup> In practice, CDEs typically apply for state dollars first and then use the resulting state allocations to try to improve their applications for federal credits.<sup>16</sup> Not all state credits result in federal credits, and individual projects are not required to be connected to the federal program in any way.

Although it is not required for Nebraska credit-earning projects to also earn federal credits, a number of them do. However, the Audit Office was unable to determine the amount of federal credits associated with projects in the state program. In order to know this amount, we need an accurate source of that information. In the course of administrating the program, insufficient information has been collected to answer this question. The only source of information on federal credits that is provided to the Department comes from requests made for Department-issued Letter Rulings.<sup>17</sup>

In this context, CDEs request a ruling on detailed descriptions of proposed New Markets deals so they can be assured that the structure of the deal is acceptable to the Department of Revenue. Of the 41 projects in the program as of August 2019, only 18 had Letter Rulings attached to them. Additionally, it is possible that some of those 18 projects attached to Letter Rulings were associated with the federal program, but omitted federal engagement information and only provided what was necessary for the purpose ensuring they complied for state credits.

Furthermore, based on the Act's design, even when federal credits are connected to a project investment in Nebraska, these credits would not necessarily end up in the state. The entities that actually earn credits are typically national financial and insurance companies and the benefit they see from federal New Markets credits is therefore diffused throughout their company's national footprint.

### **Job Creation**

As can be inferred by the title of the New Markets Job Growth Investment Act, supporters of the legislation believed that it would create jobs. This was the goal expressed by the most proponents, with one senator claiming that the Act would create between 3,000 to 5,000 jobs.<sup>18</sup> The jobs intended to be created by the Act are in local businesses. As was mentioned previously in this section, local businesses are not restricted in how they use this investment: they can use it for gap financing for operations, new construction, or upgrading equipment. However, they can also use it to pay down other debt or purchase equipment or software that ultimately increases efficiency but reduces employment.

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<sup>15</sup> Nebraska Legislature, Revenue Committee, *LB 1128 (2012) Transcript*, testimony of Senator Paul Schumacher, February 13, 2012, p. 2; and Nebraska Legislature, *LB 1128 (2012) Legislative History*, remarks by Senator Paul Schumacher and Senator Brenda Council, March 20, 2012, pp. 50-52, 54-55.

<sup>16</sup> Department of Revenue staff, meeting with auditors, September 19, 2019.

<sup>17</sup> Neb. Rev. Stat. §77-1105. Letter Rulings are written interpretations of the law to a specific set of facts.

<sup>18</sup> Nebraska Legislature, *LB 1128 (2012) Legislative History*, remarks by Senator Brenda Council, March 20, 2012, p. 59.

Despite what proponents of the bill may have intended, the Act is not structured to specifically create jobs. Instead, job creation is a hoped for after effect. What the Act incentivizes is *loans* to businesses in low-income areas. A full discussion of job creation results and cost per job associated with participating local businesses can be found in Section II on pages 15 and 18 respectively.

### **Paying for Itself**

A majority of proponents in the bill's committee hearing and during debate on the floor of the Legislature stated that the New Markets Act would pay for itself, meaning that revenue generated from increased employment and investment would make up for the revenue given out as credit under the Act.<sup>19</sup> Evidence from evaluations conducted in other states with New Markets tax credit programs cast some doubt on this claim,<sup>20</sup> but economic modeling would be necessary to test it in Nebraska. The Audit Office was unable to produce an estimate of revenue generation because the modeling software to which we have access does not have that capability.

### **New Investment**

As stated previously, there were 39 projects that received \$284.9 million in investment through the state program through the end of 2018. The central question regarding “new” investment is whether the investment would have occurred without the program. The Audit Office was unable to determine the extent to which those investments were “new.”<sup>21</sup>

### **Additional Capital/Gap Financing for Businesses in Rural, Urban, and Distressed Areas**

For detailed information on how the Act interacted with rural and distressed areas, see pages 27 and 31 in Section II of this report.

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<sup>19</sup> Nebraska Legislature, Revenue Committee, *LB 1128 (2012) Transcript*, testimony of Senator Paul Schumacher, February 13, 2012, p. 2; Nebraska Legislature, *LB 1128 (2012) Legislative History*, remarks by Senator Brenda Council, March 20, 2012, p. 59.

<sup>20</sup> Florida Legislature, Office of Economic and Demographic Research, *Economic Evaluation for Select State Economic Development Incentive Programs*, January 2017, revised March 2017, p. 4. Maine Legislature, Office of Program Evaluation & Government Accountability, *New Markets Capital Investment Program—Current Portfolio of Projects Produced Positive Outcomes; Cost-Effectiveness Could be Improved*, March 2017. Matthew N. Murray, Ph.D. and Donald J. Bruce, Ph.D., Alabama Department of Revenue, *Evaluation of Alabama's Entertainment Industry Incentive Program and New Markets Development Program*, March 9, 2017, p. 3.

<sup>21</sup> See Alabama Department of Revenue, *Evaluation of Alabama's Entertainment Industry Incentive Program and New Markets Development Program*, March 9, 2017, p. 27-30 for further discussion around the question of “new” investments.

## Evaluations of New Markets Programs

The Audit Office reviewed a number of evaluations of the federal and state New Markets programs, looking specifically for analysis of the effectiveness of such programs as well as the cost for businesses to comply with program requirements. Following is the results of our review.

### Effectiveness

In Florida, a review of several state economic development incentive programs calculated a Return on Investment (ROI) for the state's New Markets program. This calculation resulted in a .18 ROI, which indicates that while the program does not break even, "the state generates enough revenues to recover a portion of its cost of the investment."<sup>22</sup> The report cautioned, however, that while "the return associated with the New Markets Development Program is relatively low, it is worth reiterating that the ROI does not address the social benefit of the program."<sup>23</sup>

The Maine program evaluation office's audit did not calculate a ROI for the program but produced similar conclusions in their March 2017 report on their state's New Market program. In the audit, they stated that while the program had "increased investments in Maine businesses and generated other positive outcomes, it may not be accomplishing those ends cost-effectively."<sup>24</sup>

This concern was echoed by the Alabama audit released the same month, where reviewers contracted by the Alabama Department of Revenue found that Alabama's program "falls short in terms of economic impact, efficiency, and accountability. The program entails relatively high costs and, based on the available evidence, provides little market or fiscal return to the state other than the reallocation of investment into low-income communities. It is up to state officials to determine whether the limited benefits of the program are worth the costs."<sup>25</sup> The Alabama audit concluded with the recommendation that the New Markets program be eliminated.

Reviews of the federal New Markets program by the Government Accountability Office (GAO) in 2010 reached a somewhat similar conclusion: the GAO recommended that Congress consider instead "offering grants to CDEs that would provide the funds to low-

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<sup>22</sup> Florida Legislature, Office of Economic and Demographic Research, *Economic Evaluation for Select State Economic Development Incentive Programs*, January 2017, revised March 2017, p. 4.

<sup>23</sup> *Ibid*, pp. 35-36.

<sup>24</sup> Maine Legislature, Office of Program Evaluation & Government Accountability, *New Markets Capital Investment Program—Current Portfolio of Projects Produced Positive Outcomes; Cost-Effectiveness Could be Improved*, March 2017, pp. 5-6.

<sup>25</sup> Matthew N. Murray, Ph.D. and Donald J. Bruce, Ph.D., Alabama Department of Revenue, *Evaluation of Alabama's Entertainment Industry Incentive Program and New Markets Development Program*, March 9, 2017, p. 3.

income community businesses” to ensure that funds go directly to those targeted areas.<sup>26</sup> The GAO has reiterated this recommendation in annual reports through 2019.<sup>27</sup>

Although the Audit Office was unable to run an ROI or an estimate of revenue generation for the Nebraska program, a direct cost per job analysis can be found on page 18.

### **Compliance Costs for Local Businesses**

Although the design of the Act provides tax benefits to credit investors, we focus on participation costs of the local businesses because they are the entities the program is ultimately intended to help. We examined state and federal New Markets tax credit reports for information related to their costs and highlighted some of their findings.

Local businesses can incur costs in the preparations and lead up to the initial investment. Maine’s program evaluation office described the challenges in their 2017 report: local businesses “reported to OPEGA that this part of the process can be complex, time consuming, and costly for them. One [local business] described participating in conference calls with 17 people and signing 150 documents.”<sup>28</sup> In addition, the state of Florida found that local businesses had been subject to “front end or organization fees at [the] closing” of the deal.<sup>29</sup>

Florida also found that asset management fees can accrue during the compliance period, and local businesses can be subject to closing fees at the end of the compliance period. These fees are in addition to any interest inherent in a loan.<sup>30</sup>

An evaluation of the federal program found common complaints related to “the significant administrative (especially legal and accounting) costs associated with NMTC financing.”<sup>31</sup> Local businesses were often unsure of what the definitive costs for these services were.<sup>32</sup>

Time and resources prevented the Audit Office from investigating costs to local businesses relative to Nebraska’s program. However, because the process is the same, any financing received by a local business that has federal program connections will very likely have similar experiences to other federal projects. Additionally, of the 10 projects reviewed in

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<sup>26</sup> United States Government Accountability Office, *New Markets Tax Credit: The Credit Helps Fund a Variety of Projects in Low-Income Communities, but Could Be Simplified*, January 2010, p. 42.

<sup>27</sup> The most recent was the United States Government Accountability Office, “2019 Annual Report: Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits,” <https://www.gao.gov/reports/GAO-19-285SP/> (released May 21, 2019).

<sup>28</sup> Maine Legislature, Office of Program Evaluation & Government Accountability, *New Markets Capital Investment Program—Current Portfolio of Projects Produced Positive Outcomes; Cost-Effectiveness Could be Improved*, March 2017, p. 21.

<sup>29</sup> Florida Legislature, Office of Economic and Demographic Research, *Economic Evaluation for Select State Economic Development Incentive Programs*, January 2017, revised March 2017, p. 54-55.

<sup>30</sup> *Ibid.*

<sup>31</sup> Urban Institute, *New Markets Tax Credit (NMTC) Program Evaluation, Final Report*, April 2013, p. 86.

<sup>32</sup> *Ibid.*

the Maine evaluation, 7 were managed by CDEs that have projects in Nebraska's program.<sup>33</sup> The five CDEs listed as having the most projects in the Florida report all have Nebraska projects as well.<sup>34</sup> This suggests that Nebraska projects would have similar compliance costs.

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<sup>33</sup> Maine Legislature, Office of Program Evaluation & Government Accountability, *New Markets Capital Investment Program—Current Portfolio of Projects Produced Positive Outcomes; Cost-Effectiveness Could be Improved*, March 2017, p. 58-67, Nebraska Department of Revenue, “New Markets Job Growth Investment Tax Credit General Information,” <https://revenue.nebraska.gov/incentives/new-markets-job-growth-investment-act/general-information> (accessed November 21, 2019).

<sup>34</sup> Florida Legislature, Office of Economic and Demographic Research, *Economic Evaluation for Select State Economic Development Incentive Programs*, January 2017, revised March 2017, p. 58, Nebraska Department of Revenue, “New Markets Job Growth Investment Tax Credit General Information,” <https://revenue.nebraska.gov/incentives/new-markets-job-growth-investment-act/general-information> (accessed November 21, 2019).

## **SECTION II: New Markets Job Growth Investment Act's Effect on the State Economy**

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This section contains the results of the Audit Office's analysis of the selected New Markets Job Growth Investment Act metrics. The individual scope questions, which include the metrics utilized to answer each question, are listed below. Note that metrics regarding how much new investment, how many tax credits have been issued under the Act, the cost-benefit analysis, how much federal credit the Act brought to the state, and how much it costs for businesses to comply with the Act were addressed in Section I of the report. Suggestions for improving future audits are included in the metric sections for which they are appropriate.

**Scope Question:** Is the New Markets Job Growth Investment Act meeting the goals of strengthening the state's economy overall by attracting new business to the state, expanding existing businesses, increasing employment, creating high-quality jobs, and increasing business investment?

Metric 1: How many jobs did businesses that received investment through the Act create?

Metric 2: How much tax benefit did companies receive for each new job businesses that received investment through the Act created?

Metric 3: Were the average wages at businesses that received investment through the Act higher or lower than the average wages of all Nebraska jobs in the same industries?

Metric 4: How many employees filed for unemployment in the year *prior* to being hired and in the two years *after* being hired at a business that received investment through the Act?

Metric 5: How many businesses that received investment through the Act were new to the state?

**Scope Question:** Is the New Markets Job Growth Investment Act meeting the goal of revitalizing rural and other distressed areas of the state?

Metric 6: To what extent are tax credits being utilized in connection with businesses in rural areas?

Metric 7: To what extent are tax credits being utilized in connection with businesses in distressed areas?

**Scope Question:** What are the New Markets Job Growth Investment Act's economic and fiscal impacts?

Metric 8: What is the cost to administer the Act?

**Scope Question:** Are adequate protections in place to ensure the fiscal impact of the New Markets Job Growth Investment Act does not increase substantially beyond the state's expectations in future years?

Metric 9: What protections are in the Act to ensure its fiscal impact does not increase beyond expectations?

# Metric 1: Job Creation

How many jobs did businesses that received investment through the Act create?

## Results

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**For 35 businesses that received investment through the Act, we estimate that the businesses created 323 full- and part-time jobs in the local area of the sites that received the program investment.**

**Statewide, the businesses created 520 full- and part-time jobs. Of the statewide jobs, 368 were full-time jobs.**

For this metric, using Department of Labor (Labor) information, the Audit Office (Office) reports jobs created in three ways: 1) total jobs (full- and part-time) created in the local area of the business site that received the program investment; 2) total jobs (full- and part-time) created statewide; and 3) “full-time workers” statewide, using the definition of full-time worker contained in the Legislative Performance Audit Act. As seen in Figure 2.1, this analysis shows an increase of 323 local jobs, an increase of 520 jobs statewide, and an increase of 368 full-time jobs statewide.

The broadest definition of jobs, which gives companies the most generous view of employment increase, is statewide full- and part- time employment. Using this definition, businesses receiving investments created—at most—520 jobs. The other measurements can be seen as more specific subgroups of the companies’ total statewide employment.

### Local Employment

Generally speaking, the Office defined “local” as meaning within a city. For 31 of the 35 businesses, we were able to identify the specific site that received the program investment. For the four businesses that did not report site specific information, we were able to determine that they could be included in the local employment category with only a small possible overestimation of the jobs created locally, as described in the methodology section.

### Statewide Employment

In addition to the local job creation impact, we found the number of jobs created statewide. For businesses with multiple locations, this analysis shows the net increase or decrease for the company’s statewide operations. For example, if a company received an investment for a location in Lexington and added 50 jobs there, but decreased their employment at a location in Omaha by 30 jobs, their statewide employment total increase would net 20 jobs.

We found statewide employment in two ways—total jobs (full-time and part-time) and full-time jobs only. The analysis of full-time jobs uses the definition of “full-time” contained in the Legislative Performance Audit Act.<sup>35</sup>

**Figure 2.1. Employment Change from Investment Date through 2018**

Method for Determining Employment	Total Net Change in Employment
Local Employment	+323
Statewide Total Employment	+520
Statewide Full-time Workers	+368

Source: Audit Office analysis of Department of Labor data.

## Methodology/Discussion

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For this metric and all others using Quarterly Census of Employment and Wages (QCEW) data from the Department of Labor, although there were 39 projects that received investments during our review period, we were only able to examine 35 companies for employment and wage analyses. Of the four we had to exclude, one company had multiple projects in the New Markets program, but reported only statewide data to Labor. There were also three projects/companies that we were unable to match to Labor information.

For each company we found average employment in the quarter in which their investment began and compared it to the average for the fourth quarter of 2018. The Audit Office makes no claim about whether or not the Act directly caused employment changes.

As stated previously, this analysis uses three sets of results: one using the most local-possible results, one using company-wide results from the entire state, and another using our full-time worker definition. The first two use average total employment in the quarter. This means all employees reported to Labor for October, November, and December were averaged together, regardless of income or length of employment.

The last uses the definition set in statute for full-time workers.<sup>36</sup> Companies in are not required to report the number of hours an employee works, so we needed to find a definition that we could use with the information available to us. The Legislative Audit Act was amended by LB 936 (2018) to provide a definition of full-time worker that uses a quarterly minimum wage calculation in order to capture every possible full-time employee.<sup>37</sup> It also excludes short-term employees by requiring that we only count individuals who appear on two consecutive quarterly reports. So the reported number of full-time workers is the total number of individuals that met the statutory definition in the investment quarter compared to the 4<sup>th</sup> quarter of 2018. Because this requires the

<sup>35</sup> Neb. Rev. Stat. § 50-1209(4)(b).

<sup>36</sup> Ibid.

<sup>37</sup> These are quarterly wages of \$3,299 through 2014, \$3,640 in 2015, and \$4,095 from 2016 forward (contemporary minimum wage x 35 hours x 13 weeks in a quarter). Or equivalent rates to average yearly wages of \$13,195, \$14,560, and \$16,380 respectively. This captures every possible full-time employee, because there is no way that a full-time employee could legally earn less. None of the local businesses that received investments employ tipped employees, so the standard minimum wage applies to all of them.

Department of Labor to filter out employees that do not meet the definition, it is only available at the statewide company level.

Single-site companies are the easiest to calculate. In this case, all of the employment is reported to Labor in the same way: all of the employment is assigned to the same address. Multi-site companies, however, are able to report employment either by individual locations or by reporting all statewide employment as a single number.

For the four businesses that did not report site-specific information to Labor, additional review showed that nearly all of the companies' sites were located closely to one another, generally within the same city. In other words, although the businesses had not reported job information for the specific site that received the program investment, for three of the four businesses we were able to determine that all of their sites were within the same community, allowing us to include all of the jobs created at those companies in this analysis. We could not make a similar determination for the last of the four businesses but found that all of that businesses' sites were in single region of the state and believed that it was close enough to meeting our definition of local to include it. Including that business may cause a slight overrepresentation of the number of local jobs created of no more than 25 jobs (about 8%).

### **Suggestions for Future Evaluations**

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The difficulties of data matching between state agencies and unemployment insurance account analysis can be eased and the accuracy of our reports can be improved by having community development entities (CDEs) report specified employment information connected to New Markets tax credits such as unemployment insurance account information, the number of employees connected with the investment project, their wages, and the number of hours worked.

Two other states with New Markets tax credit programs require identification numbers of local businesses to be reported. Seven other states with New Markets tax credit programs require reporting of employment associated with investment in local businesses.

<p><b>Finding:</b> The Audit Office encountered difficulties in data matching between state agencies and unemployment insurance account analysis. Future performance audits will be improved if the relevant employment and wage data, or the identification information necessary to find it and perform our analyses, is readily available for use.</p>
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## Metric 2: Cost per Job

How much tax benefit did companies receive for each new job businesses that received investment through the Act created?

### Results

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**Depending on the method used for calculating job increases and how the “but-for” question is treated, businesses that received investment had an estimated cost per job range of \$87,607 and \$1,175,347.**

Our cost per job estimates take two factors into account: which job creation count is included in the equation and how many of the jobs created are attributed solely to the Act. We estimated the cost per job using all three methods discussed in the Job Creation metric (pages 15-17). Taking these factors into account, we provide nine estimates for the cost per job.

The total credit use through 2018 was \$45.6 million.<sup>38</sup> If it is assumed that *all* of the employment increase is directly attributable to the Act—a 100% but-for assumption—the cost per job would be \$87,607 using all statewide jobs, \$123,793 using statewide full-time jobs, and \$141,039, using only local full- and part time jobs, as shown in Figure 2.2.

However, according to subject matter experts, if the incentive did not exist, a certain amount of the employment increase would have happened anyway. Academic research suggests that tax incentives are responsible for tipping 12%-25% of business decisions, meaning 12%-25% of location and expansion decisions would not have been made “but for” the incentive.<sup>39</sup> We use these percentages to estimate what a reasonable employment increase and cost per job estimate would be.

If we assume that the New Markets incentive was responsible for 25% of the employment increase in businesses that received investment, the cost per job increases four-fold. In this case, the cost per job would be \$350,428 using all statewide full- and part-time jobs, \$495,170 using only statewide full-time jobs, and \$564,157 using local full- and part-time jobs.

Using a 12% but-for assumption would result in a cost per job of \$730,059 using all statewide jobs, \$1,031,605 using statewide full-time jobs, and \$1,175,327 using only local jobs.

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<sup>38</sup> See the methodology section on the following page for why this number is different from that stated earlier in this report.

<sup>39</sup> Research indicates that attributing all new employees to any incentive is an overestimation of the incentive’s impact. Timothy J. Bartik, “‘But For’ Percentages for Economic Development Incentives: What percentage estimates are plausible based on the research literature?” Upjohn Institute Working Paper, 18-289, 2018.

**Figure 2.2. Direct Cost per Job Estimates through 2018**

Method for Determining Employment	Total Net Increase in Employment	Total Credits Used (in millions)	Cost per Job— “But For” Assumption*		
			12%	25%	100%
Local Employment	323	\$45.6	\$1,175,327	\$564,157	\$141,039
Statewide Total Employment	520		\$730,059	\$350,428	\$87,607
Statewide Full-time Workers	368		\$1,031,605	\$495,170	\$123,793

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

\*The percentage of jobs assumed to be created due to the program benefit.

## **Methodology/Discussion**

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Information from the Job Creation metric (pages 15-17) using Quarterly Census of Employment and Wages data from the Department of Labor was used for this analysis. We examined companies through the end of 2018 and we estimated cost per job using all three methods discussed in the Job Creation metric. The Audit Office makes no claim about whether or not the Act directly caused employment changes.

Total credit use through 2018 was divided by the job numbers from QCEW so we could use the same time period for employment and costs. One of the companies that we could not match with the Department of Labor had investments several years previous to the end of our evaluation period, and would likely have changed the job creation results. Because we were not able to match their employment information, we subtracted the maximum possible amount of credits that could have been paid out based on that investment from our total. That is why the amount we used here (\$45.6 million) does not equal the total credit use found on page 6 (\$46.1 million).

These results are for direct costs per job. That is, we are only estimating how much state revenue was foregone for *employment change* at businesses that received investment. This does not account for secondary or induced effects.<sup>40</sup>

## **Suggestions for Future Evaluations**

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As noted in the previous metric, the difficulties of data matching between state agencies and unemployment insurance account analysis can be eased and the accuracy of our reports can be improved by having CDEs report specified employment information connected to New Markets tax credits such as unemployment insurance account information, the number of employees connected with the investment project, their wages, and the number of hours worked.

Two states with New Markets tax credit programs require identification numbers of local businesses to be reported. Seven states with New Markets tax credit programs require reporting of employment associated with investment in local businesses.

<sup>40</sup> Secondary effects are the benefits seen by companies that local businesses contract with or purchase from, that would not have occurred without the incentive. Induced effects are the benefits seen by the economy through the additional spending of new employees.

## Metric 3: Average Wages

Were the average wages at businesses that received investment through the Act higher or lower than the average wages of all Nebraska jobs in the same industries?

### Results

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**Of the 31 businesses' local sites that received New Markets investments, 8 (26%) had average wages that were higher than the Nebraska average wage for their industries, while 23 (74%) had lower average wages than their comparable industries' average wages.**

**Of the 7 businesses with additional sites throughout the state, 3 had higher average wages compared to industry standards than the average wages at the local sites. For the other 4 businesses, the local sites had lower average wages compared to industry standards than the business statewide.**

For this metric, we could only use 31 businesses that received investment through the Act.<sup>41</sup> Using Department of Labor data, the Audit Office found average wages from these 31 businesses in the fourth quarter of 2018 and compared them to their Nebraska industry averages in the same quarter.

As discussed in Metric 1 on Job Creation (pages 15-17), we were able to identify the businesses' specific site that received investment through the program. We report average wage data for those individual sites as well as statewide data for the seven businesses that had multiple sites in the state.

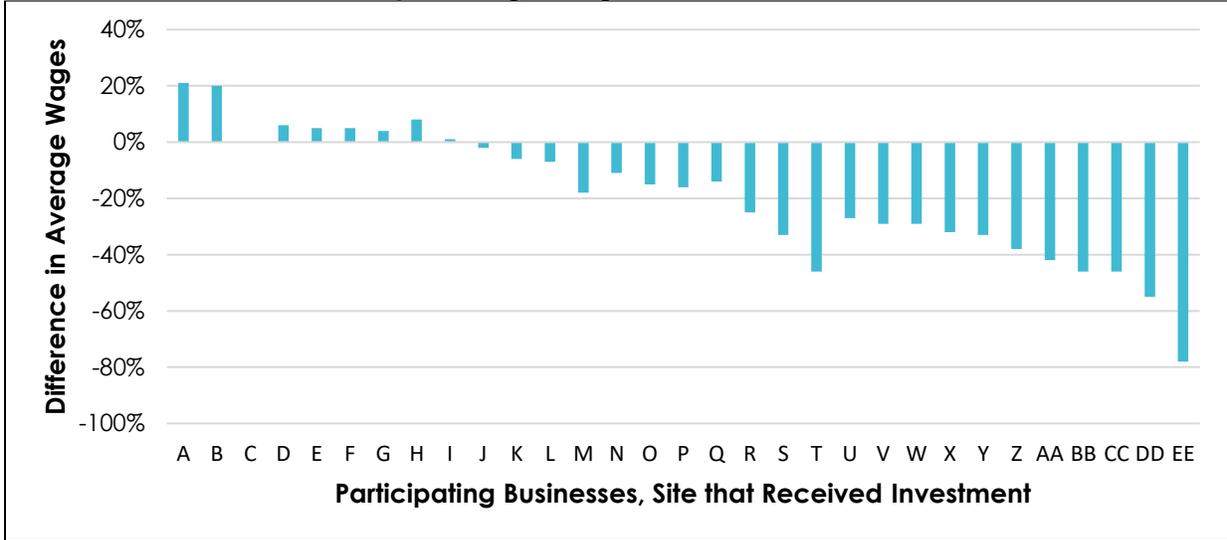
### Local Wages

Of the local sites for the 31 businesses, 8 (26%) had higher average wages than the comparable industry wages. The wages ranged from 1% to 21% above the Nebraska industry averages. For the other 23 businesses (74%), the local site had lower average wages, ranging from -2% to -78% below the industry averages. To give a further idea of the proportion of highest wages compared to lowest, we note that while 2 of the sites had average wages that were 20% or more above the statewide industry average, 14 sites had average wages at least 20% below the industry average. The complete breakdown is shown in Figure 2.3.

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<sup>41</sup> Four of the 35 businesses included in other metrics did not have employees or wages in the fourth quarter of 2018.

**Figure 2.3. Difference in Average Wages between the Participating Businesses' Local Sites and Nebraska Industry Average Wages**

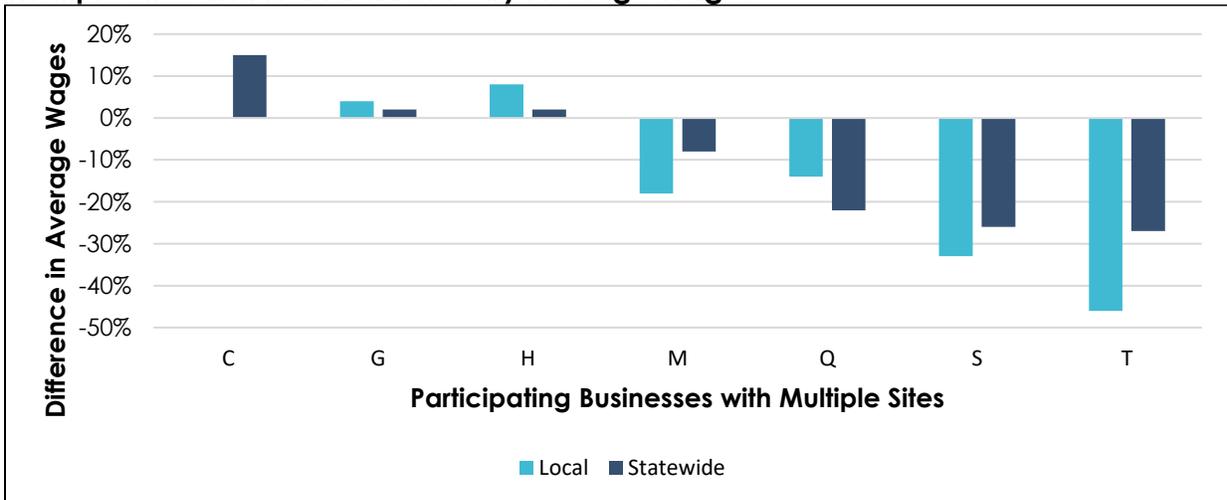


Source: Audit Office analysis of Department of Labor and Department of Revenue data.  
 Note: There is no line for company "C" because the difference between the average wages was zero.

### Statewide Wages

Seven of the 31 businesses had additional sites across the state. In three of the seven, the statewide average wage was higher compared to the industry standard than the average wage of the local site compared to the industry standard. The difference ranged from 2% to 8% higher than for the local sites. In the other four, the statewide average wage was lower compared to the industry standard than the average wage compared to the industry standard. The difference ranged from -7% to -19% less than for the local sites. The differences between the local and statewide averages are shown in Figure 2.4.

**Figure 2.4. Difference in Average Wages between the Participating Businesses' with Multiple Sites and Nebraska Industry Average Wages**



Source: Audit Office analysis of Department of Labor and Department of Revenue data.  
 Note: The Local Site amounts are the same as in the previous figure. There is no line for company "C" because the difference between the average wages was zero.

## **Compared to Federal Poverty Level**

Because industry average wages vary from industry to industry, we are also providing data on the federal poverty level for a family of four in 2018 (\$25,100) for comparison.<sup>42</sup> Of the 31 businesses included in this analysis, the highest average wage paid was \$81,073, or 323% of the Federal Poverty Level (FPL). The lowest average wage paid was \$7,530, or 30% of the FPL. Only two companies paid average wages that were less than \$25,100.

Using only the businesses' local sites, 177% of the FPL (\$44,466) is the point at which half the average wages were above and half below (the median). If the additional sites from the 7 businesses with additional sites are included, the median is 190% (\$47,663).

## **Methodology/Discussion**

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The Department of Labor provided Nebraska-specific Quarterly Census of Employment and Wages information for companies that received investments through the New Markets program, reported by quarter. We compared average wages from businesses that received investments through the program in the fourth quarter of 2018 to their industry averages in the same quarter. The NAICS codes of businesses that received investment were provided by Labor. We used 2-Digit NAICS code averages to compare them with their statewide industries.

Similar to the Job Creation metric (pages 15-17), two sets of results were available for use: one using the most local-possible results and the other using company-wide results across the state. We include both local and statewide averages to allow readers to consider either or both analyses.

## **Suggestions for Future Evaluations**

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As noted in the previous metric, the difficulties of data matching between state agencies and unemployment insurance account analysis can be eased and the accuracy of our reports can be improved by having CDEs report specified employment information connected to New Markets tax credits such as unemployment insurance account information, the number of employees connected with the investment project, their wages, and the number of hours worked.

Two states with New Markets tax credit programs require identification numbers of local businesses to be reported. Seven states with New Markets tax credit programs require reporting of employment associated with investment in local businesses.

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<sup>42</sup> Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services, "Prior HHS Poverty Guidelines and Federal Register References," <https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references> (accessed January 15, 2020). The federal poverty level of a family of four in 2018 was \$25,100.

# Metric 4: Unemployment Insurance Claims

How many employees filed for unemployment in the year *prior* to being hired and in the two years *after* being hired at a business that received investment through the Act?

## Results

**Looking at 35 of the businesses that received investment, 22 companies hired 198 individuals who had established unemployment insurance claims in the year *before* they were hired. Of those same 35 businesses, 26 companies had 224 former employees who established unemployment insurance claims in the two years *after* being hired.**

The majority of the 198 individuals that had established unemployment insurance claims in the year prior to being hired were employed by participating businesses in the Construction and Manufacturing industry sectors, as shown in Figure 2.5, utilizing the North American Industry Classification System (NAICS) of numeric codes as we did in Section I.<sup>43</sup> Hiring people who previously filed for unemployment is one indication participating companies are bringing new people into the workforce, not simply hiring people who were already employed elsewhere.

**Figure 2.5. Unemployment Insurance Claims One Year Prior to Being Hired at a Participating Business through 2018 by Industry**

NAICS Code & Industry Sector Description*	Number of Claims
23 Construction	99
31-33 Manufacturing	
42 Wholesale Trade	26
51 Information	4
52 Finance and Insurance	
53 Real Estate, Rental, Leasing	
54 Professional, Scientific, and Technical Services	
62 Health Care and Social Assistance	69
<b>Total</b>	<b>198</b>

Source: Audit Office compilation of project NAICS codes from Departments of Revenue and Labor data. NAICS code descriptions from U.S. Census Bureau.

\*Sectors combined to protect taxpayer confidentiality.

<sup>43</sup> “Established” unemployment insurance claims are those that the Department of Labor has reviewed and deemed the individual as eligible. We used established claims rather than filed claims, which was used in previous reports, to relieve administrative burden on the Department of Labor. The North American Industry Classification System (NAICS) uses numeric codes of up to six digits to identify industries—fewer digits reflect broader categories and more digits reflect narrower categories.

As shown in Figure 2.6, the industry sector with the largest number of established claims by former employees of a participating company was Manufacturing, with Health Care and Social Assistance close behind. A person who files for unemployment within two years after being hired by a participating company is one indication that jobs at these companies are not stable. However, because many factors can influence job stability, this indicator should be viewed with some caution.

**Figure 2.6. Unemployment Insurance Claims Two Years After Being Hired at a Participating Business through 2018 by Industry**

NAICS Code & Industry Sector Description*	Number of Claims
31-33 Manufacturing	104
42 Wholesale Trade	14
51 Information 52 Finance and Insurance 53 Real Estate, Rental, Leasing 54 Professional, Scientific, and Technical Services	7
62 Health Care and Social Assistance	99
<b>Total</b>	<b>224</b>

Source: Audit Office compilation of project NAICS codes from Departments of Revenue and Labor data. NAICS code descriptions from U.S. Census Bureau.

\*Sectors combined to protect taxpayer confidentiality.

## **Methodology/Discussion**

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The Audit Office requested unemployment claims information from the Department of Labor on the 35 companies that we were able to match with their database. Labor was able to identify employees at the statewide company level (they could not run this query at the local-site level). We were provided with a count of all the people who had an established unemployment claim, the quarter in which it was established, and the quarter in which they were hired. For claims that were established in the same quarter as they were hired, we assumed that the claim was in process prior to being hired at the company.

As noted in the previous metric, the difficulties of data matching between state agencies and unemployment insurance account analysis can be eased and the accuracy of our reports can be improved by having CDEs report specified employment information connected to New Markets tax credits such as unemployment insurance account information, the number of employees connected with the investment project, their wages, and the number of hours worked.

Two states with New Markets tax credit programs require identification numbers of local businesses to be reported. Seven states with New Markets tax credit programs require reporting of employment associated with investment in local businesses.

# Metric 5: New to Nebraska

How many businesses that received investment through the Act were new to the state?

## Results

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**Of the 39 businesses that received investment through the Act, 11 project investments were in companies that met our definition of new to Nebraska. Those projects received \$74.3 million in investment. The remaining 28 projects were for expansions of existing businesses and received a total of \$210.7 million in investment.**

The Legislative Performance Audit Act defines a company as being “new” to the state when a person or unitary group did not pay income taxes or wages in the state more than two years prior to submitting an application to an incentive program.<sup>44</sup> This definition generally refers to the credit-earning entity. However, due to the structure of the New Markets Act, the local businesses that were invested in by the credit-earning entities were instead measured for this metric.

Using a slightly modified version of the definition (discussed in the methodology section below), the Office found that 11 (28%) of the 39 participating businesses that received investment met the definition of new to Nebraska.

## Methodology/Discussion

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The Office used a version of the statutory definition adjusted for the New Markets credit. For purposes of this analysis, a local business was considered “new” if they did not pay income taxes or wages in the state more than two years prior to receiving their first state qualified investment from a CDE participating in Nebraska’s New Markets Act. This definition includes start-ups and companies that moved to Nebraska from another state. The Office makes no claim about whether or not the Act directly caused local businesses to be created or locate in Nebraska.

Investment dates for businesses that received investment were found using Department of Revenue administrative data. For each company that received an investment through the Act, we examined W-2 and administrative records from Revenue and Quarterly Census of Employment and Wages data from the Department of Labor to determine if the investment date was inside or outside of the “new company” definition.

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<sup>44</sup> Neb. Rev. Stat. § 50-1209(4)(f).

The most reliable sources of the investment information needed for this metric were annual reports and Letter Ruling requests.<sup>45</sup> These documents are voluntarily provided by CDEs and not required through statute or rules and regulations. They include dates and contextual information that made it easier to determine if a business was new or expanding. Our analysis would be made easier if companies were required to report this information.

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<sup>45</sup> Letter Rulings are described in Section I on page 8.

# Metric 6: Rural Areas

To what extent are tax credits being used in connection with businesses in rural areas?

## Results

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**Of the 39 businesses that received investment through the Act, 12 projects in rural areas had investments totaling \$98.8 million. The net employment change in rural areas was between -75 to -78 jobs, depending on the measurement used.**

For the purpose of tax incentive evaluations, rural areas are defined as “any village or city of the second class in this state or any county in this state with fewer than twenty-five thousand residents.”<sup>46</sup> Twelve businesses located in rural areas received a total of \$98.8 million in investment under the Act. The other 27 businesses, located in urban areas of the state, received a total of \$186.1 million. These breakdowns are shown in Figure 2.7.

**Figure 2.7. New Markets Act Project Locations and Investment through 2018**

Type	Number of Projects	Amount of Investment
Rural	12 (31%)	\$98.8 (35%)
Urban	27 (69%)	\$186.1 (65%)
<b>Total</b>	<b>39 (100%)</b>	<b>\$284.9 (100%)</b>

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

For all three methods of employment measurement we used, investments made in rural areas had a negative overall employment result.

## Local Employment

As shown in Figure 2.8, using local employment, participating rural businesses had a net loss of 75 jobs, meaning that, overall, the participating companies had fewer local employees at the end of 2018 than they did at the date of investment. The participating urban businesses’ change of employment was a net increase of 397 jobs using this same manner of determining employment. As discussed in the Job Creation metric in more detail (pages 15-17), local employment is as site specific as possible and allowed us to use a single location when we had that information.

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<sup>46</sup> Neb. Rev. Stat. § 50-1209(4)(h).

**Figure 2.8. New Markets Act Local Employment Changes through 2018**

Type	Net Change in Local Employment
Rural	-75 (-23%)
Urban	+397 (+123%)
<b>Total</b>	<b>+323* (100%)</b>

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

\*Total does not precisely sum due to rounding of quarterly average employees.

This does not mean that all investments in rural areas were followed by job losses. As shown in Figure 2.9, for the local employment method, five of the twelve rural companies had more jobs at the end of 2018 than they had at the time of their investment, one company saw no change, and six had fewer jobs. For urban areas, 11 companies had job increases, 8 had no change, and 4 had job losses.

**Figure 2.9. New Markets Act Local Employment Changes through 2018, Detailed**

Rural			Urban		
	Number of Companies	Change in Employment		Number of Companies	Change in Employment
Increase in Jobs	5	+83	Increase in Jobs	11	+448
No Change	1	-	No Change	8	-
Decrease in Jobs	6	-158	Decrease in Jobs	4	-51
<b>Total</b>	<b>12</b>	<b>-75</b>	<b>Total</b>	<b>23</b>	<b>+397</b>

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

## Statewide Employment

For companies that received investments in rural areas, their statewide employment—total employment at the company in Nebraska—also dropped. There was a decrease in the total employment of 78 fewer employees, as shown in Figure 2.10. In contrast, for urban investments, statewide numbers were higher, a net increase of 598 jobs.

**Figure 2.10. New Markets Act Statewide Employment Changes through 2018**

Type	Net Change in Statewide Total Employment
Rural	-78 (-15%)
Urban	+598 (+115%)
<b>Total</b>	<b>+520 (100%)</b>

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

As seen in Figure 2.11, for investments in rural areas, five companies had a positive total employment results, two had no change, and five others had negative employment results. For investments in urban areas, there were 11 companies that increased their employment, 8 that had no change, and 4 that had decreases.

**Figure 2.11. New Markets Act Statewide Employment Changes through 2018, Detailed**

Rural	Number of Companies	Change in Employment	Urban	Number of Companies	Change in Employment
Increase in Jobs	5	+99	Increase in Jobs	11	+642
No Change	2	-	No Change	8	-
Decrease in Jobs	5	-177	Decrease in Jobs	4	-44
<b>Total</b>	<b>12</b>	<b>-78</b>	<b>Total</b>	<b>23</b>	<b>+598</b>

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

### Statewide, Full-time Employees Only

The final reported employment determination that we present—statewide full-time workers—shows the increase in the number of statewide employees that meet the statutory definition of full-time. Because this requires the Department of Labor to filter out employees that don’t meet the definition, it is only available at the statewide company level. As shown in Figure 2.12, using the full-time employment determination, for investments in rural areas of the state, there was a net decrease of 76 jobs, while urban areas showed an increase of 444 jobs.

**Figure 2.12. New Markets Act Statewide Full-time Employment Changes through 2018**

Type	Net Change in Statewide Full-time Workers
Rural	-76 (-21%)
Urban	+444 (+121%)
<b>Total</b>	<b>+368 (100%)</b>

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

As shown in Figure 2.13, for the full-time employee method, five of the twelve rural companies had more jobs at the end of 2018 than they had at the time of their investment, two companies saw no change, and five had fewer jobs. For urban areas, 10 companies had job increases, 4 had no change, and 7 had job losses.

**Figure 2.13. New Markets Act Statewide Full-time Employment Changes through 2018, Detailed**

Rural	Number of Companies	Change in Employment	Urban	Number of Companies	Change in Employment
Increase in Jobs	5	+72	Increase in Jobs	10	+517
No change	2		No change	4	
Decrease in Jobs	5	-148	Decrease in Jobs	7	-73
<b>Total</b>	<b>12</b>	<b>-76</b>	<b>Total</b>	<b>23</b>	<b>+444</b>

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

### **Methodology/Discussion**

For the purposes of tax incentive evaluations, state law defines “rural” as “any village or city of the second class in this state or any county in this state with fewer than twenty-five thousand residents.”<sup>47</sup> Using information found in the latest Nebraska Blue Book, 16 Nebraska cities qualify as urban areas.<sup>48</sup> All other areas of the state are therefore rural.

Each project was identified as rural or urban by comparing its investment location to the list of 16 urban cities. Rural-urban status was combined with investment and employment information found for other metrics. The Office also looked at the change in employment in rural and urban businesses receiving investment under the Act, using the same QCEW data as in the Job Creation metric (pages 15-17).

The Audit Office makes no claim about whether or not the Act directly caused employment changes.

<sup>47</sup> Neb. Rev. Stat. § 50-1209(4)(h).

<sup>48</sup> These are the cities of Bellevue, Columbus, Fremont, Gering, Grand Island, Hastings, Kearney, La Vista, Lincoln, Norfolk, North Platte, Omaha, Papillion, Plattsmouth, Ralston, and Scottsbluff. Nebraska Legislature, Clerk of the Legislature, *2018-19 Nebraska Blue Book*.

# Metric 7: Distressed Areas

To what extent are tax credits being utilized in connection with businesses in distressed areas?

## Results

**Of the 39 businesses that received investment through the Act, 22 projects were in distressed areas. Investments totaled \$147.2 million and employment increased by 144 jobs for the 35 businesses that we were able to match with the Department of Labor.**

Using the Legislative Performance Audit Act’s definition of distressed (as discussed in the methodology on the following page), 22 projects and \$147.2 million in investment—more than half of the total projects and investment—occurred in distressed areas. The number of projects and the amount of investment in non-distressed areas was 16 projects, with an investment of \$131.5 million. These breakdowns are shown in Figure 2.14.

**Figure 2.14. New Markets Act Project Locations through 2018**

Type	Number of Projects	Amount of Investment (in millions)
Distressed	22 (56%)	\$147.2 (52%)
Non-distressed	16 (41%)	\$131.5 (46%)
Unknown	1 (3%)	\$6.2 (2%)
<b>Total</b>	<b>39 (100%)</b>	<b>\$284.9 (100%)</b>

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

While there were more projects and investments made in distressed areas by New Markets Act participants, more jobs were created in non-distressed areas, shown in Figure 2.15. The increase in employment in distressed areas was 68 jobs and the increase in employment in non-distressed areas was 255 jobs. This portion of the metric only looked at 35 projects, discussed in the methodology on the following page.

**Figure 2.15. New Markets Act Project Locations & Employment through 2018**

Type	Number of Projects	Net Change in Local Employment
Distressed	21	68 (21%)
Non-distressed	14	255 (79%)
<b>Total</b>	<b>35</b>	<b>323 (100%)</b>

Source: Audit Office analysis of Department of Labor and Department of Revenue data.

## Methodology/Discussion

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The definition the Audit Office used for this metric was set by the Legislature for evaluations of tax incentives and is borrowed from the Areas of Substantial Unemployment (ASU) definition used for complying with the federal and state Workforce Innovation and Opportunity Acts.<sup>49</sup> In contrast, the definition of a low-income area for purposes of administering the Act is the same as the federal version of the New Markets Tax Credit (NMTC) program. Under that definition, all investment and project-specific employment changes occurred in “distressed” areas.

Neither of these definitions is wrong. The basic difference between the two is that Areas of Substantial Unemployment are based solely on unemployment rates. The NMTC definition uses unemployment rates, but also includes other variables such as poverty rates and recent population loss to determine which areas qualify. The practical difference is that New Markets Tax Credit eligibility currently covers 154 census tracts in Nebraska,<sup>50</sup> while only 78 census tracts in the state were ASUs in 2018.

For this metric, the Audit Office identified each project as distressed by comparing its investment location to lists of ASUs provided by the Department of Labor. Distressed status was combined with investment and employment information found for other metrics. One project had insufficient information available to be able to determine its status.

Company total statewide employment and full-time employment, which we used in the Job Creation metric, were not used in this metric because the geographies are small and the risk of attributing employment to the wrong areas was too high. As for several of our other metrics, although there were 39 projects that received investments during our review period, we were only able to examine 35 companies using employment and wage analyses. One company had multiple projects, but reported only statewide data to Labor. There were also three projects/companies that we were unable to match to Labor information.

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<sup>49</sup> Neb. Rev. Stat. § 50-1209(4)(a). Nebraska Department of Labor, “Areas of Substantial Unemployment,” <https://networks.nebraska.gov/gsipub/index.asp?docid=1548> (accessed November 26, 2019).

<sup>50</sup> U.S. Department of the Treasury, Community Development Financial Institutions Fund Program Eligibility Guidance, *CDFI Investment Areas ACS 2011-2015*, September 30, 2018.

# Metric 8: Administrative Cost

What is the cost to administer the Act?

## **Results**

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**The program is administered chiefly by one individual in the Department of Revenue. According to Revenue, administration only requires part-time attention from the employee.**

Once the program was operational, according to the Department of Revenue, one person has handled the day-to-day management, including drafting Letter Rulings, setting schedules, calculating credits, and maintaining records for the New Markets program.

This employee does not dedicate their full time to administering the New Markets credit, according to the Department. Revenue does not track the number of hours dedicated to the credit because the employee is paid through the general fund and not through special funds or programs.

# Metric 9: Fiscal Protections

What protections are in the Act to ensure the fiscal impact does not increase beyond expectations?

## Results

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**The New Markets Act meets six of the eight applicable recommendations from the Pew Charitable Trusts for tax incentive fiscal accountability. Because there is a hard cap on the program, the risk that the program will exceed the Legislature’s expected costs is low.**

The Pew Charitable Trusts (Pew), a nonpartisan organization that engages in ongoing tax incentive research, makes nine recommendations for ensuring tax incentive programs do not cause fiscal issues.<sup>51</sup> One does not apply in this case due to the size of the program. The New Markets Job Growth Investment Act meets six of the remaining eight recommendations including yearly program caps and non-refundable credits.

There are two recommendations from the Pew report that are not met by the Act: regular forecasting of the cost and paying for the program through the appropriations process. Figure 2.16 describes all of the Pew recommendations and the Audit Office’s judgment about each in relation to the New Markets Act.

## Methodology/Discussion

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A 2015 report by Pew noted the difficulty placed on states when an unexpected decrease in revenue occurs and stated that tax incentive programs can contribute to such situations if fiscal controls are not in place.<sup>52</sup> In the report, Pew provided several recommendations for policymakers that can help mitigate the potential for decreased revenue due to tax incentive programs. We compared the recommendations found in the Pew report with to the Act’s statutes to make our determinations.

**Finding:** There are sufficient protections to prevent an increase of the New Markets Job Growth Investment Act’s fiscal impact beyond the Legislature’s expectations.

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<sup>51</sup> The Pew Charitable Trusts, *Reducing Budget Risks: Using Data and Design to Make State Tax Incentives More Predictable*, December 2015.

<sup>52</sup> *Ibid.*

**Figure 2.16. 2015 Pew Report Fiscal Protection Recommendations**

Pew Report Recommendations	New Markets Act	Audit Office Remarks
<b>Gathering and sharing high-quality data on the costs of incentives by:</b>		
Regularly forecasting the cost	<b>No</b>	Costs are anticipated through the design and administration of the Act, but this is not reported.
Monitoring costs and commitments of large and high-risk programs	<b>N/A</b>	Costs are recorded within the Department of Revenue. There is no requirement to report costs in the Act. However, it is not a large program compared to other tax incentives.
Sharing timely information on incentives across relevant agencies	<b>Yes</b>	Total costs are reported by fiscal year in Certified Annual Financial Reports. Credit allocation recipients are reported on the Department of Revenue's website. <sup>53</sup>
<b>Designing incentives in ways that reduce fiscal risk, including:</b>		
Capping how much programs can cost each year	<b>Yes</b>	The Act is capped at \$15 million per year. <sup>54</sup>
Controlling the timing of incentive redemptions	<b>Yes</b>	Entities earn credits annually on a seven year schedule. <sup>55</sup>
Requiring lawmakers to pay for incentives through budget appropriations	<b>No</b>	The program is not paid for through the appropriations process.
Restricting the ability of companies to redeem more in credits than they owe in taxes	<b>Yes</b>	New Markets credits are non-refundable. <sup>56</sup>
Linking incentives to company performance	<b>Yes</b>	Entities must continuously have 85% of QEl's invested in local businesses to earn credit. <sup>57</sup>
Requiring businesses to provide advance notice of program participation	<b>Yes</b>	Entities must apply and be approved in order to participate in the program. <sup>58</sup>

Source: Audit Office analysis of recommendations from The Pew Charitable Trusts, *Reducing Budget Risks: Using Data and Design to Make State Tax Incentives More Predictable*, December 2015.

<sup>53</sup> Nebraska Department of Revenue, "New Markets Job Growth Investment Tax Credit General Information," <https://revenue.nebraska.gov/incentives/new-markets-job-growth-investment-act/general-information> (accessed November 21, 2019).

<sup>54</sup> Neb. Rev. Stat. § 77-1115.

<sup>55</sup> Neb. Rev. Stat. § 77-1103.

<sup>56</sup> Neb. Rev. Stat. § 77-1113.

<sup>57</sup> Neb. Rev. Stat. § 77-1110; Neb. Rev. Stat. § 77-1117.

<sup>58</sup> Neb. Rev. Stat. § 77-1116.



### ***III. Agency Response and Fiscal Analyst's Opinion***



# NEBRASKA

Good Life. Great Service.

DEPARTMENT OF REVENUE



Steve Ricketts, Governor

December 27, 2019

Sen. Suzanne Geist  
State Capitol, #12<sup>th</sup> Floor  
P.O. Box 94604  
Lincoln, NE 68509

Honorable Chairwoman Senator Geist and members of the Performance Audit Committee,

I am in receipt of the Legislative Audit Office draft report "New Markets Job Growth Investment Act: Performance on Selected Metrics." The draft report was provided to the Department of Revenue (DOR) on November 27, 2019. DOR does not have any comments relating to the findings stated in the draft report.

Thank you for the time and efforts expended by the Legislative Audit Office in conducting this audit. We enjoyed working with you and the members of the audit team.

Respectfully Submitted,

A handwritten signature in black ink that reads "Tony Fulton".

Tony Fulton  
Tax Commissioner



## **Legislative Auditor's Summary of Agency Response**

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This summary meets the requirement of Neb. Rev. Stat. § 50-1210 that the Legislative Auditor briefly summarize the agency's response to the draft performance audit report and describe any significant disagreements the agency has with the report or recommendations.

The Department of Revenue had no comments on the audit report's findings.



# State of Nebraska

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December 19, 2019

Martha Carter, Legislative Auditor  
Legislative Audit Office  
1225 L St., Suite 502  
P.O. Box 94604  
Lincoln, NE 68509

Dear Martha,

You have asked the Legislative Fiscal Office to review the draft report, "New Markets Job Growth Investment Act: Performance on Selected Metrics" as to whether the recommendations can be implemented by the agency within its current appropriations.

The recommendations for Metrics 1, 2, 5, 6, and 7 state that future performance audits would be improved if the Legislature established a benchmark for the Metric. There is some potential for additional costs to establish these benchmarks, depending on whether these could be done with existing staff or if contract assistance is needed. The amount of such costs cannot be determined at this time, nor can the expectation of absorbing the costs in future budgets.

Metrics 3, 4, 8, and 9 do not have any recommendations, and therefore, do not have any anticipated fiscal impact.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Bergquist".

Tom Bergquist  
Legislative Fiscal Analyst