Nebraskans for Peace

Nebraska Report

There is no Peace without Justice

JULY/AUGUST 2003 VOLUME 31, NUMBER 6

Whiteclay Protest March Marks Progress

Nebraska state officials attend, vow cooperation

by Laura M. Dellinger
The Native Voice

The following article appeared in the June 14 -27 issue of the national Indian publication, The Native Voice, *and is reprinted with the permission of editor Frank King.*

WHITECLAY, Neb. - Broken clouds gathered to weep soft tears as hundreds of people, white as well as Indian, joined in a circle in this tiny border hamlet to remember Ron Hard Heart and Wally Black Elk, two Oglala men whose badly beaten bodies were found in a ditch a few hundred yards away four years before.

This day, in this place that sells an estimated 11,000 cans of beer daily 200 feet away from a reservation where alcohol consumption and intoxication are prohibited, they were remembered as two of the fallen in the century-long battle against the ravages of alcohol in Indian Country.

The alternation between cloudy and clear in the sky reflected the alternating emotions engendered by this day's observance: joy and sorrow, sadness and optimism. As the marchers moving south from Pine Ridge Village approached the Nebraska border for their rendezvous with marchers with Nebraskans for Peace coming north, a few tense moments occurred when Nebraska law enforcement placed vehicles in and across the road, apparently preparing to block the Indians from crossing the border.

The column, led by three Pine Ridge Tribal Police vehicles, paused about one hundred yards away and the leaders of the column closed into a circle for a prayer. A few moments later the Nebraska vehicles were moved, the column continued southward and the rendezvous was complete.

Those who had come on this day of observance gathered in a circle to hear words from a number of eloquent speakers, including Vernon Bellecourt of the Ojibway Nation who is president of the American Indian Movement; Frank LaMere, Winnebago, a member of the Democratic National Committee; and Tom Poor Bear, an Oglala veteran and activist who was cousin to Ron Hard Heart. But the words that most electrified the crowd came from two white men, the Superintendent of the Nebraska State Patrol and the Nebraska Attorney General.

Col. Tom Nesbitt and Attorney General John Bruning brought news of the most solid progress to date in the dilemma of Whiteclay. It's been four years that the marchers have been working to draw attention to this place. "We're looking at cross-deputization, where the state of Nebraska would deputize the Pine Ridge Police to provide law enforcement in Whiteclay," said Bruning. "We trust the Pine Ridge Police, we know they're well-trained. We believe they're as well-trained as state troopers or any other police in this

conclusion on page 3

photo courtesy of Jan Osten

Winnebago Tribe member Frank LaMere addressing the June 7 rally on the streets of Whiteclay. Standing next to him in the sunglasses is Camp Justice founder Tom Poor Bear. Nebraska Attorney General Jon Bruning, with his back to the camera, looks on.

inside:

SPECIAL REPORT:

The Case for Repealing LB 775

Nebraskans for Peace
941 'O' St., Ste. 1026
Lincoln, NE 68508

Phone: 402-475-4620/Fax: 475-4624
E-mail: nfpstate@redjellyfish.net
www.nebraskansforpeace.org

ADDRESS SERVICE REQUESTED

Nonprofit Org.
U.S. Postage
PAID
Permit No. 310
Lincoln, NE

Nebraska Report

The *Nebraska Report* is published nine times annually by Nebraskans for Peace. Opinions stated do not necessarily reflect the views of the directors or staff of Nebraskans for Peace.

Newspaper Committee: Tim Rinne, Editor

Sarah Disbrow, Bud Narveson, Byron Peterson, Charlie Flowerday

Typesetting and Layout: Ben Knauss

Printing: Fremont Tribune

Circulation: 6,500

Letters, articles, photographs and graphics are welcomed. Deadline is the first of the month for publication in the following month's issue. Submit to: *Nebraska Report*, c/o Nebraskans for Peace, 941 'O' Street, Suite 1026, Lincoln, NE 68508.

Nebraskans for Peace

Nebraskans for Peace is a statewide grassroots advocacy organization working nonviolently for peace with justice through community-building, education and political action.

State Board of Directors

Moving? Send us your new Address

Name (print) ____________________

Old Address ____________________

City ____________ ***State*** ______ ***Zip*** ________

Old Phone # ____________________

New Address ____________________

City ____________ ***State*** ______ ***Zip*** ________

New Phone # ____________________

Nebraskans for Peace Membership…

☐ **I want to ____ BEGIN ____ RENEW MEMBERSHIP**

☐ $35 Individual ☐ $25 Introductory (new member only)

☐ **$50 Household** ☐ **$10 Student/Low income**

Peacemaking Covenant pledge of $__________ per:

☐ month ☐ quarter ☐ year

☐ **NEWSPAPER SUBSCRIPTION ONLY: $10/year**

Payment method: ☐ check ☐ cash ☐ credit card

MasterCard/Visa # ____________________

Expires ________ Signature ____________________

Name (print) ____________ ***Phone (____)*** ________

Address ____________________

City ____________ ***State*** _____ ***Zip*** ________

Contact Congress & Capitol Contacts

The White House
Washington, DC 20500

Sen. Chuck Hagel
346 Senate Russell Office Bldg.
Washington, DC 20510
202-224-4224
202-224-5213 (FAX)
402-476-1400 (Lincoln)
402-758-8981 (Omaha)
308-632-6032 (Scottsbluff)

Sen. Ben Nelson
720 Hart Senate Office Bldg.
Washington, D.C. 20510
202-224-6551
202-228-0012 (FAX)
402-391-3411 (Omaha)
402-441-4600 (Lincoln)
senator@bennnelson.senator.gov

Rep. Doug Bereuter
1st Congressional District
2184 Rayburn Building
Washington, DC 20515
202-225-4806
202-225-5686 (FAX)
402-438-1598 (Lincoln)

Rep. Lee Terry
1524 Longworth HOB
Washington, DC 20515
202-225-4155
202-226-5452 (FAX)
402-397-9944 (Omaha)

Rep. Tom Osborne
507 Cannon HOB
Washington, DC 20515
202-225-6435
202-226-1385 (FAX)
308-381-5555 (Grand Island)

Capitol Hill Switchboard
202-224-3121

State Capitol Switchboard
402-471-2311

State Senator, District #
State Capitol
PO Box 94604
Lincoln, NE 68509-4604

Governor Mike Johanns
PO Box 94848
Lincoln, NE 68509-4848
402-471-2244

Put Your Money To Work for Peace & Justice

Give to the Nebraska Peace Foundation

The Case for Repealing LB 775

A Special Report on the Employment and Investment Growth Act

August 2003

Prepared by *$top Big Business $ubsidies: The Committee to Repeal LB 775*

LB 775 and Its Amendments Since 1987

The Case in Brief:

- LB 775 tax breaks have cost Nebraskans much more than anticipated when the program was enacted in 1987.
- The program has not created the expected new jobs and new investment.
- Despite this, the legislature has not made any significant changes to the LB 775 program for 16 years.

Nebraska's most expensive and highest profile tax incentive program was enacted in 1987 in reaction to corporate threats. Omaha-based ConAgra, Inc. announced it would move its headquarters out of Nebraska unless the State and the City of Omaha made changes to allow the multi-national food-processing giant to do business more cheaply. As Bellevue State Senator Paul Hartnett explained, "When we passed LB 775 for the first time, I think we felt that we were under a great deal of pressure because ConAgra was saying that I'm going to take my marbles and go someplace else." Lincoln Senator David Landis noted that this occurred shortly after Enron, another large corporate presence in Nebraska, had moved its headquarters from Omaha to Texas.

In response, according to Landis, the business community and the administration of newly-elected Governor Kay Orr wrote LB 775, with input from the Legislature's Revenue Committee. Landis said, "It was designed to create major tax incentives to keep businesses here who were thinking of leaving, and to attract people to come here."

In promoting LB 775 to state lawmakers, the Governor's Office asserted that the tax incentive legislation would be used "12 or 15 times," Landis stated. In reality, Nebraska Department of Revenue reports reveal that 498 agreements under the legislation have been signed with a total of 396 business entities from 1987 through 2002. Eighty-three of these corporate beneficiaries have sought LB 775 tax breaks two or more times. Of those seeking the most benefits, ConAgra and its subsidiaries have sought benefits under nine separate LB 775 agreements. Union Pacific and its associated companies have signed seven agreements and IBP has entered into six agreements for LB 775 benefits.

According to Landis, "It's been used hundreds of times in part because we placed the thresholds and the credits too low. We have rewarded doing business as usual, not in the exceptional." Indeed, a study required by LR 342 in 2000 by the Revenue Committee and the Legislative Fiscal Office found that 68 percent of the job growth attributed to LB 775 beneficiaries would have occurred in any event.

Forecasts of how much revenue the State of Nebraska would lose as a result of LB 775's corporate tax breaks were also grossly underestimated. In May 1987, the Legislative Fiscal Office estimated that that LB 775 tax refunds and credits would result in the loss to the General Fund of a mere $3.87 million in 1987-88 and $5.37 million in 1988-89. The Fiscal Office speculated that, after that point, "revenue losses might increase by several thousand dollars a year or more until leveling off by years 7 to 10." In reality, in the succeeding 16 years, approximately $1.3 billion in state tax credits have been taken under LB 775 and approximately another $700 million in credits have been earned, according to Landis. During the life of the program, LB 775 tax credits have already cost the state of Nebraska $100 million per year on average. As explained elsewhere in this report, this price tag does not include future revenue losses and credits not yet taken.

Chief provisions of LB 775 as enacted in 1987

The Nebraska Unicameral passed LB 775, the Employment and Investment Growth Act, May 26, 1987 with the emergency clause by a vote of 37-11-1. Governor Orr signed the bill into law the next day, May 27, 1987, and the new tax incentive program became effective immediately.

LB 775, as originally enacted, provided significant sales, income, and/or property tax benefits (credits, exemptions, and/or refunds) for certain new and expanding businesses that met threshold requirements.

1. For qualified individuals or companies investing $20 million or more in a qualified facility, the following incentives were available:

   a. A refund of sales tax on depreciable property used in connection with the qualified facility; and

   b. An election to use a sales-only factor to compute corporate income attributable to Nebraska (which allows a corporation that does business in Nebraska as well as other states to pay tax only on income from sales in Nebraska, thus avoiding Nebraska taxes on other corporate income).

2. For qualifying individuals or companies investing $3 million in a qualified facility which results in 30 or more full-time jobs (or the equivalent), in addition to the incentives above, the following incentives were available:

   a. A jobs creation credit equal to five percent of the compensation for each new job for each year the jobs are maintained, up to seven years; and

   b. A ten percent investment tax credit on depreciable property used in connection with a qualified facility.

3. For qualified individuals or companies investing $10 million and creating 100 full-time jobs (or the equivalent), in addition to the incentives above, a property tax exemption for 15 years was available for mainframe business computers, turbine-powered aircraft, and business equipment involved directly in the manufacture or processing of agricultural products which are used as a part of the project.

LB 775, when enacted, also contained a separate provision that was not tied to jobs retention, job growth, or tax incentives for business. This was a capital gains exclusion from taxable Nebraska income for capital stock owned by employees of a corporation who acquired the stock during employment with the corporation. The benefits could also be given to the employee's spouse.

Subsequent Amendments to LB 775

In the years since 1987, the Nebraska legislature made material changes to LB 775 nine times. However, according to Senator Landis, these changes have been minor. Indeed, analysis of the revisions to the Act indicates that most were simply clarifications.

Even though LB 775 has been used much more frequently than anticipated, has cost significantly more than expected, and has not encouraged the level of new jobs and new investment as hoped, none of the legislative changes accomplished since 1987 has made substantive reductions to the availability of tax credits, exemptions and refunds. In fact, the legislature broadened the availability of tax credits, exemptions, and refunds somewhat in 1993, 1997 and 1999.

Following are the chief revisions the legislature has made to LB 775 since its original enactment 16 years ago.

1988

LB 1234 amended the Act as follows:

1. The length of the lease is limited to prevent the stacking of leases to generate credits for leases up to ten years after the end of the entitlement period, or a total of 17 years. The original ten-year period is retained for all leases that are entered into before the levels have been reached. All other leases are limited to the end of the third year after the end of the entitlement period.
2. The computation of the number of new employees is reworded (adopting the full-time equivalent [FTE] measure of "new employees") to reduce the ability to manipulate the number of new employees.
3. The preparation of food for immediate consumption is excluded, clarifying that the exclusion for retailers applies to restaurants.
4. The financial services eligible under the Act are limited to clarify that these do not apply to accountants, attorneys, and economists.
5. A definition of "related persons" is added to limit the incentives that can be generated by transactions between related parties.
6. The definition of "new investment" is changed to require that the amount of the net investment in the state must be increased. This prevents the simple replacement of $20 million property from qualifying for benefits under the Act.
7. The following transactions do not have any real economic benefit to the state and cannot be used to obtain benefits under the Act:

   a. Moving a business from one location to another within the state without an actual increase in either investment or employment.

   b. Selling property previously used by the taxpayer, then repurchasing or leasing it, or re-signing leases without material changes in the lease provisions.

   c. Transactions with a related party.

   d. Any transaction that has the primary purpose of obtaining benefits under the Act without a corresponding business purpose.

8. The compensation credit with respect to wages paid is simplified, thus reducing some of the taxpayer records required to compute the credit.
9. A recapture for personal property tax (in addition to refunds and credits) is created if required levels are not maintained.
10. The acquisition date for property is changed to the date of the application (from the date the agreement between the taxpayer and the Tax Commissioner was signed).

1990

LB 431 amended the Act as follows:

1. As a part of each annual report, the Department of Revenue is required to report by taxpayer, (a) agreements entered into in the previous calendar year, (b) agreements still in effect, (c) identity of each taxpayer, and (d) location of each project. By industry group, the Department is required to report (a) the specific incentive options applied for under the Act, (b) the refunds allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate and individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the number of jobs created, (g) the total amount employed in base year and total on subsequent reporting dates, (h) the expansion of capital investment, (i) wage levels of jobs created after signing agreement, (j) total of qualified applicants, (k) the projected future state revenue gains and losses, (l) the amount of sales tax refund owed, (m) credits outstanding, and (n) the value of personal property exempted by class in each county.

2. The report shall not report any information prohibited by state or federal confidentiality laws.

The information considered to be confidential was broadened so that (a) the name of the taxpayer, (b) the location of the project, and (c) the amounts of increased employment and investment, which had been previously considered nonconfidential, were removed from this category.

1991

LB 773 amended the Act to clarify that:

1. The capital gains exclusion may be exercised on stock of a successor corporation of the employer of the individual only if the reorganization was during or after the employment of the individual.
2. Under the capital gains election, trusts may subtract the gain from taxable income.

1993

LB 121, which enacted the Limited Liability Company Act, amended LB 775 as follows:

1. The definition of "taxpayer" eligible for benefits under LB 775 is expanded to include limited liability companies.
2. Incentives to an LLC are transferable as are incentives allowed to other business entities under the Act.

1996

LB 1290 amended the Act as follows:

1. The Department of Revenue is required to estimate the amount of sales tax refunds to be paid under the Act.
2. Applicants must include a timetable showing when sales tax refunds are expected to be claimed.
3. Approved applicants must agree to provide updates on changes in plans which would affect the timetable of refunds set out in the application. If the company fails to comply, the Tax Commissioner may defer any pending sales tax refunds until the company does comply.

1997

LB 264 amended the Act to clarify that the definition of "taxpayer" eligible for benefits under the Act also includes partnerships and joint ventures.

1998

LB 1104 amended the Act to specify that for refund claims filed on or after October 1, 1998, interest is not allowable on any refunds paid because of benefits earned under the Act.

1999

LB 87A reinstated the designation as nonconfidential (removed in 1990 by LB 431) for the following (a) the name of the taxpayer, (b) the location of the project, and (c) the amounts of increased employment and investment, in addition to information required to be reported by section 77-4110 (pertaining to the annual report).

LB 539 amended the Act to provide that companies may claim credits for leased employees.

2000

LB 968 amended the Act to provide that the Property Tax Administrator is required to review all personal property of taxpayers seeking an exemption under the Act. The forms required for the exemption must be filed with the Property Tax Administrator as well as the county assessor in each county in which the applicant is requesting exemption.

What We DON'T Know About LB 775

The Case in Brief:

- Key facts about the LB 775 tax break program are kept secret.
- The State of Nebraska has not been held accountable for the benefits or effectiveness of the LB 775 program.
- Neither have the corporations receiving the benefits.

by Linda Ruchala

LB 775 is shrouded in secrecy. Although LB 775 has provided over $1.3 billion to corporations over the past 15 years, the State has not been made accountable to its citizens about the benefits and effectiveness of LB 775. Likewise, corporations have not been accountable to those from whom they have received credits with respect to LB 775.

What proportion of the claimed 72,320 "new" jobs created were actually new jobs? We don't know.

The Department of Revenue estimates in its 2002 annual report on LB 775 that about 70 percent of the 72,320 jobs claimed to be created by LB 775 would have been created anyway. *Governing Magazine* reports in its February 2003 issue that the legal counsel to the legislature's Revenue Committee sees an almost three-fold discrepancy in job benefits claimed over reports on aggregate increases in jobs from the private sector. The extent of confusion about the jobs actually created by LB 775 makes impossible any attempt to look at even the most basic and highly aggregated assessments of the cost to generate each job. Even the strongest supporters of LB 775 admit in legislative hearings that "honest people disagree" over whether the money has had any significant net positive impact.

*Are the jobs created **quality** jobs that benefit the communities in which they are located? Do they provide a living wage to all those employed under the program – a wage that does not increase the burden to local social services? We don't know.*

The information provided under LB 775 is made up of very aggregated data. The only information available involves the average wages paid on an industry-wide basis. That is of no help for accountability purposes since a small number of projects with well-paying positions can easily skew the average wage statistics. Even further, we currently do not hold participating corporations accountable for creating jobs that pay a living wage. Corporations are granted "credit" for new jobs even if those jobs represent an inadequate standard of living in the local community and even if they provide no benefits to workers. The available evidence indicates that LB 775 has had no impact on personal income growth in Nebraska (Dr. Ernie Goss, Creighton University, as reported in the *Omaha World-Herald*, December 28, 1997).

Is this incentive program applied in a fair manner so that all businesses working toward economic development and job growth have the opportunity to participate in receiving the benefits from LB 775? Unfortunately, again, the answer here is either we don't know or, no, it does not.

The decisions as to what corporations and projects are granted tax credits are made in secret, without oversight, and cannot be reviewed by citizens or even state legislators. What we *do* know about the distribution of accepted projects is that the benefits are very heavily weighted to urban areas and rural areas have benefited hardly at all. Small businesses might even be adversely affected if they cannot reap the benefits of the credits, and instead lose trained workers to jobs in qualifying larger corporations that pay workers marginally more.

Are corporate tax credit programs, such as LB 775, the best way to encourage economic development?

The available evidence suggests not. Tax incentive programs are not nearly the most important feature in a company's decision to locate in a particular state. Studies reported by Deloitte & Touche in 1997 found that business tax incentive programs are ranked low when corporations relocate. The November 2001 issue of *Governing Magazine* discussed the role of site consultants in helping companies relocate. One successful consultant said, "'Communities would be better served by focusing their energies on improving schools than showering companies with tax breaks. 'It's a third-tier influence at best. . . . I've never seen an incentives package transform a poor location into a good one.'" *Governing Magazine* concluded that most other consultants interviewed agreed, saying that "tax breaks are less important than the public might think."

The Real Cost of LB 775
Questions, Questions, Questions

The Case in Brief:

- The identifiable net cost to Nebraska taxpayers for LB 775 tax breaks is about $90 million per year.
- LB 775 has had no measurable impact on personal income growth in Nebraska.
- All but a few Nebraskans receive nothing from their tax subsidy for LB 775 projects.
- Net revenue losses are not expected to turn into gains as long as the LB 775 program continues.

by Mark Vasina

Is LB 775 good for Nebraskans? In other words, *has LB 775 been a success or failure as an economic stimulus program?* Large corporate proponents of the program have fought hard to restrict disclosure about LB 775. Their success in severely restricting disclosure has hampered efforts to examine the impact upon the average Nebraskan in a straightforward manner.

This leads to the next question: *How can we evaluate LB 775 today, hindered as we are by limitations on information about the program's results?* The answer is that we must ask more questions about LB 775 – the right questions – and sift through the available public information for the best answers. This article examines closely the information collected on LB 775 by the Nebraska Department of Revenue and reviews the analyses of that information performed separately by the Department of Revenue and the Legislative Fiscal Office. As a result, we arrive at some surprisingly solid and meaningful answers.

Is LB 775 good or bad for Nebraskans? Restated simply: *Do LB 775's benefits to the residents of Nebraska outweigh their cost?* This is what economists mean when they ask whether a government program is good for the "economy." The "economy" means "the public good" – all of us, not just some of us. Certainly, LB 775 provides benefits to specific groups in the state (owners of the businesses that receive LB 775 tax breaks, some of their employees, other firms and professionals who provide goods and services to the LB 775 project businesses). But are adequate benefits also returned to all those who *pay* for LB 775 (taxpayers at the state and local levels and recipients of other state and local services who must compete for tax dollars with LB 775)?

Economic development programs that target their benefits to specific groups, such as rural entrepreneurs or family farmers, are relatively easier to evaluate. We look to statistics about how well the programs reach the target groups and attempt to match observed benefits with costs to the state treasury (taxpayers). Often the benefits are recognized as public transfers of funds to serve agreed-upon public purposes, with the result that these programs are not always expected to pay for themselves.

By general agreement among economic experts, state economic development programs aimed at the broader public good – improving a state's overall economic conditions – must meet a higher standard. Unless a broad economic stimulus program such as LB 775 is designed explicitly to benefit targeted groups – owners of large corporations already doing business in Nebraska, for example, the state's residents are justly entitled to expect and demand that the program will return net benefits (benefits minus costs) to the public at large. However, the legislature's stated purpose in enacting LB 775 identified a broad state purpose – encouraging both new businesses to relocate to Nebraska and existing businesses to expand, creation and retention of new jobs, and attraction and retention of investment capital in the state. This means Nebraska's public as a whole is entitled to net benefits from the LB 775 program.

Program evaluation requires careful examination of its costs and benefits. *What does LB 775 cost Nebraska taxpayers?* The only satisfactory answer is an actual number that reasonably considers LB 775's impact in a comprehensive and understandable manner.

LB 775's "Gross Cost" To Taxpayers – Tax Revenues Already Lost

Income and Sales Tax Credits and Refunds

The Nebraska Department of Revenue prepares annual reports to the Nebraska legislature on LB 775 and other state tax incentive programs. These reports are the source for much of the following analysis. The "Summary of LB 775 Benefits Approved" (Table 2 on page 13 of the *2002 Annual Report*) breaks down most of the tax benefits earned and used by participating businesses. These businesses earn credits from investment and new jobs associated with LB 775 projects. The businesses use the credits earned to offset their state income tax liability and state and local sales taxes otherwise owed. In addition to credits earned, participating businesses also receive direct refunds of sales tax on their investment in LB 775 projects.

Credits and refunds used, as reported by the Department of Revenue, are the starting point for determining the "gross cost" of LB 775, which is the identifiable loss in tax revenues statewide due to LB 775. The tabular presentation in the Department of Revenue's annual report is consolidated and simplified in the table, "Gross Tax Revenues Lost From LB 775," page 5 of this special report.

According to the Department of Revenue, **since 1988** (when benefits began accruing) **total credits and refunds used by LB 775 project businesses to offset taxes owed are $1.4 billion**. In recent years the amount of credits and refunds used has been as much as $150 million annually, falling to $94 million in 2002. These numbers are the amount of income tax credits and sales tax refunds used by businesses participating in LB 775 – a direct reduction in state and local tax revenues.

However, these numbers obscure several important things. First, they do not include all tax revenues lost under LB 775. Second, they do not include the obligations incurred by Nebraska taxpayers to businesses with existing LB 775 projects for tax breaks that will be used over the next 15 years.

Personal Property Tax Exemptions

In addition to credits and refunds for income and sales taxes, LB 775 also provides personal property exemptions for 15 years for certain types of personal property purchased for LB 775 projects: turbine-powered aircraft, certain computer equipment and business equipment used in the manufacture or processing of agricultural products. This exemption applies only to projects with a minimum $10 million investment and 100 new employees. Property tax revenues lost due to these exemptions are not included in the Department of Revenue's annual report, although it does include an estimate of personal property exempted (Table 30, pages 37-38). Lost property tax revenues due to LB 775 property tax abatements can be reliably estimated from the information, supplemented by county tax rates and value base data. Analysis of lost property tax revenues, which includes this supplementary data, shows that **LB 775 projects currently receive property tax abatements of about $13 million annually, and have received abatements of more than $130 million since 1988**.

LB 775 property tax abatements, concentrated within certain local taxpayer districts, result in shifts in the property tax burden away from what are often the largest employers in the tax district to the other residential, agricultural and business taxpayers. While the tax burden shift may be negligible (well under one percent in Lancaster County, for example), the general property taxpayer burden in Douglas County may be as much as one percent higher than it would be if the LB 775 businesses paid property taxes on exempt personal property. Moreover, it may be as much as three percent to 15 percent higher in certain nonmetropolitan counties, such as Adams, Colfax, Dakota, Platte, Saline and Washington counties.

The assertion that much of this exempt property would have been unavailable to the tax base if not for LB 775 is misleading. Fully 40 percent of the exempt property is associated with plant investment by meatpacking and food processing companies already operating within Nebraska. LB 775 merely provides extra profits to these companies as they continue to upgrade their facilities to avail themselves of Nebraska's natural advantages in agricultural commodities. Therefore, it is not persuasive to argue, for example, that more beef is slaughtered in Nebraska than in any other state due to the stimulus of LB 775. In reality, the impact of the withholding of this property from local tax bases is compounded by the growing needs of these host communities for school improvements to accommodate the new immigrant workforce in the meatpacking and food processing plants. This means that many residents of these communities are paying dearly to subsidize LB 775 projects.

Ethanol and grain processing projects account for another 45 percent of tax exempt property. State and local subsidies already targeted to ethanol producers ought to provide adequate incentives for ethanol plant construction. LB 775 tax subsidies given to ethanol producers on top of the usual combination of ethanol production incentives and community block grants are nothing more than a windfall to producers.

Local property taxpayers are not the only taxpayers subsidizing LB 775 property tax abatements. A large portion of the abatements are subsidized by taxpayers statewide through state aid to education. School districts receive 60 percent of property tax revenues statewide. As a result of the way the state aid to education formula operates, a large part, if not most, of the lost property tax revenues that would otherwise go to schools is offset by state aid payments to local school districts. As a result, state aid to education may subsidize LB 775 by as much as $7 to $8 million per year (60 percent of the $13 million of annual LB 775 property tax abatements). This means that LB 775 subsidies masquerade as state aid to education, but actually contribute to the squeeze on the state aid program at this time of severe state budget cuts. This is explained further in "LB 775 Subsidy Hidden in State Aid to Education," page 11 of this report.

"Sales-Only" Factor for Income

Additional undisclosed state income tax revenues are lost due to the election by many participating businesses to use the "sales-only" factor to apportion state taxable income. Businesses may elect the "sales-only" factor for determining their state income tax liability when this election lowers their tax liability. The impact of this benefit to certain LB 775 participants is not quantified by the Department of Revenue, but may be quite large. This option is given to businesses with LB 775 project investment of at least $20 million. Businesses reporting $20 million or more of planned LB 775 project investment account for over two-thirds of the total. This means that the businesses that are earning and using the vast majority of LB 775 credits are eligible to take advantage of this method to lower their state income tax liabilities even further.

Tax revenues lost due to the "sales-only" formula are *not included* as benefits earned or used in the Department of Revenue's annual report. The Department also does not release a list of businesses that are taking advantage of the "sales-only" formula option offered by LB 775. Because these benefits are virtually impossible to quantify without a reporting by the Department of Revenue, the many millions of additional dollars of state tax revenues lost annually are not estimated here.

Total Tax Revenues Already Lost

When property tax abatements are added to the amount of credits and refunds used, **total tax revenues already lost due to LB 775 since inception through year-end 2002 are $1,529,000,000 – over $1.5 billion**. If it were possible to quantify state income tax revenues lost due to the "sales-only" factor election, this total would be considerably higher than $1.5 billion.

Over its 15-year life, the identifiable "gross cost" of LB 775 to Nebraska taxpayers has averaged $100 million per year. This average annual amount is higher in recent years as LB 775 has matured and more projects have become active. **The most recent three-year average identifiable "gross cost" is $142 million.**

LB 775's "Gross Cost" To Taxpayers – Future Tax Revenues Lost

If LB 775 were simply terminated today and no new projects added, businesses could continue to receive tax breaks under existing LB 775 project agreements for up to 15 years. Tax credits are earned, and sales tax on new investments are refunded directly, over each project's attainment phase (a seven-year period commencing with the signing of the individual project agreement). The use of tax credits may be deferred over the project's carryover period (an additional eight years). Since these tax breaks to LB 775 businesses are certain to be used in their virtual entirety (based on current trends, only a tiny portion are likely to expire unused), they represent additional short- and medium-term obligations by Nebraska taxpayers.

Although these obligations by taxpayers are not legally classified as debts, they would be classified as a true liability if financial accounting standards were applied. (A governmental process does not require the rigors of financial accounting.) In any event, the certainty of the future claims by LB 775 businesses against Nebraska taxpayers combined with the ability to quantify accurately a large portion of these claims (as the Department of Revenue does in the annual report) is good reason to regard these future claims as true obligations. It is important to keep in mind that these identifiable future tax revenues lost are tied to *existing* LB 775 projects – not planned future projects for which agreements have not yet been signed.

The Department of Revenue, in Table 2 of the annual report, recognizes only one component of future tax revenues lost: credits earned but not yet used. The amounts for this component are not explicitly stated in the Department's table, but can be easily determined by netting line items. **Total credits earned but not yet used total $817 million as of the end of 2002** and represent tax credits approved by the Department of Revenue which will be used over the next eight years (the carryover period). Annual amounts vary widely. Nearly $36 million of tax credits earned and approved in 2002 alone remained unused and deferred for future use as of year-end. By contrast, tax credits earned and approved in 2000 exceeded tax credits used in that year by over $110 million.

To the total $817 million of credits earned but not yet used, one must add future credits to be earned under existing agreements (which may be earned for up to six more years and deferred for up to an additional eight years), direct sales tax refunds on future investments under existing agreements (which apply to investments made under existing agreements for up to six more years), and future property tax abatements for existing projects (which apply to existing exempt property as well as investments to be made for up to six more years). By assuming a straight-line reduction over six years of recent four-year averages of tax credits earned, direct sales tax on investment, and property tax abatements, one can compute reliable estimates of these future tax break items for existing projects. (Credit utilization may extend beyond six years due to carryover, but the attainment period, during which tax credits are earned, ceases after the sixth year following the year of project qualification.) Future credits earned under existing agreements will likely cost future taxpayers $464 million, direct sales tax refunds on future investments under existing agreements are estimated to cost an additional $122 million, and future property tax abatements for existing projects are likely to cost another $45 million.

In addition, qualifying businesses will be able to elect the "sales-only" formula to lower their income tax liability for up to six more years (the attainment period) under existing agreements. This future amount, like the amount of "sales-only" formula revenue losses already suffered by taxpayers, cannot be reasonably estimated.

The four quantifiable items above combined result in total identifiable future tax revenues lost of $1,448,000,000 – almost $1.5 billion – as of year-end 2002. This amount is nearly equivalent to the total of quantifiable revenues already lost by the end of 2002. The recent three-year average of annual future tax revenues lost is $148 million. This number reflects the current annual rate of future revenues lost more accurately than an average calculated over the life of LB 775.

LB 775's Total "Gross Cost" To Taxpayers

When liability for *future* tax revenues lost is added to tax revenues *already* lost, the *total* identifiable gross cost of LB 775 since inception is $3 billion. While annual revenues already lost have ranged in recent years from a low of $107 million in 2002 to a high of $160 million in 2001, annual identifiable gross program

continued on next page

Gross Tax Revenues Lost from LB 775

	2000	2001	2002	1988-2002
REVENUES ALREADY LOST:				
State Income Tax Credits	$58,909,065	$43,246,720	$21,930,812	$471,899,129
State Sales Tax Refunds	74,872,536	86,095,486	60,482,091	775,463,191
City Sales Tax Refunds	15,061,578	18,187,979	11,430,399	148,831,719
Total Credits & Refunds Used	$148,843,179	$147,530,185	$93,843,302	$1,396,194,039
Property Tax Abatements	11,427,525	12,966,488	13,000,000	133,000,000
Sales Only Formula for Income Tax	??	??	??	??
TOTAL REVENUES ALREADY LOST	$160,270,704	$160,496,673	$106,843,302	$1,529,194,039
FUTURE REVENUES LOST:				
Credits Earned But Not Yet Used	110,529,483	28,153,642	35,773,034	816,996,608
Future Credits Earned Under Existing Agreements	66,300,000	66,300,000	66,300,000	464,000,000
Direct Sales Tax Refunds on Future Investment	17,400,000	17,400,000	17,400,000	122,000,000
Future Property Tax Abatements	6,400,000	6,400,000	6,400,000	45,000,000
TOTAL FUTURE REVENUES LOST	$200,629,483	$118,253,642	$125,873,034	$1,447,996,608
TOTAL GROSS PROGRAM COST	$360,900,187	$278,750,315	$232,716,336	$2,977,190,647

Estimates of Net Tax Revenue Loss from LB 775 (Adjusted)*

DEPARTMENT OF REVENUE	1987-2002/03	2002/03	1987-2019/20
Net Tax Revenue Loss (Department Model)	$485,805,968	$14,787,321	$686,177,090
Property Tax Abatements	133,000,000	13,000,000	354,000,000
Sales Only Formula for Income Tax	??	??	??
NET TAX REVENUE LOSS (Adjusted)*	$618,805,968	$27,787,321	$1,040,177,090

LEGISLATIVE FISCAL OFFICE	2002-2009	Annual Avg
Net Tax Revenue Loss (Dynamic TRAIN Model)	$538,000,000	$77,000,000
Property Tax Abatements	91,000,000	13,000,000
Sales Only Formula for Income Tax	??	??
NET TAX REVENUE LOSS (Adjusted)*	$629,000,000	$90,000,000

*Agency estimates are adjusted by adding LB 775 property tax abatements.

cost has ranged from $233 million in 2002 to $361 million in 2000, although the portion attributed to future tax revenues lost is deferred over future years. (In the chart, page 5, "Gross Tax Revenues Lost From LB 775," future tax revenues lost were apportioned to historical years based on the average amount attributable to new projects in a single year.) This does not include unknown large amounts for income tax revenues lost due to the election of the "sales-only" factor for computing state income tax liability. **One must remember that this total program cost is capped at $3 billion only if LB 775 were terminated at the end of 2002.** For each additional year the LB 775 program is alive, one must add, using current rates of revenue loss, an estimated $142 million in tax revenues already lost and another $148 million in new liabilities for future tax revenues lost.

LB 775's "Net Cost" To Taxpayers

What are the net revenue losses (revenue losses minus additional revenues) resulting from LB 775? As explained earlier, the total program cost in excess of $3 billion is a gross cost. True expansion of investment and new jobs will result in some new taxes being paid, provided that LB 775 has not restricted the taxing authorities' access to new tax bases. To project the net impact of LB 775 on tax revenues, the work of two state agencies – the Department of Revenue and the Legislative Fiscal Office – is examined.

Department of Revenue Estimate

In the *2002 Annual Report* (pages 35-36), the Department of Revenue presents its estimate "Projected Revenue Gains and (Losses) of LB 775" over the historical life of the program and projected through tax year 2019/2020. (Although the table commingles the impact of two additional tax incentive programs, LB 829 and LB 620, the effects of these are negligible.) Lost sales and income tax revenues are offset by estimated sales and income tax revenues due to expansion under LB 775. **The Department of Revenue estimates net revenue losses of $486 million since program inception in 1987 through tax year 2002/2003** and a loss of $14.8 million for tax year 2002/2003. Moreover, its model projects net revenue losses to accumulate to $686 million by 2020, depicted in the table, "Estimates of Net Tax Revenue Loss from LB 775 (Adjusted)," above.

This Department of Revenue model fails to include the two additional causes of lost revenues discussed earlier. First, the model assumes that the "sales-only" formula has no impact, presumably because it is difficult to estimate. Its inclusion in the model would increase the lost revenue part of the equation, resulting in dollar-for-dollar larger net revenue losses. In other words, if the "sales-only" formula resulted in an annual increase in lost income tax revenues of only $5 million (a small percentage of total credits and refunds used and accounted for annually), the net revenue losses for the 2002/2003 tax year would be increased to $19.8 million ($14.8M + $5M), and net losses would accumulate to over $800 million by 2020, rather than $686 million, as the Department of Revenue estimates.

Second, the Department of Revenue model does not include lost property tax revenues due to property tax abatements, estimated at $133 million since 1987 and about $13 million annually in recent years. Personal property tax abatements under LB 775 effectively expire as their additions to value bases expire through depreciation, which means that their valuations are forever withheld from the taxing authorities' value bases. Only additional real property is added to value bases. Examination of property tax valuations at several large project sites reveals that the value of real property added by LB 775 projects is proportionately quite small compared to the valuation of personal property exempted.

Adjusting the Department of Revenue's numbers by adding LB 775 property tax abatements results in **estimated net revenue losses of $619 million since 1987** ($486M + $133M in abatements since 1987), **$27.8 million net revenue loss for tax year 2002-2003** ($14.8M + $13M in abatements), and **cumulative net revenue losses of over $1 billion by 2020** ($686M + $133M + $13M/year for 17 years). These numbers do not include the impact of the "sales-only" formula, which would increase the net losses further. These numbers reveal the relative importance of property tax abatements to the total cost picture presented by the Department of Revenue, since over the next 18 years property tax abatements of $221 million will exceed the Department's estimate of a net revenue loss of $200 million due to income tax credits and sales tax refunds.

Legislative Fiscal Office Estimate

To estimate the net impact of LB 775 on state revenues, the Legislative Fiscal Office uses a more sophisticated dynamic equilibrium model, Dynamic Tax Revenue Analysis in Nebraska (Dynamic TRAIN). In January 2002, the Legislative Fiscal Office reported that projected state tax reductions of $700 million over the next seven years due to LB 775 would be offset by only $162 million in new tax revenues generated by LB 775 investment projects, for a net revenue loss of $538 million. (By contrast, the Department of Revenue estimated in the *2002 Annual Report* a net revenue loss of $33 million for roughly the same period.)

Dynamic TRAIN's estimate of a $538 million net revenue loss over a seven-year period averages a $77 million net loss annually. While superior to the Department of Revenue's model, the Dynamic TRAIN model suffers from the same omissions described above: failure to model the impact of the "sales-only" formula and property tax abatements. When property tax abatements are added directly to the Legislative Fiscal Office's estimated annual net revenue loss, **Nebraska taxpayers are predicted to lose $90 million net each year ($77M + $13M).**

True New Jobs Created

Of critical importance to both models is the assumption that only 30 percent of "jobs created" by LB 775 projects are true new economic jobs. This assumption was derived by Department of Revenue analysts who compare data on project job creation with historical employment growth data for the project companies. The Department has determined that **70 percent of jobs classified as "new jobs" for purposes of earning new jobs tax credits under LB 775 are, in fact, *not* true new economic jobs**. This assumption is evaluated annually and, according to a manager at the Department of Revenue, is generally consistent year to year.

This assumption, however, does not recognize the impact of crowding out of jobs within industry sectors in the state. This means that some of Company X's "true new economic jobs" counted by the Department of Revenue may not be true new economic jobs at all, but merely local job transfers from Company Y, which operates in the same line of business as Company X and which now suffers from lower market share resulting from Company X's local expansion.

Obviously, if the effects of tight local job markets and limited in-state market share are substantial, the models' assumption that 30 percent of jobs created are "true new economic jobs" is too high. Reducing the estimate of true new economic jobs to a number below 30 percent would result in greater net revenue losses. Annual net losses to taxpayers (which do not factor in future tax revenue losses) most likely fall somewhere between $90 million (the "net cost" determined by Dynamic TRAIN adjusted to include property tax abatements not considered by the model) and $142 million (the most recent three-year average of the annual identifiable "gross cost" of LB 775).

Total Net Cost of LB 775

To recap: *What are the net revenue losses to Nebraska taxpayers attributable to LB 775?* The best answer today is found by relying on the estimate of the Legislative Fiscal Office's Dynamic TRAIN model, supplemented by the addition of property tax abatements and the recognition that the resulting numbers are very likely too low due to other significant factors not incorporated into the model (such as revenue lost through the "sales-only" election for income and the impact of crowding out of jobs on estimates of true new jobs created by LB 775). Conclusion: **LB 775 is currently costing Nebraska taxpayers at least $90 million net per year.**

The annual net cost ($90 million) is roughly two-thirds of the three-year average gross tax revenues already lost ($142 million). Assuming that this relationship is historically valid, we can infer that **Dynamic TRAIN, adjusted to include property tax abatements, yields a net tax revenue loss since the inception of LB 775 of $1 billion** (roughly two-thirds of the $1.5 billion gross tax revenues already lost to date). If LB 775 were terminated at the end of 2002, existing projects would continue to earn and use tax breaks and result in additional net revenue losses of $276 million ($45 million additional property tax abatements and $231 million additional net sales and income tax losses, estimated using the straight-line method over six years). **The**

net cost of LB 775, including future net tax revenue losses for existing projects, is nearly $1.3 billion.

Net Cost To Taxpayers Versus Other Benefits To State Economy

What do Nebraskans receive for their tax dollars? New net investment? Job growth? Better jobs? These questions beg for better public information about LB 775 projects and the jobs associated with them. But available information suggests that Nebraskans receive precious little in return.

A study of the economic impact of the first ten years of the LB 775 program published in 1997 by Creighton University economics professor Ernie Goss compared economic growth in Nebraska with that of surrounding states to determine the impact of various economic factors on growth in jobs and personal income. Dr. Goss found that **LB 775 had, at best, a modest impact on job growth in Nebraska between 1988 and 1997 and *no impact on personal income growth*** ("personal income" is aggregate earnings from wages and investment interest and dividends). He told the *Omaha World-Herald* (December 28, 1997) that the weak impact of LB 775 on personal income growth was due to the high number of low-paying jobs, such as in meatpacking and telemarketing, which were created under the program.

Zero impact on personal income growth means zero sum benefits to the state economy at large. If, as the economic study suggests, the growth in Nebraska's economy since 1987 is not due to LB 775, this means that the net tax revenue loss attributed to LB 775 is nothing more than a transfer of wealth within the state to the owners of businesses with LB 775 projects. For $90 million (or more) net tax revenues currently lost each year – or $1 billion net tax revenues lost since LB 775 began in 1987 – it appears that the overwhelming majority of Nebraska taxpayers got absolutely nothing in return but escalating tax bills.

The next question – *After how many years of paying out for LB 775 do taxpayers expect to earn back their investment, in effect breaking even?* – does not make much sense in light of the foregoing information. An entrepreneur ordinarily expects to earn back an investment in new property after a certain period of time. The careful entrepreneur will not undertake an investment opportunity unless the investment's breakeven horizon is satisfactory.

The Department of Revenue projects mounting net revenue losses due to LB 775 over the next 17 years. Projected losses actually increase in later years, so that no tax revenues earnback period will ever materialize. The Legislative Fiscal Office's Dynamic TRAIN model projects even higher annual net losses. Moreover, both agencies acknowledge that all net revenue losses are not accounted for by their models.

Conclusion

The identifiable gross cost to Nebraska taxpayers for the LB 775 program since its inception in 1987 is approximately $3 billion. This includes liability for tax revenues already lost plus liability for future tax revenues. On average, this gross cost to Nebraskans is currently $290 million per year – $142 million for revenues already lost and $148 million for future revenues lost. This does not include unknown large amounts of income tax revenues lost due to the election of the "sales-only" factor for computing state income tax liability.

The total net cost – revenue losses minus additional revenues resulting from LB 775, factoring in future tax revenue losses for existing projects – is estimated to be nearly $1.3 billion. This represents a net cost of at least $90 million each year for Nebraska taxpayers. However, it does not reflect the impact of the use by LB 775 companies of the "sales-only" factor for computing in computing income taxes and of the crowding out of jobs, which could result in greater net revenue losses.

How many years until net revenue losses are turned to gains? Never, so long as LB 775 is in effect. *What is the quantifiable impact on Nebraskans' personal income growth?* Zero, according to Dr. Ernie Goss's economic study. *What do all but a few Nebraskans receive from their investment in LB 775 projects?* Nothing.

Should the legislature require a new economic study of LB 775's payoff to the residents of Nebraska? Yes. Will they? Given lawmakers' unwillingness to correct the significant weaknesses of LB 775, or even to require meaningful disclosure regarding LB 775 projects, the answer is obvious: No.

The next logical questions are these: *How long will the taxpayers of Nebraska continue to pay $90 million or more each year in return for nothing? When will the citizens of Nebraska insist that the legislators stop taking $90 million or more each year from the state's taxpayers and giving it to a select few?* The answer to this last question must also be obvious: Now.

What LB 775 Money Could Have Paid For

The Case in Brief:

- Since 2001 the legislature has repeatedly slashed funding for Nebraska's most vulnerable populations.
- At the same time, legislators have protected huge LB 775 tax breaks for large corporations.
- The LB 775 money could have covered many of these deep budget cuts.

Considerable Nebraska revenues and resources have been lost or drained to pay for the LB 775 tax benefits. In the 15 years that Nebraska's most expensive tax incentive program has operated, state government and local subdivisions have already suffered revenue losses totaling $1.5 billion to pay for the LB 775 program. This represents an average annual cost of about $100 million to Nebraska taxpayers.

Beginning in mid 2001, state government began experiencing a shortfall in tax revenues brought on by the general downturn in the national economy and the drought in the state's agricultural sector. The steep decline in revenues quickly led to a budget crisis inside state government. In response, the legislature slashed the state funding for K-12 and higher education during each of the past four legislative sessions. Public services, Medicaid, services for poor children, and rural programs have also had their funding repeatedly cut at the state level, increasing, in turn, the budget pressures on Nebraska counties, municipalities, school districts, and other political subdivisions, which have already suffered revenue losses because of LB 775 tax breaks.

All of these programs, some serving Nebraska's most vulnerable populations, have suffered cutbacks. But not LB 775. Over the past four consecutive budget-cutting sessions, the legislature has exempted the LB 775 program every time.

The following cost comparisons show how the revenues and resources lost as a result of LB 775 tax incentives could have been otherwise spent. Information regarding budget cutbacks was obtained from the Legislature's Fiscal Office. Information regarding expenditures by Nebraska political subdivisions was obtained from the Nebraska Auditor of Public Accounts.

• Just **one** year of LB 775's average cost could have amply covered **all** state cutbacks in the General Fund for **four years** (fiscal years 2001-2005) for state aid to Nebraska individuals. This includes, among many programs, Medicaid, public assistance (including Aid to Dependent Children, educational assistance for state wards, child welfare services, foster care, child care, adoption assistance), aid for developmental disabilities, public health, higher education student aid, aging programs, and the Water Conservation Fund.

• LB 775's average cost per year could pay for the total amount the following 26 Nebraska counties plan to spend in 2003 for highways and roads: Douglas, Lancaster, Hall, Phelps, Valley, Keith, Adams, Seward, Buffalo, Nuckolls, Nemaha, Chase, Madison, Cheyenne, Gosper, Custer, Dawes, Grant, Knox, Kearney, Dawson, Red Willow, Dodge, Scotts Bluff, Dakota, and Brown.

• The average yearly price tag for LB 775 tax breaks ($100 million) could pay for the 2003 total fund requirements for more than half – **265** – of Nebraska's public school districts.

• The average annual cost of LB 775 over four years ($400 million) could have completely paid for the General Fund cuts for all Nebraska state agency operations and all state aid to local government in the four fiscal years from 2001 through 2005, listed in the chart below. ***This means that none of the cutbacks for agency operations and state aid to local government which began in 2001 would have been necessary if the total revenue spent on LB 775 tax breaks during this period had been available.***

Total State General Fund Cuts FY 2001-FY 2005

State aid to K-12 education	$160,583,867
Special education	7,308,241
University of Nebraska / State college system	69,004,763
Community colleges	8,803,395
Health and human services system	15,919,682
Correctional services	15,063,797
Aid to cites and counties	15,358,891
All other local government aid	10,546,682
Funding for all other state agency operations	39,758,866
Total	**$ 342,348,184**

Who's Who on the List of Top LB 775 Beneficiaries

> **The Case in Brief:**
>
> - A few large corporations receive the lion's share of LB 775 tax breaks.
> - Businesses receive LB 775 rewards largely for investments that would have been made anyway.
> - Many companies are rewarded for LB 775 projects involving large numbers of low-paying jobs.
> - The LB 775 program has not created and retained the new jobs and new investment that the legislature intended.

by Mark Vasina

One of the central secrets surrounding LB 775 is how much Nebraska taxpayer money each participant in the program receives in the form of tax credits, refunds, and exemptions. The annual reports on LB 775, published by the Department of Revenue according to the restrictive requirements spelled out in the law, are silent on this issue. Efforts by Senator David Landis and others in the legislature to require disclosure of this basic information have been repeatedly thwarted.

While the annual reports contain aggregated data and do not include information regarding actual tax breaks earned and used by specific projects and companies, they do provide a listing of all LB 775 projects with agreements signed and in effect at the end of the reporting year. Project-specific planned investment serves as an excellent proxy for actual project tax breaks, leading to a number of significant and valid observations and conclusions. Review of project-specific planned jobs adds additional insights. When planned project investment and jobs are grouped together by company, three revealing facts emerge: (1) a few large corporations receive the lion's share of LB 775 tax breaks, (2) businesses are rewarded largely for investments that would have been made anyway, and (3) many businesses are rewarded for projects involving large numbers of low-paying jobs.

Planned investment is a good proxy for actual tax breaks since three of the four major LB 775 tax breaks are tied to planned investment. Two of the major tax breaks (investment credits and direct refunds of sales tax on investments) are tied directly to all planned project investment. A third major tax break (property tax abatements) is also tied to planned investment, but for only certain investments in some projects (turbine-powered aircraft, some computer equipment, and business equipment used in the manufacture or processing of agricultural products, including meatpacking and ethanol).

Since the relationship between planned investment and tax breaks is strong, sound observations about company-specific tax breaks can be made by examining company-specific planned investment. However, because some projects have been completed (43 projects as of 2002), while others have only just been initiated (20 new agreements were signed in 2002), planned investment may be a weak proxy for tax breaks *historically* earned or used. Nevertheless, this does not impair its usefulness as a proxy for all tax breaks (past and future) associated with LB 775 projects.

Companies typically understate planned investment and jobs on their project applications to minimize public resistance to tax incentive programs and to restrict information available to competitors, according to Creighton University economics professor Ernie Goss. In the case of LB 775, qualified investment in projects completed and in process was already $16.3 billion by year-end 2002. This is nearly three times the amount of planned project investment for all LB 775 agreements in effect, completed, or terminated after tax breaks were earned, according to Department of Revenue annual reports. One cannot draw clear conclusions about the *actual* amounts of company-specific tax breaks from the following analysis. However, conclusions about the amounts of company-specific tax breaks *relative to the total* of all LB 775 tax breaks is likely quite sound.

The Top 25 Beneficiaries of LB 775 Tax Breaks

Analysis of the project investment data for the life of the program found in the Department of Revenue annual reports yields a list of 332 companies that appear to have earned LB 775 tax breaks for roughly $6 billion in planned investment. The list of the 25 largest LB 775 beneficiaries (businesses receiving the largest tax breaks) can be found in the table, "The Top 25 Beneficiaries of LB 775 Tax Breaks," page 9 of this report. (Missing from the list, but likely to be among the ranks of the top 25 if *actual* rather than planned investment data were available for all projects, is financial services giant **First Data Corporation**. In public documents filed last year with the Department of Revenue and the Douglas County Treasurer, First Data reported $80 million in personal property (mostly computers) purchased in connection with its LB 775 projects in Omaha and exempted from property taxation.)

There are a number of noteworthy facts about some of the companies on this list. One company, **MCI–WorldCom**, is in bankruptcy after perpetrating the largest accounting fraud in United States corporate history. Three companies, **Cargill, IBP,** and **High Plains Corp.**, have been cited recently for environmental violations in Nebraska. This includes an agreement by **IBP** in 2001 to pay $4.1 million to settle Clean Air Act violations at its Dakota City plant. In 2001, **Eaton Corp.** closed its Aeroquip-Vickers plant in Omaha after receiving tax breaks from two LB 775 projects at that site since 1996. **Goodyear**, whose Lincoln plant is the site of three LB 775 projects since 1987, has reduced its operations in Nebraska and threatens to pull out entirely for Mexico. **Union Pacific** announced in early 2003 that it plans to cut several hundred jobs in the state while using tax breaks to build new headquarters in Omaha. **ConAgra** threatened in 1987 to move its headquarters from Omaha to another state, prompting the panic to protect jobs that led to the passage of LB 775.

But the most important observations regarding the companies on the Top 25 List are not related to public outrage at the behavior of some of the largest companies receiving LB 775 tax breaks. Rather, the chief observations are what this list indicates about the operation of the LB 775 program itself, and whether it is doing what it ought to be doing. A broad tax incentive program like LB 775, consistent with the legislature's stated purpose when enacting LB 775, ought to encourage business decision-makers to choose Nebraska for new investment and quality jobs when investment opportunities would be marginally poor or when investors would

The Top 25 Beneficiaries of LB 775 Tax Breaks

Ranked by Planned Project Investment

Rank	COMPANY NAME	Planned Project Investment ($millions)	Percent of Total	Industry Sector
1	First National of Nebraska, Inc.	283.6	4.6%	financial services
2	MCI-WorldCom	245.0	4.0%	telecommunications
3	AT&T Communications/Technologies	243.0	3.9%	telecommunications
4	Cargill Dow LLC	220.0	3.6%	grain processing
5	Mutual of Omaha	206.0	3.3%	financial services
6	Avaya Communication (Lucent Technologies)	191.0	3.1%	telecommunications
7	Becton, Dickinson & Co.	183.0	3.0%	manufacturing
8	Qwest Communications (Northwestern Bell)	160.0	2.6%	telecommunications
9	Cargill, Inc.	150.0	2.4%	ethanol
10	OpticTrek.com, Inc.	144.0	2.3%	manufacturing
11	IBP-Tyson	137.5	2.2%	meat
12	Union Pacific Corp.	132.5	2.2%	railroads
13	Kellogg Company	104.0	1.7%	food products
14	ALLTEL Corp. (Lincoln Telecom)	86.0	1.4%	telecommunications
15	Eaton Corp.	85.5	1.4%	manufacturing
16	Minnesota Corn Processors	80.0	1.3%	ethanol
17	ConAgra, Inc.	79.9	1.3%	food products
18	Goodyear Tire and Rubber Co.	73.0	1.2%	manufacturing
19	Kawasaki Motors Mfg. Corp.	64.3	1.0%	manufacturing
20	Claas Omaha LLC (Caterpillar Claas America)	60.0	1.0%	manufacturing
21	High Plains Corp. (Abengoa Bioenergy)	55.1	0.9%	manufacturing
22	MPS, Inc.	54.9	0.9%	meat
23	Burlington Northern	50.0	0.8%	railroads
24	Ag Processing, Inc. (AGP Corn Processing)	45.0	0.7%	ethanol
25	Excel Corp. (Cargill subsidiary)	40.8	0.7%	meat
		$3,174.1	51.6%	

Project agreements in LB 775 annual reports are grouped by company and industry sector. Company names are updated with available public information. The Department of Revenue does not provide current names for entities controlling existing projects.

otherwise be unlikely to consider the state. In essence, the incentive program should tip the balance toward new investment in Nebraska. The program should also do this at a price to Nebraska taxpayers which is reasonable, affordable and has a clear economic payoff.

The Top 25 Beneficiaries of LB 775 Tax Breaks list reveals the following about the LB 775 program as it exists today:

1. Most LB 775 tax breaks go to a small number of very large companies, depicted in "The LB 775 Tax Break Pie," below. **The 23 top beneficiaries of LB 775, which represent a mere seven percent of the total number of LB 775 participants, receive 50 percent of the tax breaks.** Eighty-four companies, or 25 percent of total LB 775 participants, receive 75 percent of the tax breaks. Only 50 percent of all participants (166 companies) receive 89 percent of the tax breaks. In sum, the benefits of LB 775 are passed primarily to the largest corporations operating in Nebraska. Fifteen companies on the Top 25 List are also on the Fortune 500 list, which represents the top 500 companies in the United States rated by market capitalization. The Top 25 List of LB 775 Tax Breaks also includes **Cargill, Inc.**, the largest private company in the world, as well as its subsidiary, **Excel Corporation**.

2. **Large LB 775 tax breaks go to companies already drawn to Nebraska for its natural advantages in agricultural commodities and production.** Forty percent of the top 25 companies fit this description: three meat processing firms, two food products firms, four ethanol plants

conclusion on next page

The LB 775 Tax Break Pie

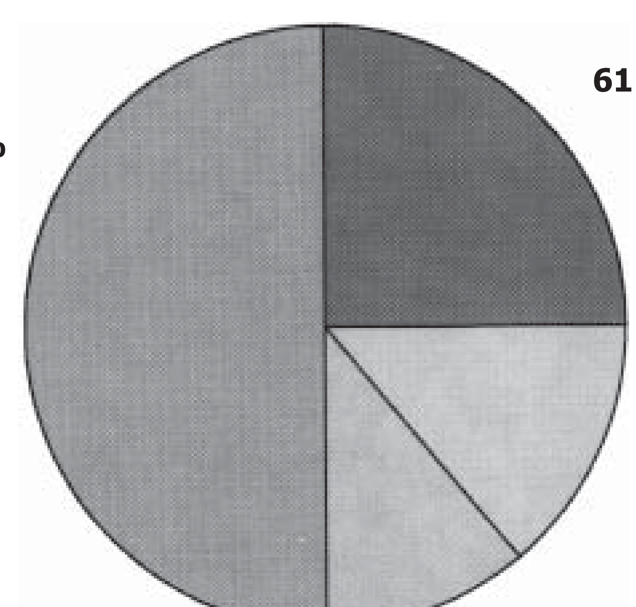
Percentage of Total LB 775 Tax Breaks Received by Participating Companies

332 companies receive LB 775 tax breaks.

166 companies receive 89% of total tax breaks.

84 companies receive 75% of total tax breaks.

23 companies receive 50% of total tax breaks.



and one grain processing facility. Tax incentive dollars are unlikely to be needed, for example, to encourage the major beefpackers to expand and modernize their facilities in one of the largest beef-producing states in the nation. In the case of ethanol production, explicit public policy currently directs public money to support it. Therefore, public support should be reflected in programs *targeted* at ethanol production. If ethanol-specific programs do not receive adequate public support to reward ethanol producers for new investment, a question arises as to why LB 775 tax incentives should be used for this purpose. Moreover, if incentives targeted specifically to ethanol production are adequate to encourage publicly desirable projects, LB 775 tax breaks constitute unfair windfalls to producers.

3. **Companies doing business within a geographical franchise that includes Nebraska receive large LB 775 tax breaks for market-driven essentials such as maintenance and technological modernization.** These companies include telecommunications giants **Qwest Communications** (which owns Omaha's telephone monopoly) and **ALLTEL** (which owns Lincoln's telephone monopoly), **Union Pacific** (which received tax breaks for track maintenance projects) and regional bank holding company **First National of Nebraska** (headquartered in Omaha). Companies with a nationwide scope that are headquartered in Nebraska, like **Mutual of Omaha** and **Union Pacific**, could, like **ConAgra** in 1987, threaten to move their corporate headquarters to another state if taxpayers do not pay up to keep them here. It is highly unlikely, however, that Qwest and ALLTEL will abandon their profitable monopoly telephone franchises in Nebraska or that Union Pacific will abandon its tracks in Nebraska if LB 775 tax breaks are not available to them. It is important to note that in 1987 ConAgra threatened only to relocate its corporate headquarters out of state, not its many food production facilities in Nebraska. ConAgra currently reaps tax breaks from LB 775 projects at production facilities in Grand Island, South Sioux City, Hastings, and Omaha.

Lack of public disclosure about specific projects prevents more precise analysis of the purposes of these projects. However, the Department of Revenue estimates that 70 percent of "new jobs" created by LB 775 projects are *not* true new economic jobs. This *strongly* suggests that 70 percent of LB 775 investment projects would have been undertaken without LB 775 tax incentives. Thus, it appears that the LB 775 tax incentive program is being used to reward routine business investments required by the competitive marketplace rather than to tip the balance for new investment in Nebraska.

The Top 25 Beneficiaries of LB 775 New Jobs Credits

Ranked by Number of New Jobs

Rank	COMPANY NAME	Planned Project Jobs	Percent of Total	Industry Sector
1	IBP-Tyson	1,750	4.4%	meat
2	West Telemarketing Corp.	1,500	3.8%	telemarketing
3	OpticTrek.com, Inc.	1,445	3.6%	manufacturing
4	MBA Poultry, LLC	922	2.3%	meat
5	Union Pacific Corp.	852	2.1%	railroads
6	Oriental Trading Co., Inc.	750	1.9%	retail
7	Wal-Mart Stores, Inc.	600	1.5%	retail
8	ConAgra, Inc.	590	1.5%	food products
9	MDS Pharma Services (Harris Laboratories)	535	1.3%	health research
10	International Galleries, Ltd.	525	1.3%	manufacturing
11	Claas Omaha LLC (Caterpillar Claas America)	502	1.3%	manufacturing
12	First National of Nebraska, Inc.	500	1.3%	financial services
13	Physicians Mutual Insurance	450	1.1%	financial services
14	Dubuque Packing Company	450	1.1%	meat
15	First Data Corp.	400	1.0%	financial services
16	Peter Kiewit Sons, Inc.	400	1.0%	construction
17	Eaton Corp.	398	1.0%	manufacturing
18	Becton, Dickinson & Co.	396	1.0%	manufacturing
19	Pegler-Sysco	370	0.9%	food service
20	Excel Corp. (Cargill subsidiary)	350	0.9%	meat
21	May Telemarketing, Inc.	350	0.9%	telemarketing
22	MPS, Inc.	320	0.8%	meat
23	Idelman Telemarketing, Inc.	310	0.8%	telemarketing
24	United Parcel Service, Inc.	300	0.8%	package delivery
25	Ford Motor Credit Company	300	0.8%	financial services
		15,265	38.2%	

Project agreements in LB 775 annual reports are grouped by company and industry sector. Company names are updated with available public information. The Department of Revenue does not provide current names for entities controlling existing projects.

Companies Earning the Largest New Jobs Credits

A list of companies earning the largest amount of LB 775 new jobs credits is found in the table, "The Top 25 Beneficiaries of LB 775 New Jobs Credits," above. Many companies are found on both lists. Ten of the names on the tax breaks list also appear on the new jobs credits list. Three of the companies on the tax breaks list – IBP-Tyson, OpticTrek.com, and Union Pacific – are among the top five companies on the new jobs list. The second list brings to light two additional realities about the operation of LB 775 and which types of companies are its prime beneficiaries.

1. **Project jobs, and the new jobs credits tied to them, are highly concentrated in a small number of large companies**, as is the case with LB 775 project investment (and the resulting investment credits, sales tax refunds and property tax abatements). The 25 top jobs credit-earning companies account for 38 percent of total planned project jobs. Only 46 companies (14 percent of all companies receiving LB 775 tax breaks) account for 50 percent of planned jobs (and likely earn roughly 50 percent of all LB 775 new jobs credits).

2. **A large portion of LB 775 jobs are low-paying jobs in meatpacking, food products, telemarketing and retail-wholesale operations.** Nearly half of the 25 companies on this list are in industry sectors dominated by low-paying jobs. While these 12 companies comprise only four percent of all companies receiving LB 775 tax breaks, they account for 21 percent of total planned project jobs. Five of the 25 companies on this list are meatpacking and meat-processing firms and account for nearly ten percent of all planned project jobs. **IBP-Tyson**, which heads the list, alone accounts for 4.4 percent of the total. Over 22 percent of all *actual* LB 775 project jobs through 2002 are in the meat and food products sector, according to the Department of Revenue, which also reports that these jobs pay the lowest average wages of all industry groups using LB 775 tax credits. Three telemarketing firms also make the Top 25 List, with the number two spot held by **West Telemarketing**, which accounts for nearly four percent of total planned project jobs. Also in the top ten for LB 775 new jobs credits are **Wal-Mart** (retail-wholesale) and **ConAgra** (food products) for projects with relatively low-paying jobs.

Creighton University professor Goss published a study in 1997 regarding LB 775 that found the program had zero positive impact on personal income growth in Nebraska. Dr. Goss explained to the *Omaha World-Herald* (December 28, 1997) that the weak impact of LB 775 on personal income growth was, in part, because "so many of the jobs created under LB 775 have been relatively low-paying meatpacking and telemarketing jobs."

Conclusion

Proponents of LB 775 assert that the program encourages business decision-makers to invest in projects with lower returns than unsubsidized investments, therefore, encourages new investments which would otherwise not be made. However, it appears that for every Becton Dickinson that is attracted to Nebraska, in part, by the carrot of LB 775, thus bringing new investment and jobs, there are many companies using LB 775 tax breaks simply to pay for retooling, maintenance and normal business expansion. This occurs often in industries for which Nebraska has a natural competitive advantage. In addition, many LB 775 beneficiaries are earning "new jobs credits" for low-paying jobs that the companies would have created anyway. In sum, since LB 775's enactment by the Nebraska Unicameral in 1987, the available evidence indicates that the tax incentive program has not created and retained new jobs and new investment in Nebraska consistent with the program's purpose.

LB 775 Subsidy Hidden in State Aid to Education

The Case in Brief:

- A tax burden of about $8 million from property tax abatements (for purchase of corporate jets, computers, and certain business equipment) is shifted away from LB 775 businesses.
- The state aid to education formula causes this tax burden to be shifted to state taxpayers.
- The beneficiaries of $8 million annually in state aid subsidies are not the school districts, but the LB 775 businesses receiving property tax abatements.

by Mark Vasina

Among various types of tax breaks, LB 775 provides, for projects with a minimum $10 million investment and 100 new employees, property tax abatements on certain forms of personal property: turbine-powered aircraft, certain computer equipment and business equipment used in the manufacture or processing of agricultural products. Total valuation exempted in 2002 was $715 million (*see* Table 30, page 37, of the *2002 Annual Report* on LB 775), resulting in property tax abatements (lost property tax revenues) of about $13 million in 2002 (estimated by applying county value base and tax rate data to the information provided in the annual report).

In the absence of other revenue sources to pick up the tax base shortfall, the property tax burden is simply shifted away from LB 775 businesses (which pay fewer property taxes than they otherwise would) to other property taxpayers in the districts (who pay more property taxes than they otherwise would). Since over 60 percent of property taxes in Nebraska are paid to school districts, the amount of tax burden shifting within school districts due to LB 775 property tax abatements is nearly $8 million (60 percent of $13 million). This $8 million would pay for the cost of educating approximately one thousand pupils in small Nebraska elementary schools, according to costs calculated in a 2002 study by Augenblick & Myers, a Denver educational consulting firm, cited in the *Lincoln Journal Star*, July 21, 2003.

Local property taxpayers residing in tax districts (cities, counties, etc.) that host LB 775 projects enjoying property tax abatements must absorb the tax burden shift of the remaining $5 million in tax abatements. The property tax burden in some counties, such as Adams, Colfax, Dakota, Platte, Saline and Washington, may be as much as three percent to 15 percent higher than it would be if taxes were paid on all property exempted by LB 775.

For the $8 million in property tax abatements affecting school districts, however, the LB 775 tax burden is not primarily shifted to other local property taxpayers. Instead, due to the way the state aid to education formula works, the tax burden is largely shifted to taxpayers at the statewide level. Here is how it works.

The state aid formula is broadly divided into a needs assessment and a resources assessment. While the needs assessment is quite complicated, the resources assessment (which is concerned primarily with the district's tax base) is straightforward. Essentially, the amount of state aid a school district receives varies on a dollar-for-dollar basis with the district's tax base. If the tax base increases, the resources assessment portion of the state aid formula will reduce state aid by roughly the same amount (assuming the needs assessment portion of the formula has not changed). If the tax base decreases, the state aid formula kicks in the shortfall.

Property tax abatements that total $8 million statewide in 2002 result in lower tax bases for school districts that host qualifying LB 775 projects. State aid makes up the tax base shortfall in those school districts. This mechanism does not require that local school officials be aware that their tax bases have been weakened by LB 775. Rather, the action of balancing needs with resources in the state aid formula leads to the subsidy provided by state aid.

This means that the true beneficiaries of $8 million in state aid subsidies annually are not the school districts but the businesses in those districts that receive LB 775 property tax abatements. In 2002, school districts received $8 million from state aid to replace property taxes they would have received from businesses if LB 775 had not provided abatements, LB 775 businesses paid $8 million fewer property taxes, and Nebraska taxpayers paid the $8 million in additional state aid subsidies to the school districts. While LB 775 subsidies masquerade as state aid to education, in reality, they contribute to the squeeze on the state aid program.

It is deceptive to argue that much of this exempt property would have been unavailable to tax bases if not for LB 775. Fully 40 percent of property tax abatements are associated with plant investment by meatpacking and food processing companies already operating within the state. As these companies upgrade their facilities to benefit from Nebraska's natural advantages in agricultural commodities, LB 775 merely provides extra profits. Ethanol and related projects account for another 45 percent of tax abatements. LB 775 tax subsidies given to ethanol producers in addition to ethanol production incentives and community block grants simply represent a bonanza for producers, not real incentives encouraging business that would not have otherwise occurred.

2003 Nebraska Legislature

1 **Floyd P. Vrtiska,** 471-2733
2 **Roger Wehrbein,** 471-2613
3 **Ray Mossey,** 471-2627
4 **Kermit Brashear,** 471-2621
5 **Donald Preister,** 471-2710
6 **Pam Brown,** 471-2714
7 **John Synowiecki,** 471-2721
8 **Patrick Bourne,** 471-2722
9 **Chip Maxwell,** 471-2723
10 **Mike Friend,** 471-2718
11 **Ernie Chambers,** 471-2612
12 **Pam Redfield,** 471-2623
13 **Lowen Kruse,** 471-2727
14 **Nancy Thompson,** 471-2730
15 **Ray Janssen,** 471-2625
16 **Matt Connealy,** 471-2728
17 **Pat Engel,** 471-2716
18 **Mick Mines,** 471-2618
19 **Gene Tyson,** 471-2929
20 **Jim Jensen,** 471-2622
21 **Carol Hudkins,** 471-2673
22 **Arnie Stuthman,** 471-2715
23 **Curt Bromm,** 471-2719
24 **Elaine Stuhr,** 471-2756
25 **Ron Raikes,** 471-2731
26 **Marian L. Price,** 471-2610
27 **DiAnna Schimek,** 471-2632
28 **Chris Beutler,** 471-2633
29 **Mike Foley,** 471-2734
30 **Dennis Byars,** 471-2620
31 **Mark Quandahl,** 471-2327
32 **Jeanne Combs,** 471-2711
33 **Carroll Burling,** 471-2712
34 **Bob Kremer,** 471-2630
35 **Ray Aguilar,** 471-2617
36 **Jim D. Cudaback,** 471-2642
37 **Joel Johnson,** 471-2726
38 **Ed Schrock,** 471-2732
39 **Dwite Pedersen,** 471-2885
40 **Doug Cunningham,** 471-2801
41 **Vickie McDonald,** 471-2631
42 **Don Pederson,** 471-2729
43 **Jim Jones,** 471-2628
44 **Tom Baker,** 471-2805
45 **D. Paul Hartnett,** 471-2615
46 **David Landis,** 471-2720
47 **Philip Erdman,** 471-2616
48 **Adrian Smith,** 471-2802
49 **LeRoy Louden,** 471-2725

Senator
District # State Capitol
P.O. Box 94604
Lincoln, NE 68509-4604

Failed Legislative Attempts to Amend LB 775

Regarding Disclosure, Program Evaluation, and Cost-Benefit Analysis

The Case in Brief:

- Since LB 775 has been on the books, the legislature has never evaluated the tax incentive program, turning down 13 attempts to require program evaluation.
- The legislature has refused ten proposals to increase disclosure of key information about the tax incentive program.
- Nebraska citizens have been refused oversight over key program features for 16 years.

In the 16 years since it was enacted, the Nebraska legislature has shown little interest in evaluating the massive LB 775 program. State legislators have turned down 13 separate proposals that provided for evaluation of either the effectiveness of the tax incentives in carrying out program purposes or the extent to which the program is actually being carried out according to its requirements. Only four of these proposals were considered by the entire legislative body; eight died in committee.

Closely tied to the legislature's disinterest in evaluating LB 775 is its reluctance to increase, even slightly, the disclosure of information related to the tax credits enjoyed by beneficiaries under the Act. The legislature voted in 1990 to expand the information required for inclusion in the Department of Revenue's annual reports. However, rather than reporting information by taxpayer or taxpayer liability range, only aggregate information by industry group is required. All other attempts – ten since 1987, when LB 775 was enacted – to increase information disclosure under the Act have ultimately failed.

The repeated failure of the numerous proposals to increase information disclosure and evaluate the operation and effects of LB 775 means Nebraska citizens have had virtually no oversight over key features of the program for 16 years. Nebraskans' elected state representatives have demonstrated a studied indifference and/or resistance to exerting real oversight regarding LB 775's effects on the taxpaying public. The legislature has also repeatedly agreed to corporate lobbyists' requests and has withheld from Nebraskans the essential information necessary for citizens to exert more direct oversight themselves.

1988

LB 1072 required the Legislative Fiscal Analyst to generate a cost-benefit analysis, based upon information already required from applicants and from new disclosures from applicants of their state tax obligations for the previous five years. Based upon this analysis, only projects that yielded a net fiscal return to the state within eight years could be approved. Upon approval by the Tax Commissioner, the evaluation of cost effectiveness for each project would become public information. The Legislative Fiscal Office and Research Office would have been required to develop and implement performance review of state economic development programs. The bill, sponsored by Senator Don Wesely, died in the Revenue Committee.

1989

LB 432 required the Legislative Fiscal Analyst to prepare an annual report detailing the fiscal effects of LB 775, including (1) the fiscal impact of incentives applied for, (2) an estimate of tax income generated due to actual creation of jobs and investment, and (3) a cost effectiveness analysis of projects under consideration. The bill, sponsored by Senators Wesely, Frank Korshoj, and James McFarland, died in the Government, Military and Veterans Affairs Committee.

1990

Through an amendment to LB 431, Senator David Bernard-Stevens sought to add one-half full time equivalent staff resources to the fiscal policy office in order to analyze the information provided in the Department of Revenue's annual reports (expanded by LB 431). The amendment was defeated on Select File, garnering only three votes in support. Requirements originally proposed by Senator Wesely that the Department of Revenue provide information in the annual reports by taxpayer and tax liability range as well as by industry group and to report other relevant factors were removed by the Revenue Committee. A requirement that the annual report also report credits distributed to shareholders as a part of the annual reports was removed on Select File.

1993, 1994, and 1995

In three successive years, Senator Wesely introduced a proposal calling for the Department of Economic Development to design a fiscal rate of return analysis, which would be applied to applications under LB 775. Projects would have been required to yield a net fiscal return to the state within ten years of qualifying for benefits. Each proposal, LB 824 (1993), LB 983 (1994), and LB 795 (1995), died in the Revenue Committee.

1996

LB 1196 limited the LB 775 credits that could be authorized in any one year to $35 million. Approval of projects would be made by a three-person board (Governor, State Treasurer, and chairperson of the Nebraska Investment Council), which would evaluate and prioritize projects based on, among several factors, the greatest overall benefit to Nebraska citizens. The bill, sponsored by Senator Wesely, died in the Revenue Committee.

2000

LB 1340 limited the number of projects that could be approved in one year to no more than three applications each under the $3 million investment and 30 new employees option and the $20 million new investment option. The Governor could approve up to three additional applications at the Governor's discretion. Preference would be given to projects that (a) would not otherwise locate in the state, (b) are located in counties with unemployment rates above the state average, and (c) result in the greatest number of jobs. The bill, sponsored by Senators David Landis and William ("Bob") Wickersham, died in the Revenue Committee. (Senator Landis again introduced this proposal in 2002, in LB 1036. The Revenue Committee again declined to advance the bill.)

2002 and 2003

In three consecutive legislative sessions, Senator Landis introduced a bill that would have permitted the disclosure of company-specific information about beneficiaries under LB 775 after the information was three years old (LB 1136 in 2002, LB 50 in 2002 Second Special Session, and LB 608 in 2003). The information that could be disclosed was (1) the amount of new investment and employment; (2) the amount of credits and refunds qualified for and actually taken; (3) the statewide employment of the company in the year prior to the application and each year since; and (4) the average wage of employees in the year prior to application and each year since. LBs 1136 and 50 died on General File in 2002. LB 608 passed in 2003 but with the disclosure provision, as well as every other provision related to LB 775, removed by a 38-0 vote.

Before all LB 775-related provisions were removed from LB 608, the legislature twice rebuffed Senator Chris Beutler's efforts to provide for disclosure of tax return information of LB 775 beneficiaries for program evaluation by the Legislative Program Evaluation Committee. Beutler's first amendment to LB 608 called for the statistical and random selection of tax returns based upon name or anonymous identification number. This amendment garnered only 13 votes in support. Beutler's second amendment sought the same information, but selected only by anonymous identification number. The second amendment attracted only seven votes in support.

Also prior to excising from LB 608 all provisions affecting LB 775, the legislature considered on Select File an amendment that required the Department of Revenue to provide the Legislative Fiscal Analyst aggregated nonfederal information about companies that have qualified for benefits. The information exchange was to be used solely for determining the economic benefits and project costs of the LB 775 tax incentive program. The legislature did not adopt this proposal.

LB 758, also introduced in 2003 by Senator Kermit Brashear, at request of Governor Mike Johanns, would have expanded the information included in the Department of Revenue's annual reports on LB 775. It required specific information to be provided on an annual and a cumulative basis since 1987 by county or groups of counties related to companies receiving LB 775 benefits. The bill's provisions were amended into LB 608 by a 26-13 vote on General File but, along with all other LB 775-related provisions, were later removed when the legislature voted to transform LB 608 into a bill that had no bearing on LB 775.

LB 578, which Senator Landis introduced in 2003, provided that LB 775 projects meeting the requirements for benefits under the Act would be forwarded to a three-person board (Governor or his/her designee, professor of economics from a doctoral economics program in the state, and a member from the private sector qualified in finance, economics, economic development or a related field). The board could approve applications only if satisfied that the project would not occur absent the benefits provided in LB 775. The Revenue Committee did not advance the bill.

Regarding Accountability for Creation and Retention of Quality Jobs

The Case in Brief:

- State legislators have rejected six proposals to tighten LB 775 provisions regarding the number of new jobs actually created and retained.
- Senators have rejected three measures prohibiting the use of LB 775 jobs credits for employment of illegal aliens.
- The legislature has rejected 17 attempts requiring wage or health care benefit floors to qualify for LB 775 jobs credits.

Creation & Retention of Jobs

When enacting LB 775 in 1987, the Nebraska legislature declared that it had become state policy to revise Nebraska's tax structure to encourage, among several things, the creation and retention of new jobs in the state. However, it is doubtful that the Act's provisions actually encourage this. Also debatable is whether the provisions for recapturing or disallowing incentives are strong enough to hold tax incentive beneficiaries accountable. But Nebraska lawmakers have rejected repeated efforts to strengthen LB 775's provisions.

LB 775 provides that one-seventh of the refunds, personal property tax reductions, credits, and remaining carryovers are disallowed for each year the company did not maintain the project at the required levels of employment or investment. Under the Act, the State of Nebraska must attempt to recapture the tax payments due for the disallowed amounts.

Since 1987, state legislators have rejected six proposals to tighten LB 775's provisions regarding the number of new jobs actually created and retained. A seventh proposal, introduced in 2003, remains in committee.

LB 1122, which Senator James McFarland and five other legislators introduced in 1988, provided that none of the incentives, refunds or credits under LB 775 would be allowed if the taxpayer's average number of employees at the end of the entitlement period is less than the taxpayer's base year. The Revenue Committee declined to advance the bill. Senator Don Wesely's attempt to advance LB 1122 to the full body was defeated by a vote of 23-22.

Senator McFarland offered an amendment to LB 1234 in 1988 providing that if the taxpayer's average number of employees at the end of each year of the entitlement period is less than the taxpayer's base year, no incentives, refunds, or credits would be allowed under the Act. This amendment was defeated on General File by a vote of 14-26.

In 1989, Senator McFarland modified his previous proposal slightly in LB 437, which provided that if at the end of each year of the entitlement period the number of equivalent Nebraska employees is less than the base year, no incentives, refunds, or credits under the Act would be allowed. By a vote of 16-29, the legislature declined to advance the bill to Select File. This same proposal was again offered in 1990 by Senator McFarland in LB 894, and in 1992 by Senator Wesely in LB 1280. The Revenue Committee declined to advance either bill.

Senator William ("Bob") Wickersham in 2000 introduced LB 1046, providing that companies that have failed to meet their required levels of investment and employment under LB 775 must pay six percent interest on the credits, refunds, and exemptions recaptured. This bill also died in the Revenue Committee.

In 2003, Senator Matt Connealy proposed LB 776, which provides that the recapture fee for businesses failing to maintain required levels of employment and investment is increased from one-seventh to one-third of refunds, personal property tax reductions, credits, and remaining carryovers. After the bill's hearing in 2003, the Revenue Committee has taken no further action regarding the measure.

Employment of Illegal Aliens

Since 1987, the Nebraska legislature has rejected three legislative proposals that would have made clear that the new jobs companies are being rewarded for creating under LB 775 must, at a minimum, be legal. These proposals declared that neither benefits nor credits under the Act were available for employment of illegal aliens. None of the proposals advanced beyond the Revenue Committee.

Each of the three bills (LB 822 in 1993, LB 794 in 1995, and LB 455 in 1997) – all introduced by Senator Wesely – clarified that the employment of illegal aliens does not create any benefits or credits under the Act. Each proposal also required the Department of Revenue to report annually the number of investigations and violations discovered by the US Immigration and Naturalization Service regarding hiring illegal aliens by LB 775 businesses.

LB 455 also provided that when employers under LB 775 intentionally employ illegal aliens to fulfill requirements under the Act, benefits and credits are denied and benefits already granted are recaptured. It also provided that when employers unintentionally employ illegal aliens, tax credits and benefits are reduced or recaptured proportionately to illegal aliens employed in qualified projects. This proposal, as well as the two earlier proposals, died in the Revenue Committee.

Minimum Wage and Health Care Benefits

Beginning in 1995, several Nebraska legislators have offered legislative proposals addressing the quality of new jobs created by companies receiving LB 775 benefits. Twelve of the proposals rewarded creation of jobs that paid a minimum wage. Five proposals rewarded jobs created with accompanying health care benefits. Most proposals died in the Revenue Committee and none has been adopted. This means that LB 775 continues, as it has from its enactment in 1987, to provide sizable tax breaks to companies for creation of jobs without wage or health care benefit floors.

LB 795, introduced by Senator Wesely in 1995, offered companies an additional credit of five percent of total compensation paid if they employ individuals who, when they were hired, were receiving public assistance payments, if the company provides these employees health insurance benefits and pays wages equal to or greater than the industry-wide average as determined by the Department of Economic Development. The Revenue Committee did not advance the bill.

In 1996, Senator Wesely proposed LB 1196, which limited the LB 775 credits that could be authorized in any one year to $35 million. A three-person board (Governor, State Treasurer, and chairperson of the Nebraska Investment Council) would evaluate, prioritize, and approve new projects based on, among several factors, (1) whether the employees at the project are paid a minimum of $11 per hour, and (2) the economic condition and unemployment rate at the project's location. The Revenue Committee declined to advance LB 1196.

LB 807, introduced by Senators Paul Hartnett and Pat Engel in 1999, stated qualifying companies must pay new employees at least 125 percent of the average salary for all Nebraska workers, adjusted by the Employment Cost Index for the Midwest. The proposal died in the Revenue Committee. In 2002, Senator Hartnett offered the same proposal again in LB 1300. This time the Revenue Committee voted to advance the bill to General File where it then died.

In 2003, Senator Hartnett introduced LB 98, providing that new employees must be paid the greater of either 125 percent of the county average annual wage or 100 percent of the regional average wage. In the same session, in LB 731, Senator Connealy coupled LB 98's minimum wage requirement with the additional requirement that employees must also receive health insurance benefits that are at least comparable to those provided for state employees. Neither bill survived the Revenue Committee.

LB 517, which Senator John Synowiecki proposed in 2003, specified that for companies seeking to qualify for benefits under LB 775, health care benefits for new employees must be provided that are substantially equal to those provided by the Nebraska State Insurance Program. An alternate proposal, LB 668 offered by Senator Nancy Thompson in 2003, provided that companies seeking to qualify for LB 775 benefits must provide basic health insurance for new employees such that the employer pays 70 percent of the premium cost of a policy that covers at least 80 percent of the costs of office visits, emergency care, surgery, and prescriptions, and has an annual deductible of no more than $1,500. Both legislative bills died in the Revenue Committee.

In 2003, the Revenue Committee proposed to modify LB 608 on General File with amendment FA 1207 to require that future applicants for benefits under LB 775 must pay all project employees at least $8.70 per hour if the company provides at least the average health care benefits for private employers in the state and $9.57 per hour if it does not. The amounts would be adjusted in future years for the change in state average weekly wage.

Senator Don Pederson offered a competing amendment that specified instead that (1) a new threshold for investment of $20 million and 20 new employees be created and these employees must be paid at least 140 percent of the federal minimum wage, and (2) for employees in the existing thresholds ($3 million / 30 new employees, $10 million / 100 new employees) a minimum wage of at least 160 percent of federal minimum wage is required. This amendment failed to achieve the required majority, with a vote of 21-16. Senator Pederson's proposal was also contained in LB 758, introduced by Senator Kermit Brashear at the request of Governor Mike Johanns, which did not advance out of the Revenue Committee.

The 2003 legislature then, by a vote of 34-4, amended FA 1207 to LB 608 to provide that, except for projects in counties with less than 20,000 population, a minimum wage of $8.25 per hour is required for LB 775 jobs. The Revenue Committee's amended amendment was then adopted on General File with a vote of 33-4, then LB 608 was advanced to Select File. At the next stage of debate, Senator Chris Beutler offered an amendment to raise to $8.70 an hour the minimum wage required for a company to be eligible for benefits under LB 775. This amendment lost with a vote of 15-16. Then Beutler offered an alternate amendment requiring a minimum wage of $8.60 per hour. This amendment attracted only five votes in support. Lawmakers ultimately removed from LB 608 all provisions related to LB 775 by a 38-0 vote, then passed the bill.

Failed Legislative Attempts to Amend LB 775

Regarding Limiting Tax Exemptions for Capital Gains, Corporate Jets, Computers, and Business Equipment

The Case in Brief:

- The legislature has preserved a special income tax exemption in LB 775 for capital gains for 16 years, rejecting 13 attempts to limit or close the tax loophole.
- The Unicameral has rejected seven proposals to limit or repeal special 15-year tax breaks for big-ticket corporate purchases – jets, computers, and certain business equipment.

Tax Exemption for Capital Gains

Nebraska legislators have rejected 13 attempts since 1987 to either limit or repeal the special state income tax exemption available under LB 775 for capital gains. Their repeated refusal to close this corporate tax loophole has, in turn, contributed to lower state income tax revenues annually throughout the 16-year life of this program. The tax exemption itself provides a special capital gains exclusion from taxable Nebraska income for the stock of employees who acquired the stock in the course of employment in any non-family corporation with at least five shareholders, at least two of which own ten percent or more of the stock. Legislative support for the exemption has been overwhelming. Ten of the 13 legislative proposals to cut back the capital gains exemption died in committee. Only three proposals were ever considered by the full legislature, and not one advanced beyond the first stage of debate.

Beginning in 1991, state legislators have offered six bills that would repeal outright the capital gains exclusion from Nebraska taxable income. The Revenue Committee voted in 1991 to transform LB 569 from a bill broadening the availability of the exclusion to include family corporations into a bill repealing the capital gains exclusion and advance it to General File. LB 569, introduced by Senator Richard Peterson, then died on the legislative floor without further consideration. Five subsequent bills were offered to repeal this income tax exemption also, each of which died in the Revenue Committee. (LB 995 in 1992 by Senator Tim Hall; LB 1120 in 1992 by Senator Hall; LB 1246 in 1992 by Senator Hall; LB 384 in 1999 by Senator William ("Bob") Wickersham and four others, and LB 203 in 2001 by Senator Wickersham and two others)

Seeking to limit rather than repeal the exemption, Senator Don Wesely introduced LB 433 in 1989 and LB 992 in 1990 to limit the capital gains exclusion to $500,000. Both bills died in the Revenue Committee. Senator Wesely's attempt in 1989 to advance LB 433 to the full legislative body was defeated by a vote of 11-26.

Senator Wesely tried again in 1992 and 1993 to limit the capital gains exemption, this time to a total of $250,000 (LB 1280 in 1992; LB 824 in 1993). The Revenue Committee did not vote to advance either legislative bill.

In 1998 and 1999, Senator Wickersham led the effort to allow one-half the amount of capital gains to be excluded for all individual income taxpayers in exchange for the outright repeal of the special capital gains exclusion. LB 1032 in 1998, which Wickersham sponsored with 18 other legislators, failed to advance beyond the Revenue Committee. LB 383 in 1999, sponsored by Wickersham and four other legislators, was advanced to General File after the Revenue Committee voted to eliminate the provisions allowing the 50 percent capital gains exclusion. LB 383 also would have limited the capital gains exclusion to one tax year such that subsequent sales of the same stock would no longer be eligible for exclusion. In addition, the individual claiming the exclusion would have been required to be a resident individual taxpayer for three years before and after the year of election. Before LB 383 ultimately died on General File, Senator Wickersham attempted to amend the committee amendments to provide an exclusion from income for one-tenth of net capital gains. His amendment was defeated by the full legislative body by a vote of 8-18.

Tax Exemption for Corporate Jets, Computers, and Business Equipment

Efforts within the Nebraska legislature to limit or eliminate the special 15-year property tax exemption under LB 775 available for computers, corporate jets, and business equipment have failed on seven occasions since 1987. LB 775 offers a property tax exemption for qualified individuals or companies for 15 years for turbine-powered aircraft, mainframe business computers and business equipment involved directly in the manufacture or processing of agricultural products, which are used as a part of a project involving investment of $10 million and creation of 100 full-time jobs (or the equivalent). Despite this exemption's high profile – illustrated by gubernatorial candidate Ben Nelson's 1990 campaign lament about "corporate tax loopholes big enough to fly a corporate jet through", all but one of the seven legislative proposals to close this tax loophole failed to advance out of the Revenue Committee. The single proposal that was forwarded to the full legislative body for consideration died on General File. Thus, LB 775's property tax escape for these big-ticket items has remained intact throughout the 16 years since these tax breaks were first created.

Beginning in 1990, four legislative proposals have attempted to eliminate the property tax exemptions for all three categories – corporate jets, computers, and business equipment. (LB 1218 in 1990 by Senator Loran Schmit, LB 299 in 1991 by Senator Hall, LB 1275 in 1992 by Senator Schmit, and LB 471 in 1999 by Senators George Coordsen and Wickersham) The Revenue Committee declined to advance any of the four bills.

In 1992, two proposals sought to eliminate the exemption for corporate jets only. (LB 1179 by Senator Jerry Chizek at the request of Governor Ben Nelson and LB 1290 by Senator Wesely) The Revenue Committee voted to advance only LB 1179 to General File, where it eventually died.

In response to Governor Nelson's second request, Senator Eric Will introduced LB 89 in 1993, which provided that the property tax exemption under LB 775 for corporate jets could be rejected by a majority vote of the county board where the qualifying project is located. This proposal died in the Revenue Committee.

LB 775 Special Report Credits

Linda Ruchala *is an Associate Professor of Accounting at UN-L. She earned a masters degree from Harvard and a Ph.D. from the University of Indiana. She is a founding member of the Association for Integrity in Accounting (AIA). She can be contacted at ruchala@earthlink.net.*

Mark Vasina *earned a bachelors degree in accounting at UN-L. He worked for federal banking and thrift regulators in New York in the late 1980's and spent the 1990's working in risk management for Wall Street firms. Mr. Vasina returned to Nebraska to work on a documentary film about meatpacking in Nebraska, and has investigated the impact of meatpacking plants on rural Nebraska communities and researched LB 775 and its effects on the taxpayers of the state. He can be contacted at mvasina@neb.rr.com.*

Lynn Moorer *is an attorney with a masters degree in journalism from UN-L who has worked as a journalist. She served as a writer and the editor for this report. She can be contacted at lmoorer@alltel.net.*

Tim Rinne*, State Coordinator for Nebraskans for Peace, served as editor-in-chief for this report. He can be contacted at nfpstate@redjellyfish.net.*

*This report was originally prepared by **$top Big Business $ubsidies: The Committee to Repeal LB 775**, as an insert to the July/August 2003* Nebraska Report *by Nebraskans for Peace, 941 'O' St., Suite 1026, Lincoln, NE 68508.*

The Case in Brief:

- None of the numerous proposals in recent years to limit tax refunds, exemptions, or credits under LB 775 has succeeded.
- Most legislative proposals died in committee and were not considered by the full legislature.

Other Limits to Credits

In addition to the legislative proposals described elsewhere in this report, the Nebraska legislature has, since LB 775's enactment in 1987, considered and rejected a variety of other measures that would limit the tax refunds, exemptions, and/or credits given under the Act. Most have been offered within the past three years. Like the majority of all proposals to amend LB 775, most died in committee and did not progress to full legislative debate.

"Bad Actor" Laws

In 2000, Senator Curt Bromm and nine other legislators sponsored LB 1137, a "bad actor" law. It would have established grounds for disqualification for, termination, suspension, or revocation and recapture or disallowance of benefits under LB 775 because of failure to comply with applicable federal, state, and local environmental laws, rules, and regulations. The bill provided that the Tax Commissioner, considering the recommendation of the Director of Environmental Quality, could take action in consideration of the severity of the violation, any action taken to correct the violation, the frequency of any violations, and whether the actions exhibit a pattern of conduct. The Revenue Committee did not advance the bill.

During the 2003 legislative consideration of LB 608 on General File, Senator Bromm offered an amendment that specified that any company receiving incentives under LB 775 that habitually or intentionally violates any federal or state environmental, health, safety, or labor law and the violation results in significant and material damage to the environment or any person, shall have a portion of its incentives recaptured or disallowed. This amendment was adopted by a 42-0 vote, but was later removed, along with all other provisions pertaining to LB 775, when the legislature converted LB 608 into a bill completely unrelated to LB 775.

Limits on Sales and Use Tax Refunds

LB 1280, introduced by Senator Don Wesely in 1992, provided that (1) the sales and use tax refund provisions were limited to depreciable property, and eliminated entirely for property used in more than one state; and (2) the use of credits generated under LB 775 would be limited to reducing income tax liability; credits could no longer be used for the refund of sales and use tax paid on otherwise non-refundable items used at the project. LB 1280 died in the Revenue Committee.

As proposed by Senator William ("Bob") Wickersham's LB 1045 in 2000, refunds of local sales taxes would be available only for purchases related to the project; local sales taxes on non-project purchases would no longer be refundable. In addition, LB 1045 would have required that any refund of local sales tax greater than $25,000 must be applied for by September so the Tax Commissioner could notify the affected city by September 1, before its budget is final. Such refunds would then be paid the following January. The Revenue Committee did not vote to advance LB 1045.

Senator Wickersham offered a similar proposal in LB 510 in 2001. The bill specified that taxpayers could not use refunds of local sales taxes to use income tax credits that could not otherwise be fully used. Additionally, a procedure would have been adopted for refunding amounts greater than $25,000 of local sales taxes that allows the municipality to budget for the revenue loss. The Revenue Committee again declined to vote the bill out of committee.

In 2003, Senator Paul Hartnett introduced LB 651 offering a kindred proposal. It provided that tax credits not otherwise refundable under LB 775 may be used to obtain a refund of sales and use taxes only for property purchased for a business entity's qualifying site. LB 651 also provided that refunds of sales and use taxes under the Local Option Revenue Act are henceforth limited to projects qualifying before the effective date of the act. The bill also stated that all refunds of local sales and use taxes totaling over $25,000 shall not be made before the first January following the first April following the claim for refund. LB 651 remains in the Revenue Committee.

Credit Limitations Regarding Income Tax Liabilities

Senator Wesely introduced LB 454 in 1997, which provided that credits under LB 775 could not reduce the tax liability of a spouse unless the spouse's income was a result of the business receiving LB 775 credits. LB 454 also stated that, for an individual with Nebraska gross income over $500,000, credits under the Act may not reduce the individual's tax liabilities to less than three percent of that gross income. The bill died in the Revenue Committee.

Also introduced by Senator Wesely in 1997, LB 456 would have changed the way the number of new employees would be calculated for purposes of qualification under LB 775. Rather than calculating credits based upon employment growth solely at the project, the credits would be based on employment growth at the project or in the state, whichever is less. The Revenue Committee did not vote to advance the bill out of committee.

Reducing LB 775 Benefits By Half

In 1999, Senator Roger Wehrbein and three other legislators proposed LB 630. The bill provided that benefits available for companies qualifying under LB 775 would be reduced by one-half, and a Beginning Farmer Tax Credit would be enacted. The Revenue Committee voted to advance the bill, with amendments, to General File. However, an amendment by Senator Kermit Brashear to remove all sections of the bill pertaining to LB 775 was later adopted 30-0.

Payment from a Special Cash Fund

In three consecutive years, the Nebraska legislature declined to create a special cash fund earmarked for reimbursement of credits and refunds under LB 775. In 2001, during the first special session, Senator Wickersham and three other legislators introduced LB 6 to create a special cash fund. The bill also provided that credits and refunds would be reimbursed from the fund on a first-come, first-served basis and that credits would be deferred if insufficient funds were available. LB 6 was determined to be outside the Governor's special session call and was not considered.

In 2002, Senator Wickersham and his three colleagues introduced the proposal again in LB 946. This time the Revenue Committee voted to advance the bill to General File. However, Senator Brashear's motion to defer consideration of the bill until the last session day succeeded by a vote of 25-15, which effectively killed the bill. Senator Wehrbein reintroduced the proposal in 2003 in LB 224, which the Revenue Committee declined to advance.

Adjustment of Investment Thresholds for Inflation

In 2000, Senator Wickersham and Senator George Coordsen introduced LB 1047 which sought to adjust the threshold levels of investment to qualify for benefits under LB 775 by an amount equal to the cumulative inflation from 1987 through 1998. LB 1047, therefore, proposed to (1) change the $3 million and 30 new employees level to $4.3 million and 30 new employees; (2) change the $20 million threshold to $28.6 million; and (3) change the $10 million and 100 new employees threshold to $14.3 million and 100 new employees. The bill also provided that investment thresholds would be indexed for inflation for years after 2001 by the same method that the personal exemption is adjusted. LB 1047 died in the Revenue Committee.

In 2003, Senator David Landis offered a bill with a similar intent in LB 576. This proposal sought to (1) change the $3 million and 30 new employees level to $8 million and 20 new employees, and to limit this threshold to projects in a county or counties with a population of less then 100,000; (2) change the $20 million threshold to $30.4 million; and (3) change the $10 million and 100 new employees threshold to $15.2 million and 114 new employees. LB 576 also provided for automatic adjustments for inflation in future years. The Revenue Committee voted not to advance the bill out of committee.

Eliminate a Threshold

LB 508, introduced by Senator Wickersham in 2001, sought to eliminate the $20 million in qualified investment threshold from LB 775. The proposal died in the Revenue Committee.

Discontinue Eligibility of Certain Businesses

In 2003, several proposals sought to remove certain businesses from eligibility for benefits under LB 775. Senator Landis introduced LB 576, which provided that (1) a meatpacking business is not eligible for benefits under the Act, and (2) data processing, telecommunications, insurance, and financial services are not eligible under the $20 million threshold. The Revenue Committee declined to advance LB 576.

While under consideration on General File during the 2003 legislative session, the Revenue Committee proposed an amendment to LB 608 stating that casinos are not eligible for credits under LB 775. The amendment was adopted 32-0. Another committee amendment to LB 608 stated that slaughterhouses are ineligible for credits under the Act. This amendment was adopted by a 42-0 vote. However, both amendments were later stripped from LB 608, along with all other provisions related to LB 775.

Limitations on Multiple Dipping for Tax Incentives

In 2002, Senator Ron Raikes introduced LB 1188, which specified that a taxpayer could not qualify to receive incentives under more than one of the following programs for the same project: (1) the Employment and Investment Growth Act (LB 775); (2) the Employment Expansion and Investment Incentive Act; (3) the Ethanol Development Act; (4) the Rural Economic Opportunities Act; and (5) the Invest Nebraska Act. The bill died in the Revenue Committee.

LB 576, introduced by Senator Landis in 2003, provided that taxpayers receiving benefits under the Ethanol Development Act may not receive benefits under both LB 775 and the Invest Nebraska Act. The Revenue Committee voted not to advance LB 576 out of committee.

Why the LB 775 Repeal Campaign Is Necessary

TOP TEN REASONS LB 775 SHOULD BE REPEALED

10. Nebraska taxpayers cannot afford corporate welfare anymore. It costs at least $90 million net for each year the current LB 775 corporate tax giveaway spigot remains open.

9. Big corporations should bear their fair share of budget shortfalls and the cost of government during times of economic crisis.

8. We do not have evidence that the LB 775 tax incentives are working to create *new* jobs and *new* investment that would not have happened without those incentives. We *do* know that many of the jobs for which LB 775 credits have been awarded do not last.

7. The State of Nebraska and the companies receiving LB 775 tax breaks have not been accountable to Nebraska citizens for the benefits of LB 775.

6. LB 775 tax subsidies are unfair to small and medium-sized businesses and rural businesses.

5. LB 775 tax breaks subsidize many lousy jobs – with low wages, minimal benefits (if any), and/or unsafe working conditions.

4. The LB 775 tax breaks for big businesses have made the tax burden for other Nebraska taxpayers even heavier.

3. LB 775 does not make economic sense. We have already spent 1.5 billion dollars in tax forgiveness and received only $300 million for new taxes in return. That's like spending $15 dollars to get $3. On top of that, there are another 1.5 billion dollars in future lost revenue resulting from the LB 775 agreements currently in effect.

2. The Nebraska legislature has resisted fixing the major problems of LB 775. During the 16 years the program has existed, only seven of 101 proposals to improve the Act have passed.

1. Nebraska citizens cannot stand by any longer while the legislature continues to slash funding for education, children, low-income families, and rural programs to pay for welfare for big business costing at least $90 million net per year.

As explained and depicted in the accompanying articles, charts, and information in this report, the LB 775 tax breaks are massively expensive and have contributed significantly to Nebraska's current revenue crisis. Even if the LB 775 program were shut down today, these colossal costs will continue to bleed state coffers for up to 15 years or more into the future – draining $90 million this year, then tapering down in succeeding years. In addition, the effectiveness of the LB 775 tax incentives is highly questionable; it appears that the majority of incentive money is being spent on investment that would have occurred anyway. In a similar vein, 70 percent of the "new jobs" earning tax credits under LB 775 are not truly new jobs, according to the Nebraska Department of Revenue.

LB 775 is further flawed by its extremely restrictive disclosure provisions, which hinder the ability of Nebraska citizens to understand the impact of the program on their lives, livelihoods, and communities. Adding insult to injury, even though LB 775 has been on the books 16 years, the implementation of the program has never been evaluated to determine whether it is being applied fairly and in a manner that is consistent with its legal requirements. What *is* evident from the cryptic annual reports produced by the Department of Revenue is that a few large corporations in Nebraska receive the lion's share of LB 775 tax breaks.

The record of the Nebraska legislature's inability or unwillingness to repair or overhaul LB 775 is clear. Individual legislators have introduced 101 proposals to change the Act materially since LB 775 was enacted in 1987. Eighty-six of these would have improved the Act, even if some improvements were merely marginal. But only seven of these were passed – all of which effected only minor changes. Almost two-thirds of the proposals that would have improved LB 775 died in committee and were not even considered by the full legislative body.

Two of these recent unsuccessful legislative bills attempted to shut down the LB 775 program. In 2002, Senator David Landis introduced LB 1037, which would have repealed LB 775 as of January 1, 2004. Senator Landis modified his approach in 2003 and introduced LB 677, which sought to sunset LB 775 as of July 1, 2005 absent further authorization from the legislature. In addition, LB 677 would have created a commission to study LB 775 and make recommendations for improving the Act. Like the majority of other proposals, both legislative bills died in the Revenue Committee.

Fortunately, the Nebraska legislature's refusal to address the significant problems in LB 775 is not an insurmountable difficulty. The Nebraska Constitution (Article 3, Sec. 2) reserves for the people of the state the power to enact laws and constitutional amendments through the initiative process. The framers of our state constitution wisely provided a fallback mechanism for the people to pass needed laws independent of the Nebraska legislature. However, statewide initiative petition drives can be expensive for the Nebraska citizens who exercise this constitutional right. Anyone seeking to shut off the extremely generous tax giveaways that big business has been enjoying in Nebraska for 15 years via LB 775 can expect vigorous and phenomenally well-funded opposition.

Nevertheless, in view of the prolonged resistance of the Nebraska legislature to re-evaluate LB 775 seriously, the time has come for Nebraska citizens to take matters directly in hand. Those who agree that we can no longer afford to continue the LB 775 corporate welfare program are encouraged to join the initiative petition campaign.

The Nebraska legislature has misused much time through the years, particularly during the recent three years of economic crisis in Nebraska. During this time, the revenue hemorrhaging of LB 775 – both current and future – has not been acknowledged, much less stopped. After four consecutive legislative sessions in which nearly every state program except the LB 775 tax break program had its budget repeatedly chopped and, as a result, services cut back or eliminated, it is now clear that LB 775 must be repealed. Mere amendment of LB 775 is not enough to deal with the drastic revenue shortfalls Nebraska currently is experiencing – shortfalls that are reasonably expected to continue for many more years to come. *Nebraska taxpayers simply cannot afford it.* Repeal of LB 775 is necessary to stanch the revenue hemorrhaging of this very costly program.

The initiative petition language set out below cuts off the LB 775 program such that no additional applications for benefits may be accepted and no additional project agreements may be signed. Project agreements currently in effect would continue. This means that many hundreds of millions more dollars in revenue will be lost as a result of these currently existing agreements. However, an attempt to cut off the LB 775 benefits for current agreements would likely face significant legal and political obstacles. It is clear, nevertheless, that any further delay in taking steps to turn off the LB 775 corporate tax giveaway spigot will be even more costly to Nebraska taxpayers – costly financially and in loss of critical state program services.

PROPOSED INITIATIVE PETITION LANGUAGE

FOR AN ACT relating to the Employment and Investment Growth Act; to amend section 77-4104, Revised Statutes Supplement, 2002; to terminate new applications under the act; to harmonize provisions; and to repeal original sections 77-4102 through 77-4113.

Be it enacted by the people of the State of Nebraska,

Sec. 1. Sections 77-4101 to 77-4113 and section 2 of this act shall be known and may be cited as the Employment and Investment Growth Act.

Sec. 2. Section 77-4104 of this act is amended to strike all existing language and insert: Effective immediately upon enactment, no further applications for benefits under the Employment and Investment Growth Act shall be filed, accepted or approved, and no further project agreements shall be entered into. All project agreements entered into before such date shall continue in full force and effect and the provisions of the act as they existed immediately prior to such date shall apply.

Whiteclay March,
conclusion

state or this land. We trust those Pine Ridge Police and we want them to be down here to help, to help solve the problem."

One of the most significant complaints that opponents to alcohol sales in Whiteclay have had is that enforcement of Nebraska's own liquor laws is sketchy and inconsistent at best. Although public intoxication, sale of alcohol to already inebriated individuals, and consumption of alcohol on streets or sidewalks are all against the law, a drive through Whiteclay at any time on any day demonstrates the laxness of enforcement.

The community of approximately 20 people has no law enforcement of its own, and the Sheridan County Sheriff protests that he has insufficient staff to maintain a continuous presence. Considering the lack of confidence that members of the Indian community have in any Nebraska law enforcement agency, allowing Pine Ridge Police the power to enforce alcohol-related laws in Whiteclay would represent a significant, positive change.

Judging by the words of the two Nebraska officials, the proposal has a solid chance of becoming reality. "I'm very strongly in support of it as well as the Attorney General who is here with me today, and the Governor," said Col. Nesbitt. He expects the next step in the process would be to have meetings with the Pine Ridge Tribal Council for their approval.

The announcement followed close on the heels of a letter written to the Nebraska State Alcohol Commission by Bob Kerrey, former U.S. Senator from and Governor of Nebraska, urging the cessation of alcohol sales in Whiteclay.

The developments are bittersweet to Tom Poor Bear and those who still mourn for Hard Heart and Black Elk. What adds to the bitter is the fact that, after four years, the killers still have not yet been identified or brought to justice.

"I have a lot of anger in me, but I turn that anger into something positive; and that is to unite the people," said Poor Bear. "Wally and Ron were not murdered near Camp Justice, they were murdered somewhere here in Nebraska, in Sheridan County. The FBI has not been communicating with the families of the Black Elks and the Hard Hearts about where they're at in the investigation of Wally and Ron. No offense to my white brothers that are here today, but if that was two white people that were found, somebody would already have been in jail."

He spoke to the crowd about a bank robbery years before in Norfolk, NE, that resulted in the deaths of four people and how Nebraska officials responded to that incident. "Four people died in that bank robbery," Poor Bear said. "The state of Nebraska had a special session of the legislature to decree that they would catch the people responsible for those four murders. But when our people are found murdered in Scottsbluff, or Omaha, or Lincoln, or Whiteclay why don't they have a special session for that?"

Bellecourt spoke of the roots of alcoholism among Indian people and what he believes will be the way out of the darkness. "When a people are oppressed for long periods of time it breeds despair, frustration, broken homes, battered families, broken dreams and no hope for the future," he said. "And because our traditional spiritual teachings had been taken from us, it left a hunger in our spirit, left a hunger in our heart, and we ended up replacing that with the poison, chemical warfare of alcohol." "We have to stand together across this country to continue this renaissance, this rebirth of our traditional spiritual way of life to fill that hunger, and we no longer will have a need for that alcohol. I can say so myself, because when I went back to the cannupa, to the sweats, to the Sun Dance, to the ceremonies, it has allowed me now to be sober for 32 years."

photo courtesy of Dave Lovekin

Marchers listening to the rally speakers in Whiteclay.

Bellecourt had strong words for the proprietors of Whiteclay's alcohol outlets and followed them with a call to further action. "This cancer is going fester, and the people that own these establishments, they have no heart, they have no spirit, they will continue to peddle this poison, they have no dignity, no integrity. And so, I want to ask you all to go back and organize," he said. "And if we have to do it, we're going to come back and we're going to put a barricade around this whole community, we're not going to allow the liquor or the alcohol in here, we're not going to allow our people to come in here and continue spending their money with these people and perpetuating the problem."

"It's so sad to see so many of our brothers and sisters who are enslaved by this alcohol, by this community," Bellecourt concluded. "We cannot support it. If you want to get rid of it, stop buying it."

LaMere noted how far things had come since the first protest march in 1999. "It was just a few short years ago, over on this border, that hundreds and thousands of you came from Pine Ridge, the Oglalas and the others who came here, wanting a better way for ourselves and our children, wanting to sober the people up," he said. "We were met with resistance and even arrested for walking across an imaginary line."

"If we did not take that one step on July 3, 1999, we would not be standing here right now. It would have been business as usual and perhaps we would have been mourning more of our brothers and sisters found dead in the alleys and the broken-down houses in Whiteclay, Nebraska. People die here, they die very painfully and they die alone. Had we not intervened at that time with all of our relatives from across the country, with the American Indian Movement, we would not be here right now."

LaMere thanked Bruning and Nesbitt for coming and standing with the protestors and welcomed the news of the cross-deputization proposal. But he emphasized the continuing frustration of those opposed to alcohol sales in Whiteclay, that more needed to be done and more was expected of the government and people of Nebraska.

"On the first of March we issued a challenge from those who want change here," LaMere said. "We did it very respectfully. We told the State of Nebraska on their birthday, on March the first, that we will give them one year of atonement, one year to hear us, to hear the pleas, to see the marchers and to see what's in their hearts."

"We will give you that one year; we will do things prayerfully, peacefully, but you've got to come forward with solutions, something more has to happen. And I dare say, Mr. Attorney General, that the clock is ticking. You can sense the frustration here, you've heard the talk of the blockade, you've heard of the efforts of those from Nebraska who have come here to voice their concerns. The resolve is there in the people. But if falls upon those in the public trust to lead, and we would ask that you lead along with Oglala Sioux leaders to find the resolution by March the first of next year."

As the last speaker, LaMere closed the march with a pledge. "We send a message to Nebraska and the powers that be that you do not even have our dander up yet; and we are going to be here a generation from now, if need be, dealing with the issue, trying to shut down—as Bob Kerrey said this weekend—'this godforsaken place.'"

photo courtesy of Jan Osten

March leader Frank LaMere addressing the Nebraskans on the way to Whiteclay.

If it's not broke, don't fix it

That's the opinion of a majority of Nebraskans regarding Nebraska's 20-year-old ban on corporate farming. I-300, voted into law in 1982, has survived numerous legislative and court challenges by opponents. It is considered the strongest such law in the country.

In mid-July, Governor Mike Johanns showed clearly which side he is on. Johanns' Department of Agriculture spent $300,000 of federal money on a study by a Texas consulting firm. The size of the pricetag is staggering. A comprehensive study of the entire Nebraska economy could be done for one-third that cost. In addition to squandering scarce federal dollars, it failed to address the number one problem facing rural Nebrasaka—low farm income. It failed to generate new base line research, and even failed to provide responsible sampling.

Instead of fixing what is wrong in rural Nebraska, the report focused on wrecking what is working—I-300 and local control of planning and zoning. The report recommendations would make it easier for agribusiness to gobble up traditional family farm agriculture, and what is worse, the report wants taxpayers to ante up more taxpayer-financed corporate welfare by "incenting" the outside corporations that would be gobbling up individual-owned farm and rural businesses. This is some kind of vision Governor Mike Johanns wants to unleash on rural Nebraska!

The report systematically excluded farm organizations that have historically supported I-300. Still, the majority of the folks in the survey expressed satisfaction with I-300. This finding was conveniently set aside. It seems the outcome of the report was predetermined.

The $300,000 report hammered at I-300 and local planning and zoning—the two most effective tools Nebraska citizens have to level the playing field between family farmers and ranchers and their rural communities, on the one hand, and outside-investor corporate agriculture, on the other hand.

For more than 50 years, beginning with a study commissioned in 1946 by a U.S. Senate special committee, research into the impact of farm scale on rural communities has found that communities in areas dominated by large farming operations tend to suffer lower standards of living and poorer quality of life, compared to communities surrounded by small-to-mid-sized farming operations. Governor Johanns ignores this research, and his study instead offers certain agribusiness truisms as done deals—that farms and agribusinesses will continue to consolidate, that value to ag producers through low prices can be made up by volume, that export demand will grow.

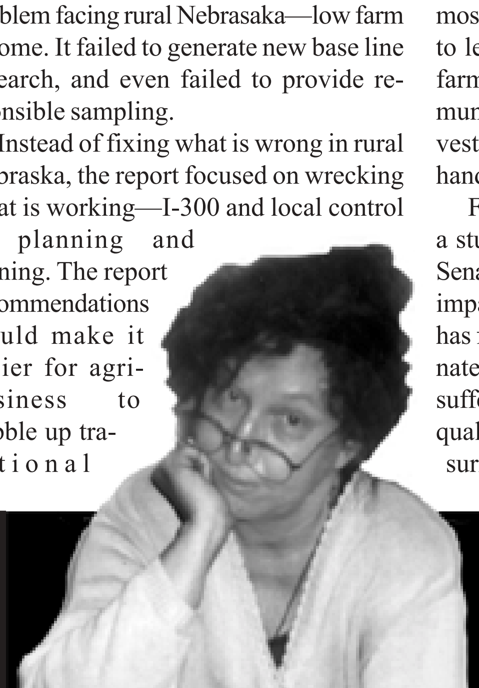
The last two points are both lies, flat out. A loss times greater volume is just a greater loss. And despite a touching faith to the contrary, exports of ag production have remained stagnant for two decades and NO credible evidence exists to the contrary.

The report chides I-300 for preventing economic consolidation, while indicating that economic consolidation is a given, as if it were the will of God or a force of nature. Concentration in agriculture is the CAUSE of low prices to farmers and ranchers, not the answer. It is the result of public policy made by people, and it is only inevitable if people continue to pursue the failed farm policies of the past quarter century.

If this study had been conducted in good faith, the consultants would have engaged proponents of I-300 also and asked them what they thought would improve it. Instead, it serves up exactly what deep-pocket corporate Omaha campaign contributors ordered. These longstanding opponents of I-300, despite attempts to reinvent public perception ("We're here to HELP I-300!"), continue to be what they have always been—opponents.

They must be awfully pleased with their governor, who got them a $300,000 taxpayer-financed study not only designed to facilitate the corporate takeover of Nebraska agriculture, but which recommends LB 775-style benefits to help pay them to put family farmers and ranchers out of business.

Isn't is interesting that this government report just happens to focus on the two public policy tools that represent the will of the people? Initiative 300, was a successful citizens' initiative supported by Nebraska voters and placed into our state Constitution in 1982, after 14 years of failed legislative response to the the corporate take over of agriculture. Local planning and zoning, which reflects local citizen's judgment about what kind of economic development they want in their local communities, is local control and citizen involvment at its best. While the report is tragically misguided, flawed, and biased, what is more more disturbing is that our governor would put his personal seal of approval on such a grievous misuse of $300,000 of our dollars.



From the Bottom ***by Sally Herrin***

The real political spectrum isn't right to left... it's top to bottom.