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FOR IMMEDIATE RELEASE
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November 15, 2018

Performance Audit Committee Releases Two Tax Incentive Audits

The Legislative Audit Office today released reports on two tax incentive programs. Performance Audit Committee Chairman John Kuehn said that the reports provide the Legislature with new information on the Nebraska Advantage Microenterprise Tax Credit Act and the Beginning Farmer Tax Credit Act.

The audits are the fourth and fifth performed under a 2015 law that requires all economic development tax incentives to receive such a review by the Legislative Audit Office at least once every five years.

In the Microenterprise report, the Audit Office found that, although the Act was intended to benefit mostly rural areas, urban areas saw more benefit from 2012 to 2017, the most recent years examined by the audit.

Additionally, the Audit Office found that, when compared to other incentive programs, aspects of the Microenterprise Tax Credit Act: 1) increase the risk that participants may receive credit for activities not intended by the Legislature, 2) make the program more difficult to administer, and 3) make it difficult for individuals to comply with program requirements. These issues may factor into declining interest in the program.

The Audit Office recommends that the Legislature further investigate with an Interim Study aimed at fully exploring, and proposing solutions to, administrative and compliance difficulties caused by design and definitional issues.

The Beginning Farmer Tax Credit Act report issued several important findings and Committee recommendations relating to substantive policy questions. The report found that the Beginning Farmer Board's practice of allowing beginning farmers to participate multiple times under the Act to be at odds with both the Act itself and the legislative history. It also found the Board's practice of allowing asset owners to participate multiple times under the Act to be at odds with the Act itself. The Committee issued recommendations for both practices that require the Board to come into compliance with the Act and will follow up as necessary.

The report also found that certain sections of the Act are contradictory to sections of revenue statutes that authorize the credits allowable under the Act. The Committee recommends that the statutes be harmonized and will draft legislation to do so.

The report also made a finding relating to the Board's practice of allowing a newer type of lease agreement, flex rent. It found that flex rent lease agreement costs may rise beyond the Board's expectations in the future. The Committee made a recommendation that the Board stop approving flex rent lease agreements and stated that they will follow up with the Board to ensure compliance.

Senator Kuehn said, regarding the Beginning Farmer Tax Credit Act report, "The Committee will work with the Board to implement the recommendations. Tax incentive audits, as required by statute, provide an important oversight function that give the Legislature important information to make more-informed policy choices."

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The Beginning Farmer Tax Credit Act: Performance on Selected Metrics

Performance Audit Committee
Nebraska Legislature

November 2018

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I. Committee Recommendations

Audit Summary and Committee Recommendations

The Beginning Farmer Tax Credit Act (Beginning Farmer Act or Act) is a targeted economic development program to help reduce the barriers to entry into the farming industry. The Act provides benefits to two distinct parties, in attempt to induce new farm activity by first-time, young farmers.

An asset owner who leases land, equipment, facilities, or livestock to a qualified beginning farmer receives a refundable tax credit equal to either 10% or 15% of the lease each year, depending on the type of lease, for a maximum of three years. A qualified beginning farmer receives a property tax exemption, for up to $100,000 in valuation, for a maximum of three years, a one-time refundable tax credit for the reimbursement of a required financial management program, and access to the leased assets.

The Audit Office reviewed accepted applications to the Beginning Farmer Act between 2001 and 2017. Approximately $12.6 million in credits were issued to asset owners, and just over $13,000 has been issued as reimbursement to qualified beginning farmers for their participation in the required financial management program (which has been reimbursed by the state since 2006).

Section I of the audit describes the Beginning Farmer Act, provides additional details of program participation, and raises policy questions regarding the Act. Section II presents the Audit Office's analysis of program metrics. The Findings and Performance Audit Committee recommendations follow below.

Analysis of Metrics

The metrics used in this audit were selected by policymakers after the Beginning Farmer Act's adoption, meaning the expected performance of the Act in relation to the metrics is largely unknown. Without guidance as to what policymakers' believed this program would achieve, the Audit Office could not make simple "yes" or "no" judgements about whether program performance meets expectations.

It is difficult, if not impossible, to prove the "but-for" question of participation–would the participant have entered farming *but for* the Beginning Farmer Act? The Audit Office does not assert that the actions of program beneficiaries were caused by their participation in the Beginning Farmer Act.

Performance Audit Committee Recommendations

Scope Question: *Is the Act meeting the goal of revitalizing rural and other distressed areas of the state?*

Distressed Areas Metric

How many beginning farmers' operations are located in distressed areas of the state?

Utilizing the definition of distressed areas contained in the Legislative Performance Audit Act, 6 (2%) of 257 beginning farmers from 2011 to 2017 were located in an Area of Substantial Unemployment, as defined by the Department of Labor.

Finding: Only 2% of the beginning farmers were located in distressed areas. However, increasing economic activity in distressed areas is not a requirement of the Beginning Farmer Tax Credit Act; it is a metric the Legislature selected later for all tax incentive programs.

Discussion: For this metric, the Office utilized the Department of Labor's definition of "Areas of Substantial Unemployment," which includes farm employment. However, limitations exist in the Areas of Substantial Unemployment (ASU) analysis. The ASU definition often omits rural counties, as it requires census tracts with populations of 10,000 residents or greater, which has the potential to skew results of this analysis.

Recommendation: None.

Scope Question: *What is the Act's impact on budgets of local governments?*

Impact on Local Governments Metric

What is the fiscal impact of the Act's property tax exemption on local governments?

In 2016, 26 beginning farmers exempted property valued at more than $1.5 million, totaling $25,275 in revenue forgone to their respective counties. In 2017, 37 beginning farmers exempted property valued at about $2.1 million, totaling $34,915 in revenue forgone. Beginning farmers may claim the exemption for three years, and it is likely that some individuals received the exemption in both 2016 and 2017. However, that information is not readily available and we could not compile it within the timeframe for this audit.

There is no finding because there is no standard for comparison.

Scope Question: *What are the economic and fiscal impacts of the Act?*

Administrative Cost Metric

What is the cost to administer and promote all tax incentive programs?

The total cost for administering the Beginning Farmer Tax Credit Act (Beginning Farmer Act or Act) from FY1999 to FY2017 was $701,501, which covered Beginning Farmer Board (Board) and personnel expenditures. The average administrative cost per year for the years when the program was fully funded was about $51,500.

There is no finding because there is no standard for comparison.

Scope Question: *Are adequate protections in place to ensure the fiscal impact of the Act does not increase substantially beyond the state's expectations?*

Fiscal Protections Metric

What are the fiscal protections in the Act?

The Beginning Farmer Act has fiscal protections in place, including controlling the timing of credit redemptions, recapture provisions, and requiring advance notice of participation.

Finding: Because the Beginning Farmer Tax Credit Act contains several important fiscal protections recommended by The Pew Charitable Trusts, the program is at low risk for exceeding expected costs.

Recommendation: None.

Metrics Requiring Economic Modeling

Due to limitations on existing data and statutory protections on taxpayer confidentiality, the Audit Office was unable to attempt to answer some of the questions that the Performance Audit Committee was most interested in. Those questions include the larger impact of the program on the state economy that would have resulted from analysis using economic modeling software. The Office continues to work to find a way to accomplish the economic modeling analyses.

Policy Questions

1. *Does the Act allow the Board to approve a beginning farmer who has completed a lease agreement to participate in another lease agreement?*

Finding: The Audit Office believes the Beginning Farmer Board's practice of allowing beginning farmers to participate in multiple lease agreements conflicts with the Beginning Farmer Tax Credit Act and with the Legislature's intent that beginning farmers participate in only one lease agreement.

Recommendation: The Board must limit beginning farmers to one lease agreement as required by law and revise its regulations to reflect that practice.

Recommendation: The Performance Audit Committee will submit a letter requesting that the Board comply with the Act. If the Board chooses not to revise its practices to allow a beginning farmer only one lease agreement under the Act, the Committee will consider drafting legislation to further clarify this requirement in law.

2. *Does the Act allow the Board to approve an asset owner who has completed a lease agreement to participate in another lease agreement?*

Finding: The Audit Office believes the Beginning Farmer Board's practice of allowing asset owners to participate in multiple lease agreements using different assets conflicts with the plain language of the Beginning Farmer Tax Credit Act. However, the Office also believes the language of the Act may not be in alignment with what the Legislature intended, as reflected in the legislative history.

Recommendation: The Board must limit asset owners to one lease agreement and revise its regulations to reflect that practice.

Recommendation: The Performance Audit Committee will submit a letter requesting that the Board comply with the Act. If the Board does not revise its practices to allow an asset owner only one lease agreement under the Act, the Committee will consider drafting legislation to further clarify this requirement in law.

3. *Is the asset owner credit refundable or nonrefundable?*

Finding: There is a conflict between the income tax statutes in the Nebraska Revenue Act and the Beginning Farmer Tax Credit Act regarding whether the asset owner tax credit is refundable. The Audit Office believes the Legislature intended for the asset owner credit to be refundable, which is how it is being administered. However, the Beginning Farmer Act suggests that it is nonrefundable.

Recommendation: The Performance Audit Committee will bring legislation to harmonize the provisions of the Beginning Farmer Tax Credit Act relating to the asset owner credit with the revenue statutes to reflect that the credit is fully refundable.

4. *Is the financial management program credit refundable or nonrefundable?*

Finding: There is a conflict between the income tax statutes in the Nebraska Revenue Act and the Beginning Farmer Tax Credit Act regarding whether the financial management program tax credit is refundable. The Audit Office believes the Legislature intended for this credit to be refundable, which is how it is being administered. However, the Beginning Farmer Act suggests that it is nonrefundable.

Recommendation: The Performance Audit Committee will bring legislation to harmonize the provisions of the Beginning Farmer Tax Credit Act relating to the beginning farmer credit with the revenue statutes to reflect that the credit is fully refundable.

5. *Do the leases for larger acreages conflict with the Legislature's intention to support small farming operations?*

Finding: The Audit Office believes that some of the leases for high numbers of acres, such as 3 for 1,800 acres or more, may conflict with the Legislature's intention to support small farming operations.

Discussion: While the Act does not limit the number of acres that may be included in a lease, it requires the Board to determine that the beginning farmer can provide the "majority of the day-to-day physical labor and management on the operation." We believe that this provision was intended to limit participation in the program to smaller farming operations.

Recommendation: None.

6. *Do flex rent lease agreements conflict with the Legislature's intention that cash rent lease agreements set the total gross income at the time the lease agreement is signed?*

Finding: Flex rent lease agreements, which permit the gross rental income to be adjusted based on crop yield and/or price, were unavailable when the Beginning Farmer Tax Credit Act was adopted. Such leases may result in a higher or lower gross rental income, and therefore a higher or lower tax credit, than leases that set the gross rental income when the lease agreement is signed. Currently only a small percentage of program participants have used flex rent lease agreements, but if a larger number do so, there is a possibility that the program's "cost" (forgone revenue) may increase.

Recommendation: The Board must stop approving flex rent lease agreements under the Act and revise its regulations to reflect that practice.

Recommendation: The Performance Audit Committee believes flex rent agreements are not authorized under the Beginning Farmer Tax Credit Act and will submit a letter to the Board requesting compliance. If the Board chooses not to comply, the Committee will consider drafting legislation to further clarify the types of leases allowed under this program in law.

7. *Does the current application process sufficiently inform participants of their responsibilities under the Beginning Farmer Act?*

Finding: During a case file review, we found one case in which an asset owner had sold the land they had been leasing under this program, but they had not notified the Beginning Farmer Board of the sale. A credit was issued, although the owner returned it. Based on this anecdote, we reviewed the materials provided to program participants at application and found they do not receive a list of specific participation requirements. The other tax incentive programs we have audited provide such a list and require participants to sign and acknowledge they understand the requirements.

Finding: Under the Beginning Farmer Tax Credit Act, a beginning farmer who discontinues farming or livestock production becomes ineligible for the personal property tax exemption. However, the Department of Agriculture does not review participating farmers' qualifications after their initial approval, which could mean farmers who are no longer eligible for the property tax exemption continue to receive it.

Recommendation: The Board must provide program participants with a list of their responsibilities under the Act and require participants' signatures to acknowledge they understand those responsibilities. Among those responsibilities, the Board should include a requirement that participants notify the Board as soon as possible if they become ineligible to continue participating.

II. Legislative Audit Office Report

Legislative Audit Office Report

The Beginning Farmer Tax Credit Act: Performance on Selected Metrics

November 2018

Prepared by
Craig Beck
Martha Carter
Anthony Circo

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INTRODUCTION

The Legislative Audit Office is required to conduct a performance audit of each business tax incentive program at least once every five years. In 2016, we released the first performance audit under the requirement. In 2018, we release reports on the Beginning Farmer Tax Credit Act and the Nebraska Advantage Microenterprise Tax Credit Act. Both provide certain tax benefits to companies or individuals that meet specific requirements. This is the first audit of the Beginning Farmer Tax Credit Act.

Beginning Farmer Tax Credit Act

The Beginning Farmer Tax Credit Act (Beginning Farmer Act or Act) was enacted in 1999 (LB 630) to provide assistance to individuals seeking to enter farming.[1] While the Act applies to beginning farmers and beginning livestock producers, in this report we use the term "beginning farmer" to refer to both.

As stated in the bill's legislative history, the main purpose was to help ensure that smaller farming entities remained a robust part of the state's economy by encouraging established farmers to lease land or other assets to unestablished farmers (beginning farmers). Legislative findings in the bill generally state that the agriculture industry in Nebraska was on the decline, revisions to the state's tax structure were required to revitalize rural areas, and it is the state's policy to remediate the issues facing the agricultural industry and promote economic vitality of farms in the state.

The bill's introducer initially proposed funding the bill using a 50% reduction in benefits available under the Nebraska Employment and Investment Growth Act (LB 775, 1987), the state's largest tax incentive at the time. In principle, he believed doing so would show that Nebraska held beginning farmers in the same regard it held businesses that received LB 775 tax credits.[2] At the bill's hearing, however, he acknowledged that he intended the 50% reduction in LB 775 benefits to be a starting point for negotiation on the bill. Such a reduction equated to about $75 million and would have been far more than needed to fund LB 630, particularly the introduced version that provided only a 1% nonrefundable income tax credit to established farmers, at a cost of about $6 million per year.

Amendments to the bill increased the credit to 5%, made the credit refundable (meaning an established farmer/asset owner could receive the full tax credit even if his or her tax liability was less than the credit amount), and removed the reduction in LB 775 benefits.[3]

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[1] Neb. Rev. Stat. §§ 77-5201-77-5215.

[2] Nebraska Legislature, Revenue Committee, *LB 630 (1999) Legislative History*, remarks by Senator Wehrbein, February 17, 1999, p. 117.

[3] Nebraska Legislature, *LB 630 (1999) Legislative History*, remarks by Senator Bob Wickersham, April 12, 1999, p. 3867. While removing the reduction to LB 775 had implications for the state budget as a whole, it actually had no impact on how LB 630 was funded. The "cost" to the state of LB 775 benefits is reflected in the budget indirectly, as forgone revenue, not as a direct appropriation. Limiting the LB 775 benefits would have meant more revenue stayed in the state budget (because there was less forgone revenue). With or without that reduction, the forgone revenue due to LB 630 was the same.

While passed in 1999, the bill's implementation was delayed one year to allow the Beginning Farmer Board (created by the Act) to be established and other administrative tasks to be completed before the Beginning Farmer Tax Credit program (program) began accepting applications.

The Legislature made substantive changes to the program twice in later years. LB 990 (2006) changed four key provisions in the Act:

1. The asset owner credits were increased to 10% for cash rent and 15% for share rent;
2. The net worth limitation for the beginning farmer was increased from $100,000 to $200,000;
3. Relatives were allowed to participate as renters of the asset owners' property; and
4. A one-time credit of up to $500 was allowed to the beginning farmer for completion of the required financial management course.

LB 1027 (2008) added a personal property tax exemption for the beginning farmer. The exemption is allowed on personal property up to $100,000 for three years. The program will sunset on December 31, 2022, unless extended by the Legislature.

Program Administration

The program is housed within the Nebraska Department of Agriculture (Department) for administrative purposes. Two Department employees provide the day-to-day support for all aspects of the program except that payments to beginning farmers and asset owners are made by the Department of Revenue.

The program is governed by a board made up of individuals with knowledge of Nebraska's agricultural economy. The Beginning Farmer Board (Board) has seven members with the following makeup:

1. The Director of Agriculture;
2. The Tax Commissioner;
3. An individual representing agricultural credit lenders;
4. An individual representing the academic community with knowledge of agricultural economic issues; and
5. Three individuals, one from each congressional district, currently engaged in farming or livestock production and representative of a variety of agricultural interests.

All members, except the Tax Commissioner and Director of Agriculture, are appointed by the Governor and confirmed by the Legislature for terms of four years. The Board has statutory duties relating to providing "increased and enhanced opportunities for beginning farmers and livestock producers."[4] Key Board duties include:

- Approving and certifying beginning farmers and livestock producers for participation in the Act, for eligibility to claim the financial management course credit, and for eligibility to claim the personal property tax exemption;
- Approving and certifying asset owners for tax credits provided by the Act;

[4] Neb. Rev. Stat. § 77-5204.

- Advocating partnerships between beginning farmers and public credit and banking institutions, and partnerships between beginning farmers and asset owners;
- Providing support to beginning farmers for participation in the financial management course required by the Board; and
- Advocating changes in policies and programs, including financing, taxation, and other existing policies which are prohibitory for individuals seeking to enter farming or livestock production.

The Board must meet at least twice per year to certify beginning farmers and asset owners as eligible for the Act.

Measuring Effectiveness

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

The Office was unable to utilize most of the LR 444 metrics because they generally do not apply to this program. For example, 9 of the 19 LR 444 metrics analyze, in one form or another, job creation and investment. Neither of those policy goals are contained in the Beginning Farmer Act. Similarly, the other seven LR 444 metrics were not analyzed in this report because the data was not available. Following are the metrics used in this audit and their sources.

Metrics for the Beginning Farmer Tax Credit Audit

Source	Description
LR 444	Cost for agency to administer and promote the Act
Audit Statute	Fiscal protections
Audit Statute	Analysis of jobs created in distressed areas of the state*
Audit Statute	Recommendations to improve future audits

*This audit uses definitions of key terms, including "distressed area," adopted by the Legislature in LB 936 (2018).

Although the general formula the Legislature has applied to tax incentives does not fit this program, the Office was able to supplement this report by analyzing program data that is collected by the Department, but not reported, on topics including:

- Lease types used;
- Asset types used;
- Frequency of related-party agreements; and
- Acreage information.

Report Organization

Section I contains an analysis of descriptive program information, and Section II contains our analysis of the metrics.

We conducted this performance audit in accordance with generally accepted government auditing standards, with two exceptions based on statutory changes made in 2017. LB 210, introduced by the Legislative Performance Audit Committee, established guidelines for continuing education hours and peer review frequency that differ from government auditing standards. The law authorizes the Audit Office to work with the Audit Committee to determine the appropriate number of hours of continuing education needed, in place of the requirement in the standards that each auditor obtain 80 hours every two years. Additionally, the bill allows the Office to have an outside peer review every five years rather than every three as the standards require. As required by the auditing standards, we assessed the significance of noncompliance with the continuing education and peer review standards on the objectives for this audit and determined there was no impact.

LB 210 made no changes to the standards requiring that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives. The methodologies used are described briefly in each section.

Acknowledgements

The Office extends special thanks to Karla Bahm, Program Administrator, and Joline Gordon, Staff Assistant, Department of Agriculture; and Liz Gau, Policy Section Attorney, Department of Revenue.

SECTION I: The Beginning Farmer Tax Credit Program

In this section, we describe the Beginning Farmer Tax Credit program (program) and provide information collected by the Department of Agriculture (Department) regarding the program but not currently reported. We also report on policy issues identified as we researched the scope questions for the audit.

There are some limitations on the data that were available for the audit. For example, the number of acres associated with an application was not able to be tracked in the program database until a few years ago. While current program staff attempted to enter all acreage information for prior cases, early files were less complete and some were destroyed in accordance with data retention policies. Not all acreage information is available for the entire program history and the same is true for data in some other analyses.

Additionally, we used program data from two different points in time for our analysis: application year and first year of participation. In some instances, participants applied and received credits in the same year, but in others the credits were not received until the year after the application year. Some analyses are based on application year (e.g. total asset owner credits issued), while others are based on first year of participation (e.g. acreage), depending on which was easiest to query in the database.

Qualifications and Benefits

As noted in the Introduction, two parties are eligible for benefits under the Beginning Farmer Tax Credit Act (Beginning Farmer Act or Act): the beginning farmer and the asset owner. The primary requirement for a potential asset owner is that the asset(s) they wish to lease must meet the statutory definition of an eligible asset, such as cropland, livestock operations, machinery used for both farming and livestock operations, and/or the facilities required for farming and livestock production.

The asset owner must commit to a lease with the beginning farmer for at least three years and may receive a tax credit for only the three years allowable under the Act.[5] The rental rate must be at prevailing community rates as determined by the Beginning Farmer Board (Board). Once an asset has been approved under the Act and earned credits for the owner, it is no longer eligible for further participation, either with a subsequent lease or another beginning farmer.

[5] Neb. Rev. Stat. § 77-5211(2). The credit allowed in each of the three years of participation is equal to the applicable percentage of the lease amount in that year, defined in the application.

A beginning farmer applicant must meet statutory requirements as well as requirements established in regulations by the Board. By law, the applicant must:

- Be a Nebraska resident;
- Have a net worth of less than $200,000 and demonstrate a need for assistance;
- Demonstrate profit potential and the intention to make the operation their principle source of income;
- Provide the majority of day-to-day physical labor and management of their farming operation;
- Have adequate experience as determined by the Board;
- Submit a nutrient management and soil conservation plan; and
- Participate in an approved financial management program.

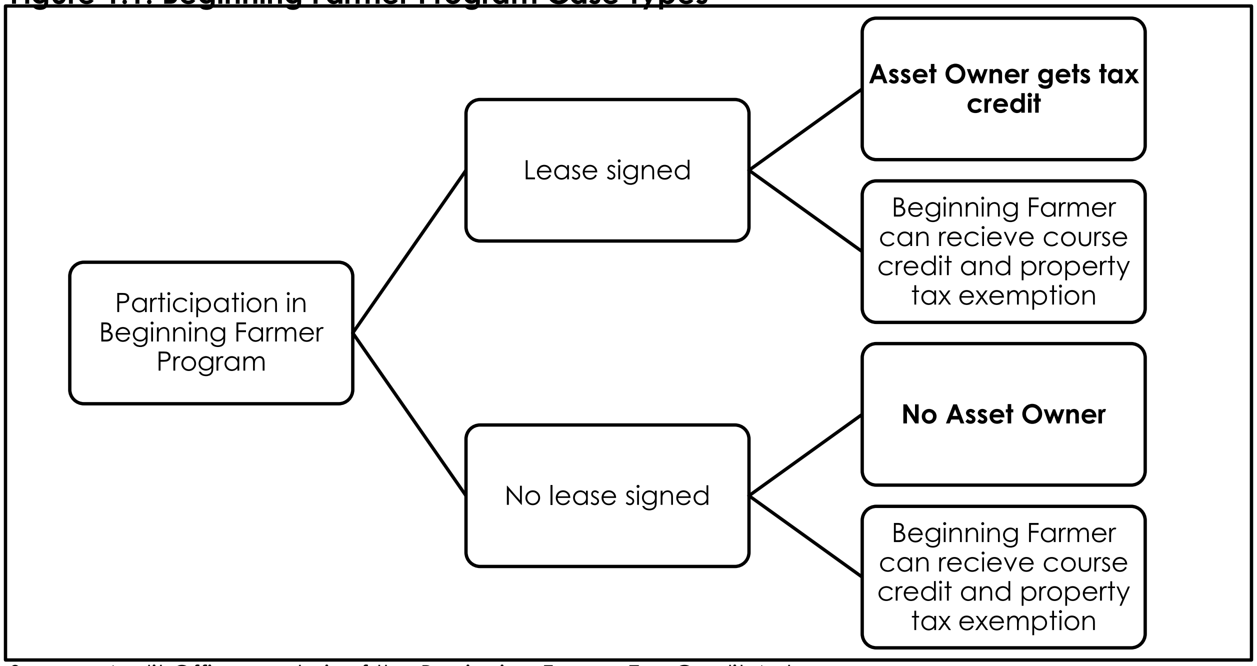
By regulation, the applicant must also have operated a farm or produced livestock for less than 10 of the last 15 years.

If approved, the beginning farmer is allowed two tax benefits under the Act in addition to the use of the land or other assets leased from the asset owner. First, the beginning farmer is eligible for a personal property tax exemption for up to $100,000 in property valuation for a period of three years. Second, he or she may receive a one-time refundable personal income tax credit, up to $500, for the cost of participation in a statutorily required financial management course.

Program Participation

The Department tracks program participation by case. As shown in Figure 1.1, there are two types of cases based on whether the beginning farmer participates in a lease with an asset owner. In cases with a lease, the beginning farmer receives the use of assets under the lease and may also receive the personal property tax exemption and financial management course tax credit. In cases without a lease, the beginning farmer may receive only the property tax exemption and financial management course credit.

Figure 1.1. Beginning Farmer Program Case Types



Source: Audit Office analysis of the Beginning Farmer Tax Credit Act.

From 2001 to 2017, the Department assigned 694 case numbers, and the vast majority (603 or 87%) were cases with lease agreements. In 200 of these cases, the beginning farmer was also certified for the personal property tax exemption; in 45 cases, the beginning farmer also received the credit for completing a financial management program.

The remaining 91 cases (13%) were for beginning farmers who were certified for a property tax exemption only—they did not have a lease agreement. While it is also possible for a beginning farmer to receive the credit for completing a financial management program without having a lease agreement or requesting certification for the property tax exemption, this rarely happens.[6]

From 2001 to 2017, 700 individuals participated as asset owners along with 452 individual beginning farmers. These numbers differ from the number of cases in part because in any given lease, the asset owner or the beginning farmer may not be an individual person; they may be entities consisting of two or more people—such as family members who own a leased parcel of land. Additionally, a beginning farmer may have leases with more than one asset owner.

Following is a brief discussion of the credits available only to beginning farmers and a longer discussion of the credits available to asset owners through lease agreements.

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[6] It is difficult to access precise counts of certain program information from the existing program database. Staff told us that 2 individuals received *only* the course credit between 2007 and 2017; however, if those are added to the 91 who only applied for the property tax exemption and the 603 leases, the total is 696 cases, not 694. Because the number of course-credit cases is so small (not even 1% of the total number of cases), we thought it simpler not to include the number in the text.

Financial Management Program Credit

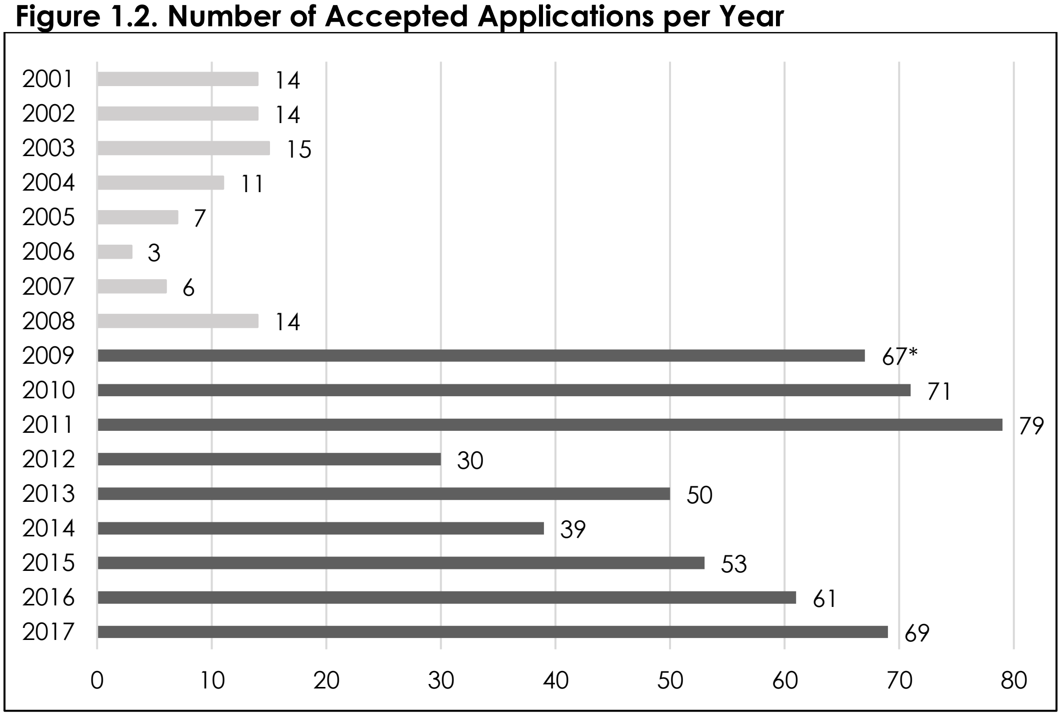
Beginning farmers have been required to complete a financial management program since the bill was originally passed in 1999, but only since 2006 has it been reimbursed by a tax credit. Beginning farmers may select the specific course they wish to attend, but board approval is necessary in order to receive the credit. The credit allowed is the cost of the program, up to a $500 maximum, and the beginning farmer must complete the course before they are considered qualified. The credit for completion of the financial management program can only be claimed in the year the cost was incurred. Applicants who completed the program prior to the tax year in which they submit an application are ineligible for reimbursement, but are still considered qualified.

From 2007 to 2017, 45 beginning farmers claimed the financial management program credit, for a total of $13,293. The average credit was $295, while the median was $263, where half of all credits were above that amount and half were below. Appendix A contains a full breakdown of this data.

Personal Property Tax Exemption

The Legislature added the property tax exemption to the program in 2008. From 2008 to 2017, 291 beginning farmers received certification for this exemption. Applications to the program increased after the property tax exemption was added. As shown in Figure 1.2, prior to 2008, 84 applications (14% of the program total) were accepted, an average of 11 per year. After the exemption was available beginning in 2009, 519 applications (86% of the program total) were accepted, an average of 58 per year.

Figure 1.2. Number of Accepted Applications per Year



Source: Audit Office compilation of Department of Agriculture data.
*First year of the personal property tax exemption for the beginning farmer.

Number and Types of Leases

The Beginning Farmer Act authorizes two types of leases: cash rent and share rent. A description of the lease types, and usage from 2011 to 2017, follows. We did not use data prior to 2011 because we determined it was less reliable.[7]

Cash Rent Lease Agreements

Under the Act, if an asset owner and a beginning farmer enter into a cash rent lease agreement, the asset owner receives a 10% credit on the agreed upon rent income (gross rental income) for the three years tax credits are allowed. While the credit percentage remains constant, the agreement may allow for different gross rental income amounts for each year. This means that the while the credit percentage is set, the *dollar amount* of the credit received by the asset owner may vary by year. For example, if the lease agreement sets the gross rental income at $100,000, $110,000, and $120,000 for years 1 through 3, the 10% credit would equal $10,000, $11,000, and $12,000 for those years.

The definition of cash rent agreement in the Board's regulations also includes agreements that provide the 10% credit but allow for "a variance in payment for abundant crops or high prices."[8] Called flex rent lease agreements, these types of cash leases do not set the gross rental income amount at the time the agreement is signed. Instead, the agreement sets a base rental amount that may be adjusted up or down after harvest to reflect unexpected increases or decreases in the crop yield or price. Flex rent agreements were developed after the Beginning Farmer Act was adopted, and the Board began receiving applications containing this type of lease about five years ago.

Share Rent Lease Agreements

Share rent lease agreements generate a higher percentage credit—15% of the gross rental income. Under a share rent agreement, the rental income amount is based on the income received for the crop, not an amount set in the agreement. Under the Act, a share rent agreement must provide that the asset owner and beginning farmer share production expenses or risk of loss, or both. The higher credit is intended to offset some of the asset owner's additional risk.

As shown in Figure 1.3, between 2011 and 2017 the Board authorized 333 lease agreements, most of which (215 or 65%) were cash rent leases. There were 100 (30%) share rent leases and 18 (5%) other types of leases, which are a combination of cash rent and share rent leases.

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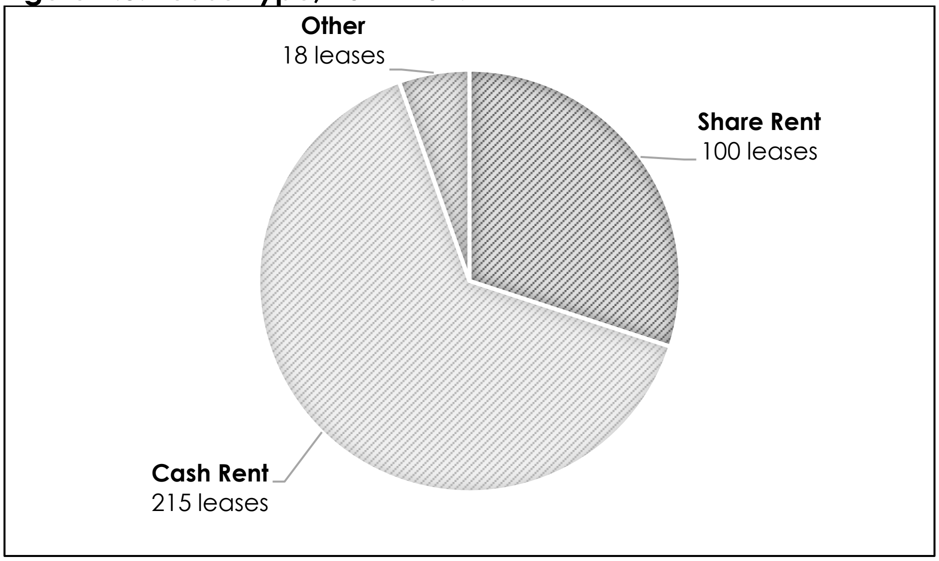
[7] Current program staff began in 2011 and indicated there were gaps in the earlier information.
[8] 91 NAC Ch. 1-003.06.

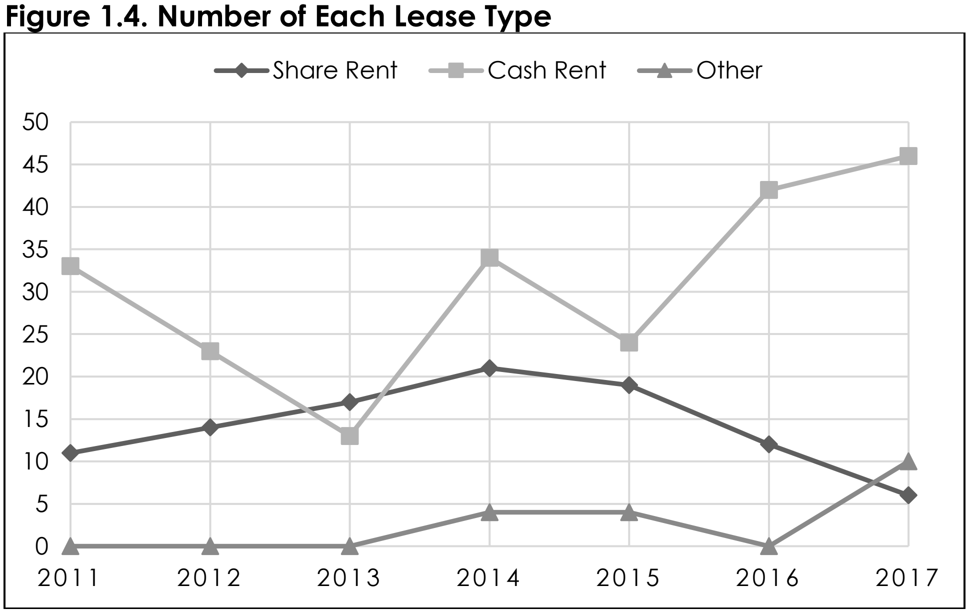
Figure 1.3. Lease Type, 2011-2017



Source: Audit Office compilation of Department of Agriculture data.
Notes: Other includes leases that contain a cash rent provision for one asset and a share rent provision for a different asset.

As shown in Figure 1.4, usage of the different types of leases varied between 2011 and 2017. Since 2015, however, the use of cash rent leases has increased and the use of share rent leases has decreased. Appendix A contains a full breakdown of lease data.

Figure 1.4. Number of Each Lease Type



Source: Audit Office compilation of Department of Agriculture data.

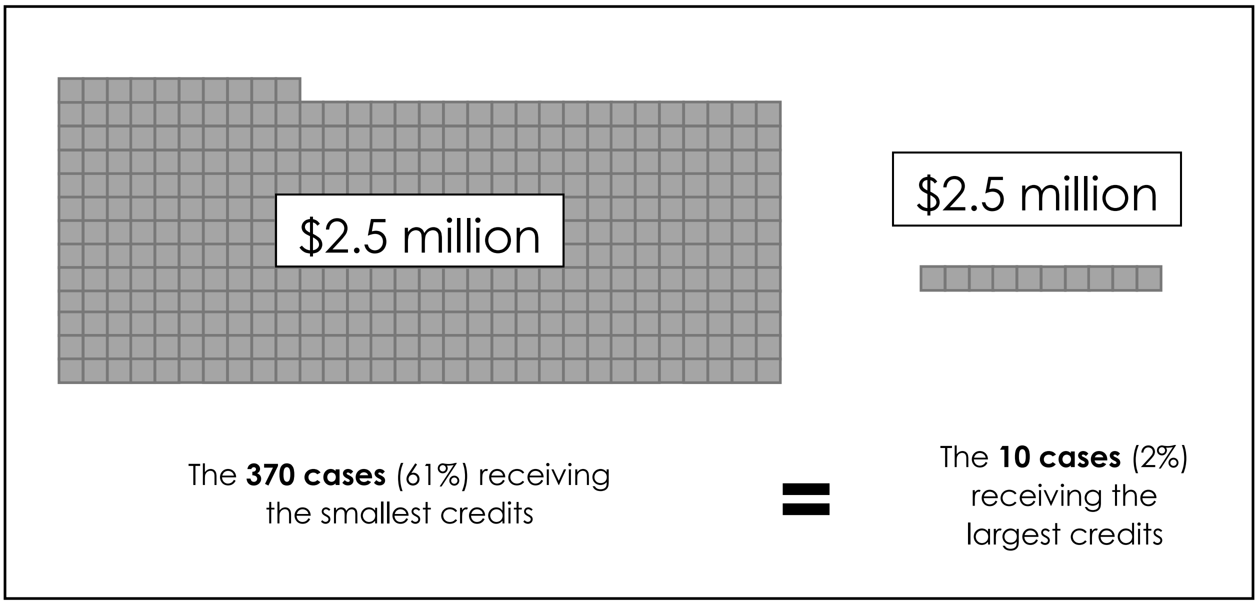
Asset Owner Credit Analysis

Lease Credits by Case

Asset owners receive more tax credits under the Act, as the credits related to leases are larger than those of the financial management program reimbursement or personal property tax exemption the beginning farmers may receive. Between 2001 and 2017, 700 asset owners participated in 603 lease agreements. The Board allows asset owners to participate with multiple beginning farmers and multiple assets. However, each asset is only allowed to be in the program for one three-year period.

From 2001 to 2017, the Department issued approximately $12.6 million in credits for 603 lease agreement cases, resulting in an average tax credit of $20,815 for the asset owner(s). For context, the 10 cases that received the most total credits equaled approximately $2.4 million—the same amount as the credits for 370 cases (61% of the total) starting with the lowest credit case. In other words, as shown in Figure 1.5, the amount paid to the bottom 61% equals the amount paid to the top 1.7%.

Figure 1.5. Top Credit-earning Cases Compared to Bottom Credit-earning Cases

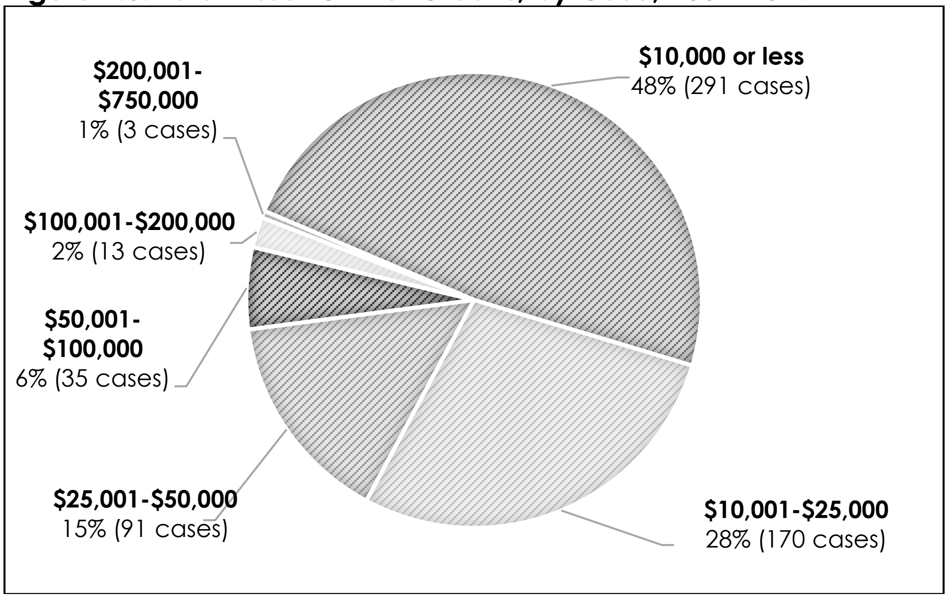


Source: Audit Office compilation of Department of Agriculture data.

The actual credit amounts received by each of the 700 asset owners ranged from less than $5,000 to more than $200,000 for three years. As shown in Figure 1.6, the vast majority (92%) received less than $50,000 total; almost half (48%) received less than $10,000 total. However, three individuals received more than $200,000 each, and that amount increased the average.

Supplemental information on credits paid to asset owners by case can be found in Appendix A.

Figure 1.6. Total Asset Owner Credits, by Case, 2001-2017



Source: Audit Office compilation of Department of Agriculture data.
Note: Percentages total more than 100 due to rounding.

Lease Credits by Individual Asset Owner

From 2001 to 2017, each of the 700 *individual asset owners* received, on average, a credit of $17,930.[9] The average amount paid to the individual asset owners was less than the average credits paid per case because in some cases, the asset owner is an entity that includes multiple individuals.

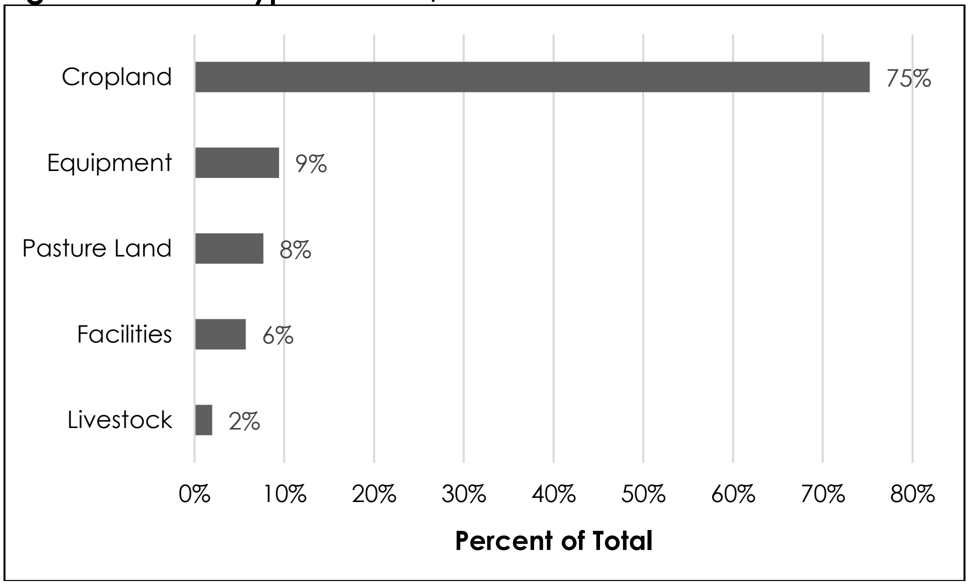
There is no limit to the amount of money an asset owner can receive, but there are limitations in the Act that may prevent extraordinarily large credits. First, the Act requires that the beginning farmer provide the majority of the day-to-day physical labor and management on the operation. Second, the Board is required to review the lease agreements submitted by applicants and may not approve an application if it "is of greater scope and scale than necessary for a viably sized farm … in order to adequately support a beginning farmer or livestock producer."[10]

Types of Assets

Between 2011 and 2017, cropland was by far the most common asset leased, making up 75% of all the assets in the program. As shown in Figure 1.7, the next largest asset leased was equipment (9%), followed by pasture land (8%), facilities (6%), and livestock (2%). As with lease data, we did not use data prior to 2011 because we determined it was less reliable. Appendix A contains a full breakdown of asset data.

[9] Of the 700 individual asset owners, some participated in more than one lease agreement.
[10] Neb. Rev. Stat. § 77-5212(2).

Figure 1.7. Asset Types Leased, 2011-2017



Source: Audit Office compilation of Department of Agriculture data.

Related Parties

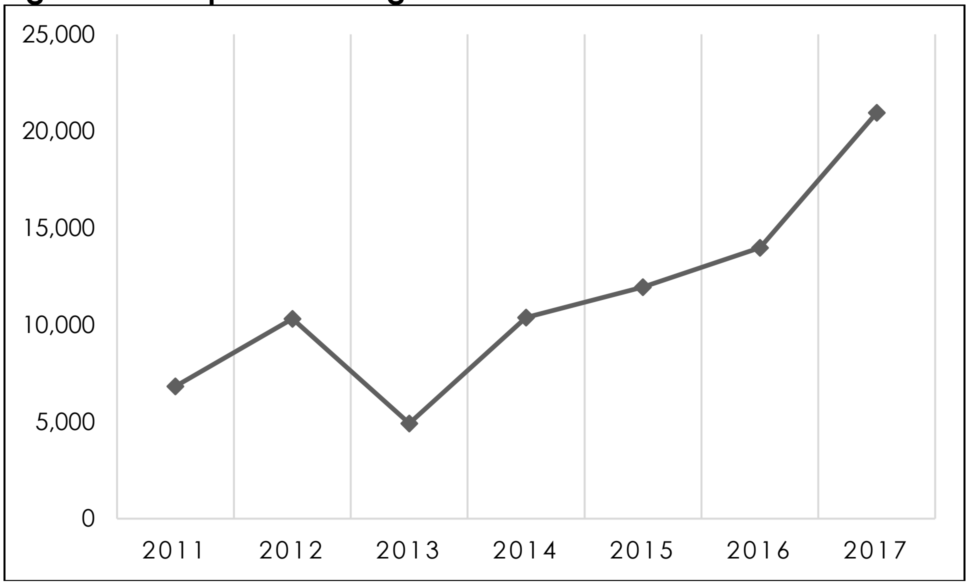
In 2006, the Legislature added a provision to the Beginning Farmer Act that allows asset owners to receive tax credits for renting agricultural assets to relatives. From 2007 to 2017, a total of 98 related parties participated in the program. Of the 539 cases through 2017, 98 (18%) were for leases between related parties.

Under the Act, a "relative" includes immediate family members, such as the beginning farmer's spouse, children, parents, siblings, and grandparents, as well as great grandparents, aunts and uncles, nieces and nephews, and great-grandchildren. In order to participate as a related party, the rental agreement must be included in a succession plan. The succession plan must be a written contract or other legally-binding document that implements both a timetable and a process for transferring assets from the asset owner to the beginning farmer within 30 years. Additional stipulations exist in the rules and regulations, including what the Board defines as acceptable forms of succession plans (including purchase contracts, buy-sell agreements, and trusts) and that wills are not acceptable.

Acreage Information

A total of 79,355 acres of cropland was leased under the Beginning Farmer Act, an average of 11,336 acres per year. As with lease and asset data, we did not use data prior to 2011 because we determined it was less reliable. The amount leased per year increased from 6,835 in 2011 to 20,950 in 2017, as shown in Figure 1.8.

Figure 1.8. Cropland Acreage Leased



Source: Audit Office compilation of Department of Agriculture data.
Note: The cases included in the yearly acreage counts are based on first year it earned credits.

As shown in Figure 1.9, between 2011 and 2017 the average amount of cropland leased per case was 247 acres. The median size of farm added was 160 acres. The smallest number of acres leased on a single farm was less than 13 and the largest was 2,924.

Figure 1.9. Yearly Acreage Information

Year	Number	Average Acreage	Median Acreage	High	Low
2011	41	167	143	575	13
2012	36	286	160	2792	40
2013	28	176	148	668	38
2014	58	179	142	670	15
2015	45	266	185	961	17
2016	53	264	160	1206	40
2017	60	349	201	2924	17
Average			**247**		
Median			**160**		

Source: Audit Office compilation of Department of Agriculture data.

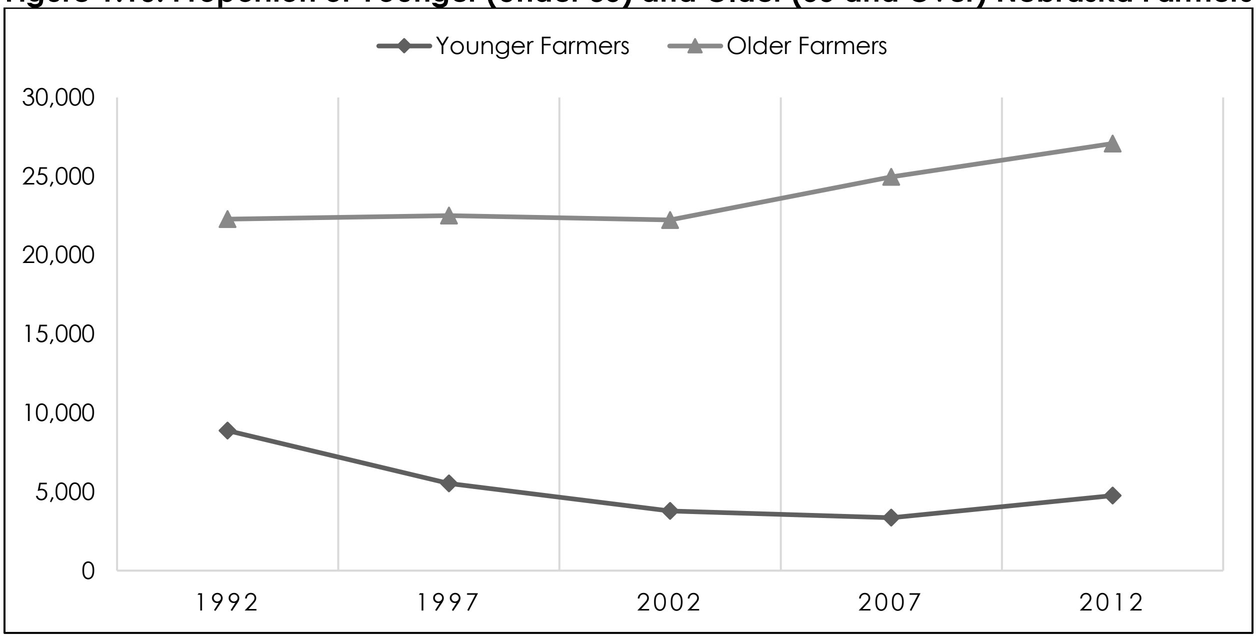
As of the 2010 USDA Agricultural Census, there were 45,331,783 farmable acres in Nebraska. The proportion of acreage leased from 2011 to 2017 under the Beginning Farmer Act as compared to total farmable acres in the state was 0.2%.

Nebraska's Farming Demographics

While a beginning farmer's age is not an explicit program criteria for program participation, there was discussion during debate on the bill about helping younger individuals, such as those under age 25, enter farming.[11] The Audit Office believed it would be useful to provide policymakers with relevant demographic data. We compared two groups—"younger" farmers and "older" farmers—between 1992 and 2012 to see the general trend in farmers' ages.[12] We defined younger farmers as those who were under 35 years of age,[13] and older farmers as those over 54 years of age.

As can be seen in Figure 1.10, older farmers (age 55 and over) increased between 1992 and 2012. Younger farmers (under age 35) generally decreased, but increased from 2007 to 2012. As a proportion of the total state population, older farmers increased by 12.1% from 1992 to 2012, while younger farmers decreased by 7.3% during the same time period.

Figure 1.10. Proportion of Younger (Under 35) and Older (55 and Over) Nebraska Farmers



Source: Audit Office compilation of Ag Census data.

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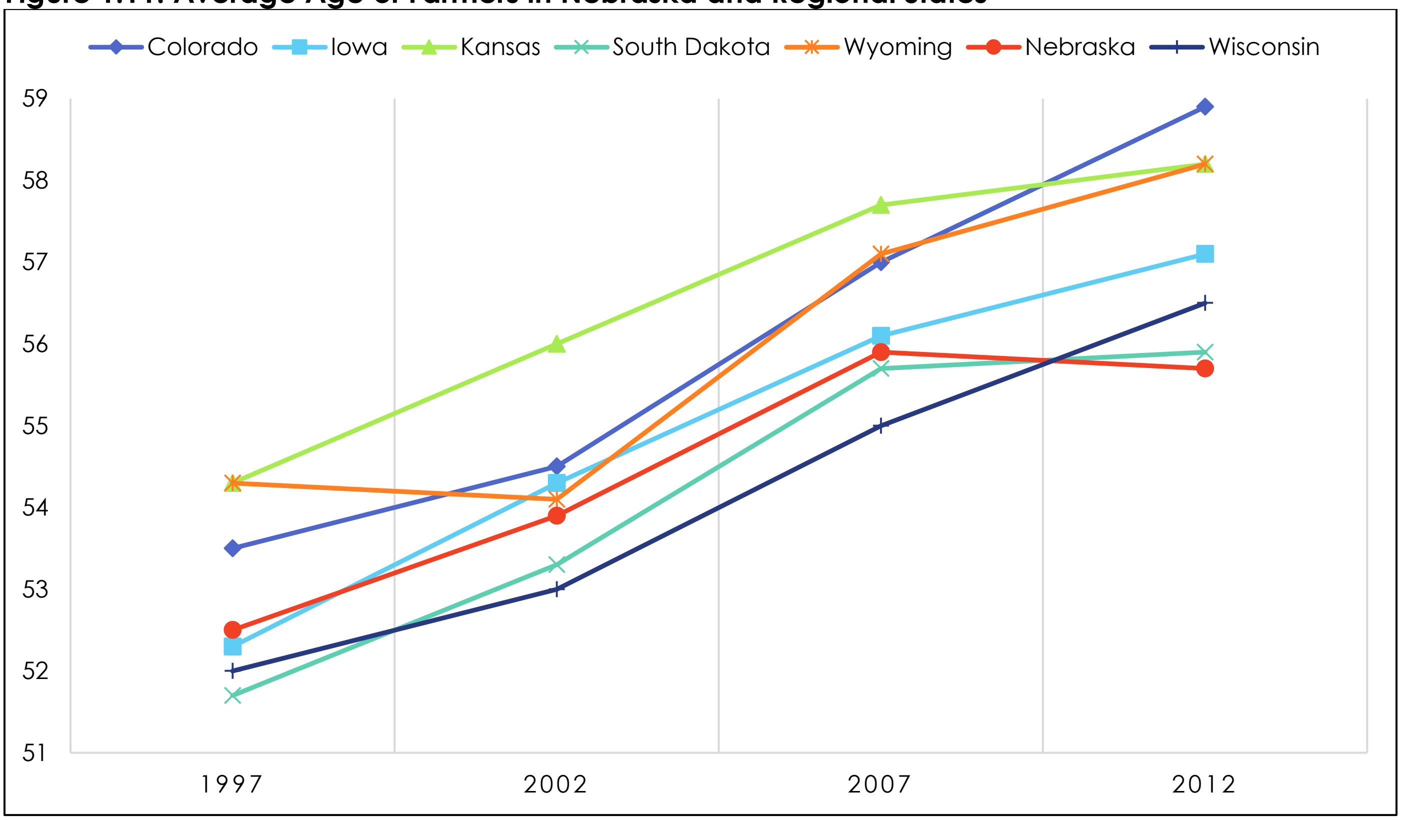
[11] In the introducer's opening remarks on General File, the opening sentence about the bill was, "this is a bill to encourage young farmers to start into business in Nebraska." Nebraska Legislature, General File Debate, *LB 630 (1999) Legislative History*, remarks by Senator Roger Wehrbein, April 12, 1999, p. 3842.
[12] We were unable to use the 2017 Ag Census data because that report will not be published until early 2019.
[13] Between 1992 and 2012, the proportion of farmers in Nebraska under age 25 reflected in the Ag Census is very small—between 1% and 3% of all farmers. We included farmers up to age 34, who can still reasonably be considered "younger" and make up a larger proportion (7% to 17%) of all farmers.

Average Age of Farmers in Nebraska Compared to Regional States

To provide context, we compiled average principal operator age data from Colorado, Iowa, Kansas, South Dakota, Wisconsin, and Wyoming for 1997 to 2012, as shown in Figure 1.11. From 2007 to 2012, in every state reviewed other than Nebraska, the average age of principal operators increased. In the most recent census, the average age in Nebraska decreased from 55.9 to 55.7 years. Although the average age is trending downward, the Office is not suggesting that the Beginning Farmer Act is the cause of this decrease.

Figure 1.11. Average Age of Farmers in Nebraska and Regional States



Source: Audit Office compilation of Ag Census data.

Policy Questions

In the course of our research to answer the scope statement questions, we identified several policy questions relating to the Beginning Farmer Act.

1. Does the Act allow the Board to approve a beginning farmer who has completed a lease agreement to participate in another lease agreement?

Through its rules and regulations, the Board allows beginning farmers to participate in more than one lease agreement.[14] However, the Legislative Audit Office interprets the

[14] 91 NAC Ch. 1-007.01D.

Beginning Farmer Act as limiting a beginning farmer to just one lease agreement. The Act states that a beginning farmer who has "participated in" a three-year lease agreement "shall not be eligible to file a subsequent application with the board."[15] Additionally, the legislative history indicates that the Legislature's intention was for a beginning farmer to have access to only a single lease agreement. For example, the bill's introducer stated: "One of the things I wanted to emphasize, a young farmer, beginning farmer, as defined in the green copy, can only use this once for three years."[16]

> **Finding:** The Audit Office believes the Beginning Farmer Board's practice of allowing beginning farmers to participate in multiple lease agreements conflicts with the Beginning Farmer Tax Credit Act and with the Legislature's intent that beginning farmers participate in only one lease agreement.

2. *Does the Act allow the Board to approve an asset owner who has completed a lease agreement to participate in another lease agreement?*

Through its rules and regulations, the Board also allows asset owners to participate in more than one lease agreement, so long as he or she is leasing a different asset (or assets) under each agreement.[17] For example, an asset owner could lease land under one agreement, farming equipment under another, and different land under a third agreement. Those assets could not be used again in future agreements, but the owner could enter into a future agreement using a different asset.

Based on the legislative history, the Audit Office agrees with the Board that the Legislature intended that asset owners be able to enter into leases using different assets.[18] At multiple points during General File debate, the bill's introducer stated the intention that asset owners be able to participate with multiple beginning farmers. For example, he said: "… and the person that allows these credits … could then go on and do the same thing to someone else, to give them a start."[19] However, the Act itself contains language limiting the amount of tax credits an asset owner can receive. It states that:

> A credit may be granted to an owner of agricultural assets for renting agricultural assets . . . to any qualified beginning farmer or livestock producer for a period of three years. An owner of agricultural assets **shall not be eligible for further credits** under the Beginning Farmer Tax Credit Act unless *the rental agreement* is terminated prior to the end of the three-year period through no fault of the owner of agricultural assets.[20]

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[15] Neb. Rev. Stat. § 77-5209(2).

[16] Nebraska Legislature, *LB 630 (1999) Legislative History*, remarks by Senator Roger Wehrbein, April 12, 1999, p. 3865.

[17] 91 NAC Ch. 1-007.01B.

[18] Given that transfer of land from the asset owner to the beginning farmer is a goal emphasized in the legislative history, we tend to agree that Legislature did not intend for the same asset to be leased multiple times. However, neither the Act nor the legislative history states that explicitly.

[19] Nebraska Legislature, *LB 630 (1999) Legislative History*, remarks by Senator Wehrbein, April 12, 1999, p. 3865.

[20] Neb. Rev. Stat. § 77-5211(3), emphasis added.

The section goes on to allow the Board to allow the asset owner to enter into a new lease agreement if the previous agreement was terminated through no fault of the asset owner.

The Audit Office believes the Board's practice of allowing an asset owner to enter into *additional* lease agreements after he or she has received credits under one agreement conflicts with the Act, but acknowledges that the statutory language is somewhat unclear. By stating that an asset owner "shall not be eligible for further credits," the Legislature was clearly setting a limit on what the asset owner could receive. What is less clear is what has to have occurred in order for the asset owner to be ineligible for "further" credits.

The first sentence of the section is somewhat broad in that it refers to renting agricultural assets (plural) to "any" qualified beginning farmer or livestock producer. That sentence could be read as allowing an asset owner to have multiple lease agreements with more than one beginning farmer. In contrast, however, the remaining two sentences in the section refer to only a single agreement.[21] When the sentences are read together, we believe this means that an asset owner can enter into a single lease agreement and cannot enter into future agreements. This is logical because once the asset owner received benefits under the initial agreement—which would normally happen after completion of the first year of the agreement—he or she is prohibited from receiving "further" credits.

Although this is the plainest reading of the statutory language, arguably the first sentence could allow the asset owner to enter into multiple agreements during the initial three-year period of participation. This would only apply to agreements made during the first year, as once the asset owner receives credits under the first agreement, they would not be eligible to receive credits under any later agreement(s).

Finding: The Audit Office believes the Beginning Farmer Board's practice of allowing asset owners to participate in multiple lease agreements using different assets conflicts with the plain language of the Beginning Farmer Tax Credit Act. However, the Office also believes the language of the Act may not be in alignment with what the Legislature intended, as reflected in the legislative history.

3. Is the asset owner credit refundable or nonrefundable?

A conflict exists between the language of the Beginning Farmer Act and income tax statutes as they relate to asset owner tax credits. The income tax statute referenced by the Beginning Farmer Act states that the credit to asset owners is *refundable*.[22] However, the language in the Act itself suggests that credits are *nonrefundable*, meaning an asset owner

[21] "The rental agreement" in the second sentence and "a subsequent qualifying rental agreement" in the third.

[22] The language states, "a refundable credit for individuals who qualify for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act …" Neb. Rev. Stat. § 77-2715.07(4)(c).

may only receive credits up to the amount of their actual income tax liability.[23] Any credits over that amount would be forfeited.

The Department of Revenue agrees that the statutes are in conflict but follows language in the income tax statutes and administers the credit as refundable. Additionally, they believe the Legislature's intention that the credit be refundable is clear, since a Revenue Committee amendment to the original bill changed the credit from nonrefundable to refundable.

> **Finding:** There is a conflict between the income tax statutes in the Nebraska Revenue Act and the Beginning Farmer Tax Credit Act regarding whether the asset owner tax credit is refundable. The Audit Office believes the Legislature intended for the asset owner credit to be refundable, which is how it is being administered. However, the Beginning Farmer Act suggests that it is nonrefundable.

4. *Is the financial management program credit refundable or nonrefundable?*

Similar to the conflict between statutes relating the asset owner tax credit, the Beginning Farmer Act and the income tax statutes conflict about whether the financial management program tax credit is refundable. The provision within the Act states, "… a one-time credit to be applied against the state income tax liability," which suggests that the beginning farmer may only receive credits up to the amount of their actual income tax liability.[24] Any credits over that amount would be forfeited.

However, the relevant income tax statute defines the credit as refundable. Again, the Legislature's intention that the credit be refundable seems clear. In the bill that added the financial management program tax credit, the credit was refundable. That provision was specifically mentioned during Select File debate on the bill, so the Legislature could have changed it at that time had it wished to do so.[25]

The Department of Revenue agrees that the statutes are in conflict and administers it as refundable, as stated in the income tax statutes.

> **Finding:** There is a conflict between the income tax statutes in the Nebraska Revenue Act and the Beginning Farmer Tax Credit Act regarding whether the financial management program tax credit is refundable. The Audit Office believes the Legislature intended for this credit to be refundable, which is how it is being administered. However, the Beginning Farmer Act suggests that it is nonrefundable.

[23] The language states, "… an owner of agricultural assets shall be allowed a credit to be applied against the state income tax liability of such owner for agricultural assets rented on a rental agreement basis …" (Neb. Rev. Stat. § 77-5211).
[24] Neb. Rev. Stat. § 77-5209.01.
[25] Nebraska Legislature, *LB 990 (2006) Legislative History*, remarks by Senator Bob Kremer, March 27, 2006, p. 11663.

5. *Do the leases for larger acreages conflict with the Legislature's intention to support small farming operations?*

Three leases for cropland were for more than 1,800 acres each—2 of them were for more than 2,700 acres each—compared to the average of 264 acres per lease and the median of 160 per lease. The legislative history for the Beginning Farmer Act reflects the Legislature's intent to support small farming operations, although the Act itself does not specifically limit the number of acres a lease may contain.

> **Finding:** The Audit Office believes that some of the leases for high numbers of acres, such as 3 for 1,800 acres or more, may conflict with the Legislature's intention to support small farming operations.

6. *Do flex rent lease agreements conflict with Legislature's intention that cash rent lease agreements set the total gross income at the time the lease agreement is signed?*

While flex rent agreements do not violate the statutory requirements for cash rent agreements, it is likely the Legislature did not envision agreements in which the gross income (and therefore the dollar amount of the tax credit) was not finalized until the end of each year of the agreement. Such agreements may result in asset owners receiving a higher tax credit than they would have under an agreement in which the gross income is set up front. On the other hand, such an incentive may be useful in attracting asset owners to participate in the program.

> **Finding:** Flex rent lease agreements, which permit the gross rental income to be adjusted based on crop yield and/or price, were unavailable when the Beginning Farmer Tax Credit Act was adopted. Such leases may result in a higher or lower gross rental income, and therefore a higher or lower tax credit, than leases that set the gross rental income when the lease agreement is signed. Currently only a small percentage of program participants have used flex rent lease agreements, but if a larger number do so, there is a possibility that the program's "cost" (forgone revenue) may increase.

7. *Does the current application process sufficiently inform participants of their responsibilities under the Beginning Farmer Act?*

As part of our data reliability assessment for this audit, we reviewed a number of case files. In one file, a tax credit was issued to an asset owner, but was later returned. According to program staff, the asset owner had sold the land subject to the lease, but had not notified the Board. Although in that case the credit was returned, we were concerned that the asset owner had not informed the Board that they were no longer eligible to participate.

We reviewed the standard application language to determine what it requires of the participants. We found that while it states that participants must meet the requirements of the Beginning Farmer Act and the program's rules and regulations, those requirements are not listed. Consequently, it is up to the beginning farmers and asset owners to find out what they are required to do.

The Act does not require the program to provide a list of requirements to the participants. In contrast, in the other tax incentive programs we have audited to date, participants have been provided with a list to sign as an indication that they understand their responsibilities. Since the applications do not contain such a list and no formal program agreement is issued by the Board, there is a higher risk that participants may not comply with all program requirements.

Finding: During a case file review, we found one case in which an asset owner had sold the land they had been leasing under this program, but they had not notified the Beginning Farmer Board of the sale. A credit was issued, although the owner returned it. Based on this anecdote, we reviewed the materials provided to program participants at application and found they do not receive a list of specific participation requirements. The other tax incentive programs we have audited provide such a list and require participants to sign and acknowledge they understand the requirements.

SECTION II: Analysis of Metrics

Before presenting the Beginning Farmer Tax Credit Act's audit scope questions and the metrics used to answer each, we note several points that will aid in the understanding of the audit results and findings.

Causation

The biggest issue when evaluating tax incentive programs is that it is often impossible to show that a program *caused* any specific results. There are many other factors that can influence a participant's decision-making that are unaccounted for in this report. We do not claim that the program caused the results we report.

Results

The results for each metric describe the product of the analysis we conducted. For example, if the metric was whether program spending increased over time, we report whether it did or not as the result. Results do not include judgments about how well the program is succeeding.

Findings

Findings involve making a judgment about how the program results on a given metric compare to a standard. For a program that had increased spending over time, the standard could be the increase or decrease in that type of spending for the United States as a whole. Our finding, in that instance, would be whether there was a difference in Nebraska's rate of spending and the US rate of spending.

Taxpayer Confidentiality

Data compiled for this program by the Department of Agriculture is not subject to the confidentiality requirements imposed by federal and state law for taxpayer data. However, we have decided to follow those requirements as they relate to what can be reported to prevent the inadvertent reporting of an individual taxpayer's information. Those requirements generally require reporting numbers that contain at least three taxpayers if the results are statewide, and ten or more if the results are from a localized area.

The Performance Audit Committee asked the Audit Office to answer four questions regarding the Beginning Farmer Tax Credit Act, utilizing the metrics listed below each question:

1. Is the Act meeting the goal of revitalizing rural and other distressed areas of the state?

    - Did the Act create more positions in areas of the state considered distressed than non-distressed?

2. What is the Act's impact on budgets of local governments?

3. What are the Act's economic and fiscal impacts?

    - What is the cost to administer the Act?

4. Are adequate protections in place to ensure the fiscal impact of the Act does not increase substantially beyond the state's expectations in future years?

    - What are the fiscal protections in the Act?

5. What can be done to improve future audits of the Act?

The Office does not have suggestions to improve future audits; following is a discussion of the remaining metrics.

Distressed Areas

How many beginning farmers' operations are located in distressed areas of the state?

Results

Utilizing the definition of distressed areas contained in the Legislative Performance Audit Act, 6 (2%) of 257 beginning farmers from 2011 to 2017 were located in an Area of Substantial Unemployment, as defined by the Department of Labor.

> **Finding:** Only 2% of the beginning farmers were located in distressed areas. However, increasing economic activity in distressed areas is not a requirement of the Beginning Farmer Tax Credit Act; it is a metric the Legislature selected later for all tax incentive programs.

Discussion

Regarding distressed areas, we answered a slightly different question than the one asked by the LR 444 Committee. The Committee asked: do incentivized companies create more new full-time jobs in areas of the state identified as distressed or non-distressed? The Office was unable to identify the number of full-time jobs created in distressed areas because the Beginning Farmer Tax Credit Act (Beginning Farmer Act or Act) does not require job creation. The question we answered instead is: are beginning farmer's operations in areas of the state identified as distressed?

Methodology

Because the Act does not require participants to be located in distressed areas, it does not define such areas and there is no definition in other tax incentive statutes. In the 2018 legislative session, the Legislature passed a bill (LB 935) that added a definition of distressed areas to the Legislative Performance Audit Act. The definition utilizes the Areas of Substantial Unemployment (ASU) designation, as defined by the Department of Labor.[26] ASUs are contiguous Census tracts that have an unemployment rate of higher than 6.5% and a combined population of at least 10,000 residents.

In order to determine if a beginning farmer was located within an ASU, the Office cross-referenced each beginning farmer's address with the ASU Census tracts. The Office chose the beginning farmer's address instead of the asset owner's location or the location of the asset itself because any new and/or increased economic activity due to the program arguably goes to the beginning farmer, who is starting a new operation.

[26] As a requirement under the federal Workforce Innovation and Opportunity Act, the Department of Labor assembles yearly maps of ASUs.

The Office used the beginning farmer's location from their program application year and utilized data from 2011 to 2017. For each application year, the applicants' addresses were checked against all of the ASU tracts. If a beginning farmer's address fell within an ASU census tract during their year of participation, we defined the beginning farmer as being located within an ASU. Figure 2.1 shows ASU counties and census tracts in which beginning farmers were located.

Figure 2.1. Beginning Farmers in ASU Counties and Census Tracts

Year	Beginning Farmers in ASU County		Beginning Farmers in ASU Tract	
	Number of Beginning Farmers	ASU Counties	Number of Beginning Farmers	Counties in Which ASU Tract is Located
2011	8	Adams, Cass, Gage, Lancaster, Otoe (3), Washington	2	Lancaster and Washington
2012	7	Dawson (2), Dodge, Gage (2), Saunders, Thurston	1	Thurston
2013	8	Dawson (3), Gage (3), Lancaster, Washington	0	-
2014	4	Buffalo (2), Dodge, Washington	1	Washington
2015	4	Douglas, Lancaster, Nemaha, Thurston	2	Nemaha and Thurston
2016	2	Dakota (2)	0	-
2017	2	Hall (2)	0	-
Total Beginning Farmers in ASU Counties			**35**	
Total Beginning Farmers in ASU Census Tracts			**6**	

Source: Audit Office compilation of Department of Labor data.

Local Impact—Property Tax

What is the fiscal impact of the Act's property tax exemption on local governments?

Results

In 2016, 26 beginning farmers exempted property valued at more than $1.5 million, totaling $25,275 in revenue forgone to their respective counties. In 2017, 37 beginning farmers exempted property valued at about $2.1 million, totaling $34,915 in revenue forgone. Beginning farmers may claim the exemption for three years, and it is likely that some individuals received the exemption in both 2016 and 2017. However, that information is not readily available and we could not compile it within the timeframe for this audit.

There is no finding because there is no standard for comparison.

Methodology

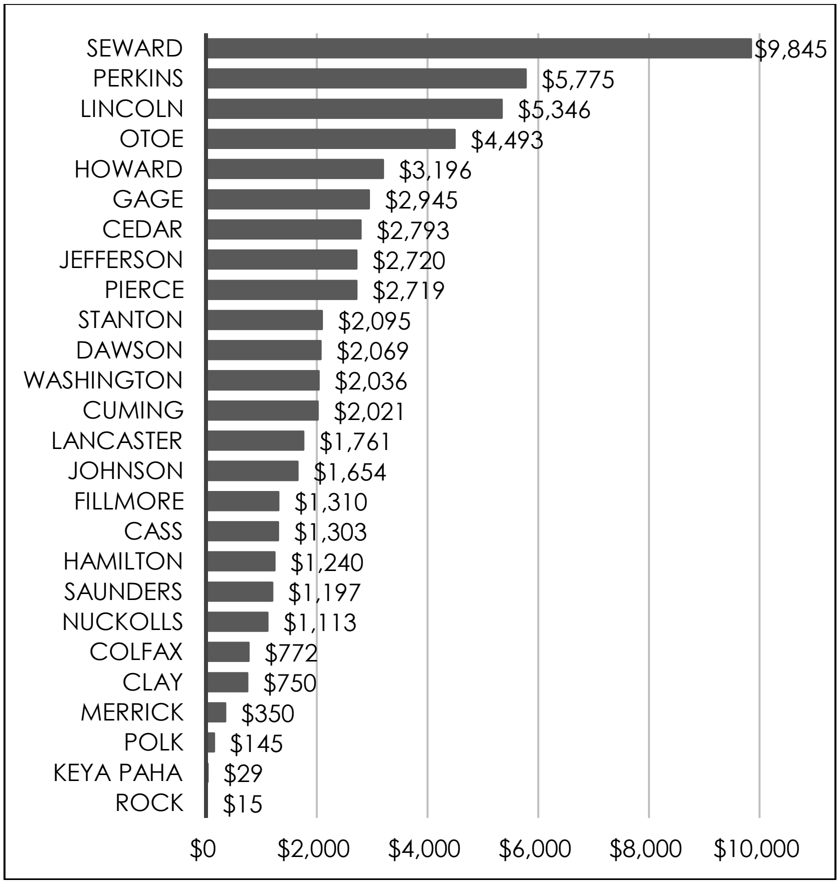
In 2016, the Department of Revenue was required to begin collecting the amount of property exempted under the Beginning Farmer program by county. Before this time, this data was not compiled and, again, within the timeframe for this audit, we were unable to collect the information each exemption at local county assessors' offices.[27] Due to this, we report data for only 2016 and 2017.

The Office obtained the exempted values by county for both 2016 and 2017, for participants in the Beginning Farmer Act and applied the average property tax rate across the state to the exempted values. For 2016, the average rate was 1.6385 and for 2017, it was 1.6536.

Figures 2.2 and 2.3 show the total amount of revenue forgone and the total number of recipients, by county. Appendix B contains a complete breakdown of the property tax exemption data.

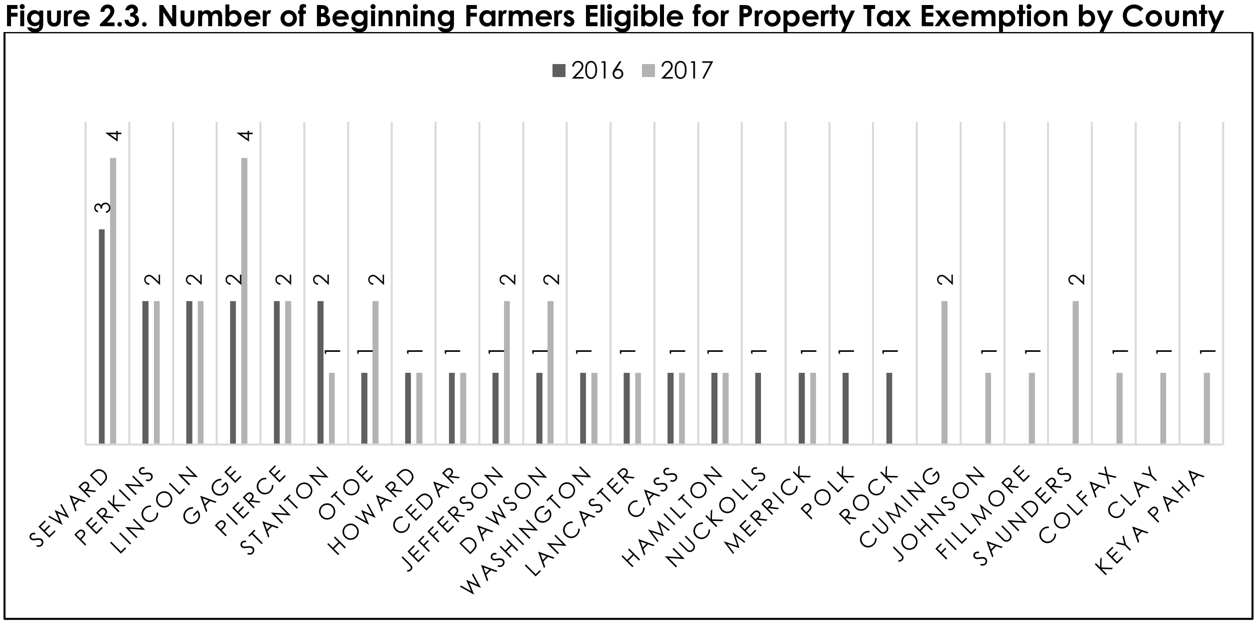
[27] The Audit Office could not contact the individual counties to obtain earlier data within the timeframe for this audit.

Figure 2.2. Estimated Forgone Revenue by County, 2016-2017



Source: Audit Office compilation of Department of Revenue data.

Figure 2.3. Number of Beginning Farmers Eligible for Property Tax Exemption by County



Source: Audit Office compilation of Department of Revenue data.

Discussion

Qualified beginning farmers are allowed a personal property tax exemption, up to $100,000 in exempted value, for a period of three years. The exemption was added in 2008 because policymakers wanted to provide the beginning farmer a financial benefit. The Legislature estimated that the total revenue forgone would be $40,000 per year statewide.

The Department of Agriculture does not administer any part of the exemption; its only role is to certify a beginning farmer as eligible to participate in the program. A beginning farmer who is qualified to participate in the program is also eligible for the personal property tax exemption. Upon request from the beginning farmer, the Department will print a certificate allowing the individual to apply to their county assessor for the exemption. If all paperwork is filed correctly and on time, the exemption is allowed.

Policy Question

The beginning farmer may request the exemption for the first time in any of their three years of program eligibility and claim the exemption for two additional years thereafter. The Act allows the beginning farmer to claim the exemption even if the individual no longer meets the definition of a "qualified" beginning farmer unless they discontinue farming or livestock production. However, the Act contains no mechanism for notifying county assessors about individuals who are no longer farming. Consequently, if an individual does not know that they are no longer qualified for the exemption or does not report their ineligibility to the county assessor, they could still receive the exemption.

Finding: Under the Beginning Farmer Tax Credit Act, a beginning farmer who discontinues farming or livestock production becomes ineligible for the personal property tax exemption. However, the Department of Agriculture does not review participating farmers' qualifications after their initial approval, which could mean farmers who are no longer eligible for the property tax exemption continue to receive it.

Administrative Cost

What is the cost to administer and promote the Act?

Results

The total cost for administering the Beginning Farmer Act from FY1999 to FY2017 was $701,501, which covered Beginning Farmer Board and personnel expenditures. The average administrative cost per year for the years when the program was fully funded was about $51,500.[28]

There is no finding because there is no standard for comparison.

Discussion

The Act is administered by the Department of Agriculture though the credits are distributed by the Department of Revenue. As authorized by the program, the Board is part of the Department of Agriculture for administrative and budgetary purposes only. The Department of Revenue does not budget for or track expenditures for their portion of administration because it is so small.

Between 1999 and 2017, personal services made up 80% of the program's cost, followed by operating expenses (15%), travel expenses for Board members and staff (5%), and capital improvements (<1%). Currently, two staff support the program, both of whom have other responsibilities within the Department. One employee manages the day-to-day responsibilities of program management, which takes up about 90% of their time. The other conducts higher level program administration, which takes up less than 10% of their time.

[28] From FY2003 to FY2007, the operating funds for the program were cut (expenses were absorbed by the Department) and a staff position was eliminated. Funding for the fully funded years ranged from $36,572 to $62,855 per year, with a standard deviation of $7,487.

Fiscal Protections

What are the fiscal protections in the Act?

Results

The Beginning Farmer Act has fiscal protections in place, including controlling the timing of credit redemptions, recapture provisions, and requiring advance notice of participation.

> **Finding:** Because the Beginning Farmer Tax Credit Act contains several important fiscal protections recommended by The Pew Charitable Trusts, the program is at low risk for exceeding expected costs.

Discussion

A 2015 report by The Pew Charitable Trusts noted the difficulty placed on states when an unexpected decrease in revenue occurs and stated that tax incentive programs can contribute to such situations if fiscal controls are not in place. In the report, Pew provided several recommendations for policymakers that can help mitigate the potential for decreased revenue due to tax incentive programs.

The Beginning Farmer Act meets several of the recommendations that the Pew report makes, including recapture provisions, control of the timing of incentive redemptions, requiring advance notice of participation, and the sharing of information across relevant agencies.

A few of the recommendations are not met, including a cap on the program cost each year, requiring lawmakers to pay for the program through budget appropriations, and restricting the ability of participants to redeem more in credits than they owe in taxes. The Act provides a fully refundable benefit to participants, meaning they receive payment for any amount of credit earned, regardless of their income tax liability.

Figure 2.4 describes all of the Pew recommendations and the Audit Office's judgment about each in relation to the Beginning Farmer Act. In comparing the Act to recommendations by The Pew Charitable Trusts, the Office found that it does have some fiscal protections in place.

Figure 2.4. 2015 Pew Report Fiscal Protection Recommendations

Pew Report Recommendations	Beginning Farmer Act	Audit Office Remarks
Gather and share high-quality data on the costs of incentives by:		
Regularly forecast the cost	**No**	There is nothing in statute to require forecasting
Monitor costs and commitments of large and high-risk programs	**N/A**	The program is small; recommendation does not apply
Share timely information on incentives across relevant agencies	**Yes**	Adequate language in statute exists that gives Audit Office access to information
Design incentives in ways that reduce fiscal risk, including:		
Capping how much programs can cost each year	**No**	The Beginning Farmer Act does not have a cap but has remained within the legislature's expectations for yearly cost
Controlling the timing of incentive redemptions	**Yes**	The refundable credits are issued in the year they were earned and only able to be claimed in that year
Requiring lawmakers to pay for incentives through budget appropriations	**No**	The program issues refundable credits
Restricting the ability of companies to redeem more in credits than they owe in taxes	**No**	Credits are refundable
Linking incentives to company performance	**Partially***	Program has recapture provisions
Requiring businesses to provide advance notice of program participation	**Yes**	Approved application required before any benefits received

Source: Audit Office analysis of information from The Pew Charitable Trusts, *Reducing Budget Risks: Using Data and Design to Make State Tax Incentives More Predictable*, December 2015.
*The other part the report mentions about linking incentives to participant performance suggests requiring participants to meet performance standards before receiving benefits, which the Act only requires a three-year lease agreement between a qualified beginning farmer and asset owner.

APPENDIX A: Section I Additional Data

Figure A.1 shows the total financial management program credit amounts for 2007 through 2017, as well as provides estimated average credit issued by year, as referenced in Section I of the report.

Figure A.1. Beginning Farmer Financial Management Program Credit

Calendar Year Received	Amount (%)	Number of Beginning Farmers (%)	Average Credit Issued
2007	$0	0	-
2008	$0	0	-
2009	$155 (1%)	1 (2%)	$155
2010	$1,774 (13%)	5 (11%)	$355
2011	$1,665 (13%)	6 (13%)	$278
2012	$421 (3%)	2 (4%)	$211
2013	$1,155 (9%)	3 (6%)	$385
2014	$0	0	-
2015	$2,526 (19%)	9 (20%)	$281
2016	$3,190 (24%)	12 (27%)	$266
2017	$2,407 (18%)	7 (16%)	$344
Total	**$13,293 (100%)**	**45 (99%)***	**$295**

Source: Audit Office compilation of Department of Agriculture data.
*The total percentage does not equal 100 due to rounding.

Figure A.2 shows the breakdown by year for each type of lease for 2011 through 2017, as shown in Figure 1.4 in Section I of the report.

Figure A.2. Lease Types by Year

	Lease Type*			
Year	**Share Rent**	**Cash Rent**	**Other****	**Total**
2011	11	33	-	44
2012	14	23	-	37
2013	17	13	-	30
2014	21	34	4	59
2015	19	24	4	47
2016	12	42	-	54
2017	6	46	10	62
Total (%)	**100 (30%)**	**215 (65%)**	**18 (5%)**	**333 (100%)**

Source: Audit Office compilation of Department of Agriculture data.
*The data only includes each asset added from 2011 to 2017 once (it does not duplicate each asset for all three years of participation).
**Includes combination (cash rent and share rent) leases.

Figure A.3 shows the total asset owner credits by case from 2001 through 2017, as shown in Figure 1.5 in Section I of the report.

Figure A.3. Asset Owner Credits by Case, 2001-2017

Total Asset Owner Credits	Case Numbers (%)
≤$10,000	291 (49%)
>$10,000 but ≤$25,000	170 (28%)
>$25,000 but ≤$50,000	91 (15%)
>$50,000 but ≤$100,000	35 (6%)
>$100,000 but ≤$200,000	13 (2%)
>$200,000 but ≤$750,000	3 (1%)
Total	**603 (101%)***

Source: Audit Office compilation of Department of Agriculture data.
*Greater than 100% due to rounding.

Figure A.4 shows supplemental information on credits paid to asset owners by case from 2011 through 2017, as referenced in Section I of the report.

Figure A.4. Asset Owner Credits, by Case, by Year

Application Year	Year 1	Year 2	Year 3	Sum, All Years	Case Count
2001	$33,592	$35,558	$35,402	$104,552	14
2002	$21,074	$21,112	$20,591	$62,777	14
2003	$24,161	$24,499	$24,532	$73,192	15
2004	$14,223	$15,615	$15,280	$45,118	11
2005	$12,166	$15,334	$19,309	$46,809	7
2006	$14,973	$14,973	$12,884	$42,830	3
2007	$21,134	$21,986	$21,986	$65,106	6
2008	$283,810	$320,682	$320,830	$925,322	14
2009	$344,101	$349,102	$352,065	$1,045,268	67
2010	$521,973	$612,981	$631,030	$1,765,984	71
2011	$561,272	$551,559	$540,408	$1,653,239	79
2012	$287,761	$278,138	$270,421	$836,320	30
2013	$323,461	$335,866	$325,171	$984,498	50
2014	$335,725	$319,778	$327,505	$983,008	39
2015	$424,999	$415,203	$419,743	$1,259,945	53
2016	$459,394	$446,157	$436,619	$1,342,170	61
2017	$457,176	$439,604	$418,674	$1,315,454	69
Total	**$4,140,995***	**$4,218,147***	**$4,192,450***	**$12,551,592***	**603**

Source: Audit Office compilation of Department of Agriculture data.
*The totals do not match the raw data exactly due to rounding.

Figure A.5 shows the breakdown by year for each asset type leased for 2011 through 2017, as shown in Figure 1.6 in Section I of the report.

Figure A.5. Frequency of Each Type of Asset Leased

Year	Cropland	Pasture Land	Equipment	Livestock	Facilities	Total
2011	37	4	3	-	1	45
2012	34	3	2	2	3	44
2013	26	3	5	-	1	35
2014	57	7	11	1	8	84
2015	45	3	9	1	2	60
2016	52	3	2	1	5	63
2017	53	8	6	3	3	73
Total (%)	**304 (75%)**	**31 (8%)**	**38 (9%)**	**8 (2%)**	**23 (6%)**	**404**

Source: Audit Office compilation of Department of Agriculture data.

APPENDIX B: 2016 & 2017 Property Tax Exemption Data

Figure B.1 shows the county-by-county value of property exempted under the Beginning Farmer Tax Credit Act for 2016, and Figure B.2, on the following page, shows the same information for 2017.

Figure B.1. Value of Property Exempted, by County, 2016

County	Number of Beginning Farmers Exempt	Exempted Personal Property Value	Estimated Amount of Revenue Forgone
Cass	1	$40,351	$661
Cedar	1	$100,000	$1,139
Dawson	1	$14,296	$234
Gage	2	$38,425	$630
Hamilton	1	$38,146	$625
Howard	1	$94,112	$1,542
Jefferson	1	$37,688	$618
Lancaster	1	$59,929	$982
Lincoln	2	$174,465	$2,859
Merrick	1	$13,442	$220
Nuckolls	1	$67,946	$1,113
Otoe	1	$100,000	$1,639
Perkins	2	$176,807	$2,897
Pierce	2	$96,387	$1,579
Polk	1	$8,848	$145
Rock	1	$908	$15
Seward	3	$300,000	$4,916
Stanton	2	$119,656	$1,961
Washington	1	$61,002	$1,000
Total	**26**	**$1,542,408**	**$25,275**

Source: Audit Office compilation of Department of Agriculture data.

Figure B.2. Value of Property Exempted, by County, 2017

County	Number of Beginning Farmers Exempt	Exempted Personal Property Value	Estimated Amount of Revenue Forgone
Cass	1	$38,825	$642
Cedar	1	$100,000	$1,654
Clay	1	$45,332	$750
Colfax	1	$46,663	$772
Cuming	2	$122,208	$2,021
Dawson	2	$110,962	$1,835
Fillmore	1	$79,249	$1,310
Gage	4	$139,979	$2,315
Hamilton	1	$37,203	$615
Howard	1	$100,000	$1,654
Jefferson	2	$127,091	$2,102
Johnson	1	$100,000	$1,654
Keya Paha	1	$1,733	$29
Lancaster	1	$47,090	$779
Lincoln	2	$150,404	$2,487
Merrick	1	$7,841	$130
Otoe	2	$172,593	$2,854
Perkins	2	$174,066	$2,878
Pierce	2	$68,940	$1,140
Saunders	2	$72,416	$1,197
Seward	4	$298,090	$4,929
Stanton	1	$8,077	$134
Washington	1	$62,663	$1,036
Total	**37**	**$2,111,425**	**$34,915**

Source: Audit Office compilation of Department of Agriculture data.

III. Agency Response and Fiscal Analyst's Opinion

NEXT GEN
301 Centennial Mall South
P.O. Box 94947
Lincoln, NE 68509-4947

CULTIVATE YOUR LEGACY

September 24, 2018

Martha Carter
Legislative Audit Office
PO Box 94604, State Capitol
Lincoln, NE 68509

Dear Ms. Carter:

On behalf of the Board of Directors (Board) of the Beginning Farmer Tax Credit Act, I acknowledge receipt of the Legislative Audit Office Draft Report (Report) received August 24, 2018. We thank you and your staff, Craig Beck and Anthony Circo, for your hard work and professionalism in executing a thorough and detailed audit.

The Nebraska Department of Agriculture (Department) administers the program, under the Board's purview, and provided the Legislative Audit Office (Audit Office) the requested data and supporting information used for the Report. The Department submitted suggested edits to the Report via email on September 19, 2018.

We respectfully submit the attached document, "Suggested Edits to the Legislative Audit Draft Report," dated September 24, 2018, and the following responses to the recommendations to the Report findings.

Metric Recommendation for Distressed Area
Response: If the Legislature agrees with the recommendation, the Legislature should consider using an applicable measure suited for agriculture.

Policy Question 1
Response: The Board believes the intent of the Act was to restrict beginning farmers and livestock producers from submitting subsequent applications on the same asset, restricting the owner of the agricultural asset to receiving tax credits on an asset to one three-year rental agreement period. Title 91, Nebraska Administrative Code, Chapter 1-007 of the Beginning Farmer Tax Credit Act Regulations supports the Board's practice which has been in place since inception of the program. The Board believes it has been administering the program as intended.

Policy Question 2
Response: The Board does not agree that the Act restricts asset owners to a single rental agreement, but that a rental agreement may only be eligible for tax credits one three-year period. The Board believes they are administering the program as intended by allowing asset owners to enter into multiple lease agreements with the same beginning farmer or livestock producer or multiple beginning farmers or livestock producers.

We believe Neb. Rev. Stat. §77-5211(3) was only intended to apply to situations when a lease agreement is terminated prior to the end of the three-year period, through no fault of the owner, and allow the owner to lease the same asset to another beginning farmer.

Policy Questions 3 and 4
Response: None

Policy Question 5
Response: Neither the Act nor the Regulations reference or define "small farming operation." We disagree with the Report that a beginning farmer provide the "majority of the day-to-day physical labor and management of the operation" in and of itself is intended to limit participation in the program to smaller farming operations. A beginning farmer must meet all of the eligibility requirements to participate in the program. We believe meeting all of the requirements is intended to limit participation in the program.

Farming and ranching is diverse. The scope of an operation is dependent upon many variables such as type of commodity, traditional farming versus organic farming, irrigated versus non-irrigated land and many other factors. The Audit Office reports three leases involving 1,800 acres or more, two of which were in excess of 2,700 acres. The two lease agreements in excess of 2,700 acres accounted for approximately 275 acres in growing crops and the remaining acres for grazing cattle.

Policy Question 6
Response: None

Policy Question 7
Response: The Board will incorporate wording on the application forms and acceptance letters to include the participants' responsibilities.

Please contact Karla Bahm, Program Administrator at 402-471-6890 if you have any questions.

Respectfully submitted,

Don Anthony by KB.

Donald H. Anthony
Beginning Farmer Board Chair

Attachment

copies: Board of Directors

Suggested edits to the:
Legislative Audit Office Draft Report
The Beginning Farmer Tax Credit Act:
Performance on Selected Metrics

9/24/18

Page	Paragraph	Original	Suggested Change/Comment
iii	#6. Findings Last sentence	Currently only a small percentage of program participants have used flex rent lease agreements but if a larger number do so, there is a possibility that the program's "cost" (forgone revenue) would go up.	Currently only a small percentage of program participants have used flex rent lease agreements but if a larger number do so, there is a possibility that the program's "cost" (forgone revenue) may increase.
2	2nd paragraph, 3.	Heirs	Relatives
2	Footnote #12	§§ 77-5204(1) – 77-5204(5).	§§ 77-5205(1) – 77-5205(5).
6	1st paragraph 3rd bullet see §77-5209 (1)(d)	Demonstrate profit potential and the intention to make the operation their principle source of income;	Demonstrate profit potential by submitting a projected earnings statements and the intention to make the operation their principle source of income;
8	2nd paragraph 2nd sentence	Beginning farmers may select the specific course they wish to attend, but board approval is necessary in order to receive the credit.	Beginning farmers must complete a board approved financial management course of their choice, but board approval is necessary in order to receive the credit.
8	2nd paragraph 3rd sentence	The maximum credit allowed is $500 and the beginning farmer must complete the course before they are considered qualified and able to enter into a lease agreement.	The credit allowed is the actual cost of the class up to a maximum of $500, and the beginning farmer must complete the course before they are considered eligible.
8	2nd paragraph Last sentence	The credit for completion of the financial management program can only be claimed in the year it was earned, meaning programs completed prior to participation are ineligible for reimbursement.[28]	The credit for completion of the financial management program can only be claimed in the year the cost was incurred. Applicants who incurred the cost prior to the tax year for which they make application are not eligible for the credit. [28]
8	Last paragraph Second sentence	From 2008 to 2017, 291 beginning farmers received this exemption.	From 2008 to 2017, 291 beginning farmers received certification for this exemption. (Note: Receiving certification does not mean they actually received the exemption, for which they need to apply to their county assessor.)
18	#2. Last paragraph	A credit may be granted to an owner of agricultural assets for renting agricultural assets … to any qualified beginning farmer or livestock producer for a period of three years. An owner of agricultural assets **shall not be eligible for further credits** under the Beginning Farmer Tax Credit Act unless the rental agreement is terminated prior to the end of the three-year period through no fault of the owner of agricultural assets.	*The verbiage cited from § 77-5211(3) is intended to address situations when a lease was terminated <u>before the completion</u> of the three-year period and allow the owner to lease <u>the same asset</u> to another beginning farmer if the lease was terminated by no fault of the owner. Therefore, we don't believe this paragraph necessarily applies to the point being made.*
21	#6. Finding: Last sentence	Currently only a small percentage of program participants have used flex rent lease agreements but if a larger number do so, there is a possibility that the program's "cost" (forgone revenue) would go up.	Currently only a small percentage of program participants have used flex rent lease agreements but if a larger number do so, there is a possibility that the program's "cost" (forgone revenue) may increase.

Legislative Auditor's Summary of Agency Response

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

Beginning Farmer Board Chair Don Anthony's response highlights several areas of disagreement with the audit's findings and recommendations. Those areas of concern are highlighted below, along with the Audit Office's response.

Distressed Areas

Regarding the Office's analysis of distressed areas, the Board asks that the Legislature "consider using an applicable measure suited for agriculture." For this metric, the Office utilized the Department of Labor's definition of "Areas of Substantial Unemployment" (as required by, and defined in, Neb. Rev. Stat. § 50-1209). While the Areas of Substantial Unemployment (ASU) definition includes farm employment, limitations exist in the analysis. The ASU definition sometimes omits rural counties, as it requires census tracts with populations of 10,000 residents or greater, which has the potential to skew results of this analysis. Due to the Board's response, the Office added discussion regarding this issue to the Audit Summary and Committee Recommendations section of the final report.

Policy Question 1: Consecutive Participation by Beginning Farmers

The Board disagrees with the finding that statute disallows a beginning farmer from participating in multiple lease agreements under the Beginning Farmer Tax Credit Act. The Board believes the statutory limitation (Neb. Rev. Stat. § 77-5209(2)) is intended to limit a beginning farmer's consecutive participation with the *same asset*, not their participation in the program with another asset. The Board's response points to their regulations, which confirms their interpretation of the statute, and also states the Board's belief that they are administering the program as intended.

The Audit Office disagrees with the Board's assessment. The Office believes the statutory limitation on consecutive participation by the beginning farmer is unambiguous and is further confirmed by the legislative history. As regulations are promulgated by the Board, they reflect the Board's interpretation. However, regulations are subordinate to statute and the Office believes the Board's interpretation is in conflict with both the plain language of the Act and the Legislature's intent.

Policy Question 2: Consecutive Participation by Asset Owners

The Board disagrees with the finding that statute disallows an asset owner from participating in multiple lease agreements using different assets under the Act. The Board believes the specific statutory language in Neb. Rev. Stat. § 77-5211(3) is intended only apply to situations where the lease agreement is terminated by no fault of the asset owner, which then allows the same asset to be leased again under the Act. The Board believes they are administering the Act as intended by allowing asset owners to enter into multiple lease agreements with the same and/or multiple beginning farmers, as long as each asset is only utilized under the Act once.

The Audit Office partially agrees with the Board's interpretation. The Office believes the *intent* of the Legislature, as reflected in the legislative history, is being met by the Board's implementation; however, the plain language of the Act itself prohibits an asset owner from receiving credits on multiple lease agreements.

Policy Question 5: Leases for Large Operations

The Board disagrees with the finding that certain leases for large operations may conflict with the Legislature's intention that the Act support small farming operations. The Board cites the fact that "small farming operation" is not defined and disagrees that the statutory stipulation that the beginning farmer provide the "majority of the day-to-day physical labor and management of the operation" is intended to limit participation with larger assets. The Board also cites the meeting of all other qualifications for beginning farmers as the limiting factor for participation.

The Audit Office neither agrees nor disagrees with the Board's interpretation. We raised the size of leased properties as a policy issue due to the legislative history suggesting that the intent of the Act was to help small operations. In the course of the audit, we found certain instances of the Board's administration that may conflict with this intent. However, we agree with the Board and noted in the report that, as the Act does not limit the size of operations able to receive benefits, statute does not currently reflect that intention.

Suggested Edits

The Board also submitted a list of suggested changes to the report. The Office accepted the majority of the Board's suggestions and they are reflected in the final report.

State of Nebraska

LEGISLATIVE COUNCIL

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Legislative Fiscal Office
PO Box 94604, State Capitol
Lincoln, NE 68509-4604

September 11, 2018

Martha Carter
Legislative Auditor
Performance Audit
11th Floor, State Capitol
Lincoln, NE 68509

Dear Martha;

You have asked the Fiscal Office to review the draft report "The Beginning Farmer Tax Credit Act: Performance on Selected Metrics" as to whether the recommendations can be implemented by the agency within its current appropriations.

Our review indicates that there should be no likely fiscal impact as a result of the recommendations included.

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

Sincerely,

Tom Bergquist
Legislative Fiscal Analyst

09181052 Martha Carter Letter TB