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Revenue Committee
January 17, 2007

[LB145 LB155 LB166 LB167 LB168]

The Committee on Revenue met at 1:30 p.m. on Wednesday, January 17, 2007, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB166, LB167, LB168, LB155, and LB145. Senators present: Ray Janssen, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Carroll Burling; Chris Langemeier; Don Preister; Ron Raikes; and Tom White. Senators absent: Abbie Cornett.

SENATOR JANSSEN: Good afternoon, ladies and gentlemen, and welcome to the Revenue Committee hearings for this afternoon. For the record, my name is Ray Janssen. I'm from the 15th Legislative District. And the senators that are with us today are, from my left to right, Senator Don Preister, Senator Carroll Burling, Senator Cornett is not here yet, Senator Dierks is not here yet, and to my far right is Senator White from Omaha, and Senator Langemeier. And, let's see, George Kilpatrick is to my immediate right. He's the committee counsel. Bill Lock is the research analyst. I believe he will be with us in a little bit. And our committee clerk is Erma James, to my far right. And our page for the year, I understand, is Marcus. I'd like to have you take heed of some of the rules we're going to have. Make sure you turn off your cell phones and your pagers while you're in the hearing room. If I hear one go off, you might see another side of me. The sign-in sheets for the testifiers are at the table at both doors, and they need to be completed by everyone wishing to testify. If you are testifying on more than one bill, you need to submit a form for each bill. Please print and complete the forms prior to coming up to testify. When you come up to testify, make sure you hand your testifier sheet to the committee clerk, Ms. James, on my right. There are also clipboards in the back of the room to sign if you do not wish to testify but you want to say that you were here, but would like to indicate your support or opposition for that particular piece of legislation. These sheets will be included in the official record. We will follow the agenda posted on the door. The introducer or the representative will present the bill, followed by proponents, opponents, and then those in a neutral capacity. Only the introducer will have the opportunity for closing remarks. As you begin your testimony, state your name and spell it for the record. If you have handouts, please bring ten copies for the committee and staff. If you only have the original, we would be glad to make copies for you. Give the handouts to the pages to circulate to the committee when you come up to testify or thereabouts. With that, again I'd like to welcome you all here. We have some new members on the committee. The new members are here, all except for Senator Preister, so that's a good sign. We will start the hearing today with LB166, which is a Revenue Committee bill. It changes the provisions relating to property taxation and assessment. And, George, it's all yours. Is there any questions of anyone before we get started? Okay, we follow the rules and we'll do just fine. [LB166]

GEORGE KILPATRICK: Thank you, Senator Janssen. My name is George Kilpatrick, legal counsel of the Revenue Committee, introducing LB166 on behalf of the committee.

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

Revenue Committee
January 17, 2007

This, like our other committee bills, were brought to us by the agencies which we have jurisdiction over as a Revenue Committee. This particular one from the Department of Property Assessment and Taxation, whose director is Property Tax Administrator, Cathy Lang, who will be able to explain exactly how they derived some of these things. I would call your attention to, I guess, two matters that are substantive. People sometimes ask, is this cleanup? Is this technical? And I'm always very cautious of that term, because if it changes an outcome I assume it's not really technical. And there's plenty of things of that nature that are technical or not significant, and there are a couple of issues which do change an outcome and I'll call your attention to a couple of the more "significants." One is a little bit of change in the way that we're going to recapture greenbelt, or phase in the recapture...phase out the recapture of greenbelt. As you may recall, last year LB808 contained LB407, which was a Senator Raikes bill from the year earlier, that eliminated recapture of greenbelt assessment preference. There was a rule that said that you would recapture three or four years, depending upon which year or when during the year the greenbelt assessment practice was disqualified or when it became developed or when the county became aware that it was going to be developed. And if it were in the first, oh, I'd say two-thirds of the year, the value for that tax year would be changed and then the recapture would be the prior three years. If it were changed in the last third of the year, that value would not be changed for the current tax year, but it would be recaptured for the prior four years, including the year in which it was disqualified, but was still given the lower assessment. So the number of years involved was the same, in any event, and it had been that way for a number of years. And at the time that LB808 passed, a compromise was achieved where the recapture would be phased out. Instead of being simply eliminated, it would be phased out over a three-year period. And there was a schedule set up, and depending upon when during the year it was disqualified, depending upon how many years, would be recaptured. This approach says that instead of doing all of that, what we'll do is set the value at its higher recapture value in the statute, at the higher full market value, regardless of when during the year it was disqualified from a special value or greenbelt assessment, and then recapture two years in 2007, one year in 2008, and no years in 2009. It ends up being the same dollars, but it's a somewhat different procedure and outline in order to do that, and that is a change that some folks may notice. The other is the issue of who is eligible to file a protest of someone's value, because currently there is no, what attorneys would call, standing requirement in order to file a protest, meaning that you can protest your neighbor's value or the person down the block or anyone anywhere in the state, presumably, if you're willing to go and file the forms. And this proposal would say something along the lines of it's to be a taxpayer, somebody representing the taxpayer, or someone else who's not the taxpayer, but who is responsible for paying property taxes. Those are a couple of issues in the bill. Again, Cathy is behind me waiting to testify for further clarification or comment. [LB166]

SENATOR JANSSEN: Any questions? Seeing none, thank you, George. [LB166]

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

Revenue Committee
January 17, 2007

GEORGE KILPATRICK: Thank you. [LB166]

SENATOR JANSSEN: So with proponents? Ms. Lang, nice to have you here. [LB166]

CATHERINE LANG: Good afternoon, Chairman Janssen. [LB166]

SENATOR JANSSEN: Nice to have you here. [LB166]

CATHERINE LANG: (Exhibits 1 and 2) Nice to see you today. Members of the Revenue Committee, my name is Catherine Lang. I'm the Property Tax Administrator for the State of Nebraska, and I want to thank the committee for introducing LB166 on behalf of the agency. I'll take just a few minutes to go through each of the sections and then I would like to talk briefly about two amendments that we'd like to request, and those amendments are being handed out to you right now. The changes that we are recommending in this bill, some come from the county assessors. After they've examined the state of the law each and every year, they come up with ideas of ways to clarify or change to make the administration of the property tax or property assessment process easier. The sections that Mr. Kilpatrick mentioned to you, related to special valuation, came from our staff and our work with the assessors in looking at the implementation of LB808 from the prior session, and so I'll just go through them real quickly. Section 1 changes the date by which an application for exemption will be filed. Current law for, and this is for property that has become exempt during a year, they had in current law allows them to file up to December 1, and then the county board of equalization has to process that application. That's not enough time to get that application processed, so we're moving the date back to November 15, or requesting that the date be moved back to November 15. Section 2 amends a provision of the personal property valuation system, and it is a technical change related to the language of the statute. The current statute uses the word "or" and based on some information that was provided to us, we reviewed that and believe that the word should be "and" because those are two distinct authorities, and when we were looking at that we thought it would be easier just to break it into two distinct sentences. So the change you see in the bill creates two sentences to explain the two distinct powers. Sections 3, 4, and 5, we offer as clarification to the law that was passed last year regarding special valuation, and George has just gone through those with you. I think probably what I want to bring to your attention is that in our opinion it was not clear that when we do recapture for 2007 and 2008 tax years, that that recapture value, based on the changes made in LB808, is actual value. The prior policy was that the recapture value was at the same assessment level as agricultural land, so in prior years that would have been 80 percent of actual value. And last year it moved to actual value, and we are making a recommendation that for years prior to 2007, so that would be for this year, if you recapture you're going to recapture for '07, '06, and '05. We want to make sure that '06 and '05 are still at 80 percent of actual value, not 100 percent. We believe that based on concerns about notice, not that it would necessarily be a successful legal challenge, but

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

Revenue Committee
January 17, 2007

we just think it would be clearer for the landowner, because that's the notice that they received was 80 percent of actual value. You're going to hear testimony later on recommending that perhaps we should still continue to assess the recapture value at the same level of assessment as agricultural land, and I will tell you on the record now that I would be in support of that if that change were made to this bill. Section 6, I think, is an important one for the committee to consider, and I want the committee to know that when we drafted the change to this provision of law, we intentionally drafted it narrower than current law would allow in order to, we hope, stimulate the debate on this subject. And what this has to do with is who can file a valuation protest with the county board. Right now, if I wished to, I could file a protest on Senator Janssen's house. I could go into Dodge County and decide that I thought his value was too low and his value should be raised. And there's nothing in the law...well, I know you wouldn't like that very much, but there's nothing in the law that says specifically I can't do that. Now, certainly going up on appeal there are issues of standing and whether or not that you should be able to carry that forward, but at the county board level there's nothing that prohibits that specifically. And, in fact, our research on this matter indicated that there were more of these kind of protests than we had first originally thought. Now, it's my understanding that most of these protests are within the county of the person filing the protest, and what happens is, under current law, if I were to, let's say I was going to stick within Lancaster County and so I was going to go file a protest on Senator Raikes' house because his value was too low in my opinion... [LB166]

SENATOR RAIKES: Be careful. You might end up buying it. (Laughter) [LB166]

CATHERINE LANG: ...that the notice that would come from the county board would go to the protestor. So let's say the county board agreed. Senator Raikes' house is too low. We're going to raise it. That notice of the county board's action comes to me as the protestor. Senator Raikes gets no notice that his value is increased until he gets his tax statement in November or December. I don't think that would make him very happy. And so, our recommendation is, we believe it should be narrowed. We believe that the person who may file a protest at the county board must be filed by or on behalf of the owner of record or a person responsible for paying the tax. However, if in the end, the committee decides that it doesn't want to narrow it, that there are reasons why citizens should be able to file on their neighbors, if you will, then what we would recommend is alternative action to address the notice problem. So keep that in mind as you're thinking about which way we should go on this. The one reason it is drafted that it has to be filed by or on behalf of the owner is the following scenario. My mother receives her valuation notice and she is not doing well. I get the notice. I look at it and say, gee, I think this value is too high. I want to file on behalf of my mother. At the county board level we want to make sure that that is open to the person on behalf of the owner, so I could file on behalf of my mother. Going on up, if I were to be dissatisfied with what the county board ultimately decides and I want to go to the Tax Equalization and Review Commission, I want the committee members to know that there will be additional

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

Revenue Committee
January 17, 2007

requirements on my behalf. I would need to have a power of attorney once I go on up. So I think at the county board level it's reasonable not to make it require that I would have to file a power of attorney at that point. So it's a little more open at the county board level. We also avoid the issues then of the problem of notice, because now the notice of the county board action comes back to me. I'm either the owner or I'm a person filing on behalf of the owner, and we would hope that it would prevent any potential shock on the tax statement depending on what the county board did. Now, are there reasons why we might want citizens to be able to file on other properties? And the answer to that is, yes, perhaps there are. I'll give you an example. I am looking at the properties up and down my street and I realize that the house next door to me is valued \$100,000 less than it was a year ago, and I know they didn't do anything. I know they didn't remove something from the property. And I think, oh my gosh, that just doesn't seem right. Now certainly, can I bring that matter to the attention of the county assessor? Yes. But would it also be reasonable to think that maybe I should be able to file a protest on that value? Maybe the county assessor is unaware of that issue. Maybe it was an error. If it's an error, maybe my neighbor is not going to say anything about it. And when we think about uniform and proportionate valuation and the taxes assessed thereon, maybe we want those kind of protests to continue. In reality, are there very many of them? No. In reality, how many of those have ever gone on up to the Tax Equalization and Review Commission? Very, very few; not even a handful in the last ten years. But at the county board level we were surprised to find, in our research that we did, that there were more than we thought there were. So I give that to you as an issue, and perhaps, we'll hear some discussion on that today. Section 7 is a very technical amendment to the taxless correction requirements to allow for computer generated taxless corrections to be retained by the county official. Section 8 is a conformity to Section 7. Section 9 and 10 are the repealing sections. We are requesting that you repeal Section 77-1216. We believe that this section no longer has any purpose with regard to personal property. It's a provision that says, if there is an issue where personal property should be assessed within the county, that that matter would be resolved by the county board. I tell you, you don't need an extra sentence to say that. Right now, in state law, that would be where that would be resolved. However, if it's an issue that's between two counties, that matter could come to the Property Tax Administrator. In the 25 years that I have worked in state government there has been one of those cases. It happened about 15 years ago. I don't think there's any reason to have it there. I think that if there is a disagreement about where that property should be assessed between two counties, that there is adequate provisions of law and due process of law to resolve those now. And then Section 11 is the emergency clause for Sections 3, 4, 5, and 6. Then we offer two amendments to you today. The first one deals with the mobile home transfer statement that is required to be filed any time a mobile home is transferred. Currently, the law has very specific requirements. Not only is the form required to be promulgated by the Property Tax Administrator, but it says how many copies there should be. We are finding it very difficult to have vendors produce pressure sensitive paper, multicolored forms. People want to print these things off the Internet and file

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

Revenue Committee
January 17, 2007

them. We had explored the idea with the Nebraska Association of County Officials, that perhaps we could repeal this form altogether. The feedback we received from NACO is that counties do use this form to track ownership. So we did not recommend repealing the form. But we will work with NACO to make sure that when we do promulgate this form, that it is promulgated in a way that is useful to the county officials that need it. So removing the requirements is not an intent on our part to just shove it out there in some way that won't work for the county officials. But we want to find a more modern way to be able to have property owners, real estate agents, lawyers, abstractors, lenders, use not only a form like this, but eventually the form 521, the real estate transfer statement, where you can download it off the Internet; you can print it yourself. You can already input the data so it would be typed in there, and you don't have to handwrite these things. So we want to change what we're doing with the mobile home transfer statement, and then also work to do the same thing for the real estate transfer statement through the next year. And then the last amendment is the Greenbelt Advisory Committee. This is a committee that our agency provides support to. And this last summer they met and made recommendations to their membership based on the changes that have been made to special valuation. One, we no longer have a zoning restriction for special valuation, so we don't believe on the Greenbelt Advisory Committee that you need a zoning administrator. We've also had, not difficulty, but county attorneys are awfully busy and it has been difficult to find a county attorney who's willing to serve on the committee, so we've removed a county attorney representative from this, as well as we removed some archaic language with regard to the agricultural and horticultural land valuation boards which no longer exist. I'm offering this amendment on behalf of the Greenbelt Advisory Committee and I would ask that you amend it into LB166. And with that, I'd be happy to answer any questions. [LB166]

SENATOR JANSSEN: Any questions? Senator Langemeier. [LB166]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. Going back to Section 6 on the appeal process. [LB166]

CATHERINE LANG: Um-hum. [LB166]

SENATOR LANGEMEIER: What's the harm of having anybody have the opportunity other than the shock and awe, as Senator Raikes used as an example, would have? Where's the harm factor in that? [LB166]

CATHERINE LANG: I don't think that there is necessarily a harm factor except for the due process issues, and this is the question it will beg. I file a protest on Senator Raikes' house. It's June 30. County board now has to schedule that hearing. Do they need to give Senator Raikes a notice that I have filed a protest on his property? Currently, the issue with regard to giving notice of when you can come to your county board of equalization hearing is not consistent, and so it would add a requirement for these kinds

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

Revenue Committee
January 17, 2007

of protests that may not necessarily exist for other kinds of protests, and that would beg issues of notice during the county board of equalization process that we currently leave up to the county boards to decide. So I think the downside of doing it, is that it starts to beg all these due process questions that we're going to then need to answer. So we sort of took the easy out by narrowing it, even though I don't think that there necessarily is a harm as long as you solve those due process issues. [LB166]

SENATOR LANGEMEIER: Okay, thank you. [LB166]

CATHERINE LANG: You bet. [LB166]

SENATOR JANSSEN: Any other questions? Okay, Cathy, I have one. [LB166]

CATHERINE LANG: Yes. [LB166]

SENATOR JANSSEN: You said there were more protests than you anticipated. [LB166]

CATHERINE LANG: Um-hum. [LB166]

SENATOR JANSSEN: Now are they coming from the property owner or are they coming from someone else? [LB166]

CATHERINE LANG: Well, they're not coming from the property owner. We know that. They may be coming from family members. So it would be one of those situations where they were filed...without the county knowing this, they were filed on behalf of the owner: me filing on behalf of my mom but the county doesn't know that. [LB166]

SENATOR JANSSEN: Um-hum. [LB166]

CATHERINE LANG: We don't know that distinction. [LB166]

SENATOR JANSSEN: Okay. [LB166]

CATHERINE LANG: We didn't do the research to sort of ferret that out. We were just surprised that there were more of them than we thought: someone, not the owner, filing a protest on a property. We were surprised. [LB166]

SENATOR JANSSEN: Okay, all right. [LB166]

CATHERINE LANG: Yup. [LB166]

SENATOR JANSSEN: I don't see anymore questions. Thank you. [LB166]

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

Revenue Committee
January 17, 2007

CATHERINE LANG: Yes, thank you. [LB166]

SENATOR JANSSEN: Next testifier, please? Next proponent? [LB166]

JAY REMPE: (Exhibit 3) Senator Janssen and members of the Revenue Committee, my name is Jay Rempe, that's J-a-y R-e-m-p-e. I'm the state director of governmental relations for Nebraska Farm Bureau Federation, and I'm here today on behalf of Farm Bureau in support of LB166. In reality, I'm largely indifferent to LB166, but it does make some changes, as Ms. Lang eluded to, to the greenbelt provisions and the recapture provisions, that brought to light to me a change that was made last year in LB808 that I wanted to bring to your attention and I guess revisit that policy decision. And it was a decision, it's not so much on how many years you collect recapture taxes and how far you go back, those kind of things; it's on setting the value or that recapture value. Up until LB808 passed last year, we've always treated land that is qualified for special use value, when it becomes disqualified and you collect those recapture taxes, that recapture value is figured as if it is ag land, using the 80 percent figure to calculate that. Last year, unbeknownst to me at the time, and I went to George and asked him, tell me this isn't so, but he said no, it's true, that we changed the calculation of that recapture value to be 100 percent of actual value. And why the policy change was made, I'm not sure. I don't know. And we would question that policy change for three reasons. One, we are now in the process of phasing out recapture. In our minds, it doesn't make any sense to change the way we calculate that recapture value, when we've done it one way through the life of the program and now we're going to phase out that recapture and all of a sudden we're changing how that is calculated. We don't think that makes sense. It just creates more confusion out there. Two, I think it could inadvertently penalize some taxpayers that apply for the greenbelt program, enroll. The reason they are applying and enrolling is because they feel that there are non-ag influences on their ag land, and so they are enrolling in the program. They, for whatever reason, become disqualified. Now, instead of paying now what would be 75 percent of value, now they've got to pay recapture taxes based on 100 percent of value. And so they end up paying more taxes than they would have if they hadn't enrolled or applied for the greenbelt provision. And so it could inadvertently penalize some of the taxpayers that the program or the provision was designed to try to alleviate. And then lastly, we don't see any reason why, again, we're collecting these recapture taxes when the land was in an ag use, and we don't see why we're treating that land, when it's in an ag use, any differently than you would any other ag land. And so we would ask the committee to consider going back and making a change in the law, and instead of calculating recapture value at 100 percent, go back to the way we used to do it and calculate it at 75 percent of market value. And I think you have an amendment that we've offered that would go into Section 77-201 and do that. And if you were to adopt that and do that, then you'd have to also change some language on page 11 of this bill to reflect that 70 percent. The language on page 11 that was suggested you go back and collect the 80 percent on years '05 and '06, that's fine, because that was the law in place at the time. What we would ask is on

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

Revenue Committee
January 17, 2007

lines 20-22, that for land disqualified in 2008, that you insert 75 percent there, and that way we're operating under the same framework. And I might add, I'm not planning on testifying, but in the next bill, LB167, it makes some adjustments to the TERC's range, valuation range, to reflect the change that was made last year. And if you would go back to what we're suggesting, you wouldn't need to make those changes in LB167 either. So I appreciate your time, and it's a bit confusing but I wanted to get that issue back out in front of the committee and have you consider it again. And I would be glad to take any questions you might have. [LB166]

SENATOR JANSSEN: Any questions? Senator Raikes. [LB166]

SENATOR RAIKES: Jay, the only year that's of issue for you then is 2008? [LB166]

JAY REMPE: Yeah. The way this bill is crafted, the only year that would be an issue would be 2008. [LB166]

SENATOR RAIKES: Okay. [LB166]

SENATOR JANSSEN: Any other questions? I don't see any. Thanks, Jay. [LB166]

JAY REMPE: Um-hum. [LB166]

SENATOR JANSSEN: Next proponent, please? [LB166]

BILL PETERS: Mr. Chairman, members of the committee, my name is Bill Peters, P-e-t-e-r-s. I'm appearing here on behalf of myself to offer support and a suggested amendment to LB166. I'm particularly focused on Section 6, the provision that prohibits what we refer to as some spite protest. It certainly doesn't help a neighborhood, particularly a neighborhood association, if they're turning each other in formally. It can be accomplished by a simple call to the assessor or your county commissioner. There's one area that I would like to bring to your attention that's not addressed, but it is part of this same section, and that's the trap that's out there for property taxpayers on appealing their valuation. The trap involves personal property. At the present time, if you want to appeal your personal property value, you have to do it by the date that your return is due, which is May 1. You do not get notice from the county on what your real estate value is until June 1. Now, where the problem comes is where you have a mixed use property. And this is going to primarily be in manufacturing, processing, refining where we get into an issue, which I think we'll be addressing later in the session as well, as to what is personal and what is real property. It's easy for taxpayers to get into a situation. They know what they put into the plant. They know what they think real property is and they know what they think their personal property is and account for the full value. File their personal property return, to find out much later that the assessor has a different opinion on what is real estate. So they have this real estate value that's much

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

Revenue Committee
January 17, 2007

higher than would be required if some of that personal property was accounted for. I think it would be best served if those issues were addressed at the same time, and that could be simply accomplished, on page 13, line 5, by after the word "real," insert "and personal," and then strike the sentence starting on line 9, with the word "protest." That way it's the same date for filing your real and personal, it can be considered by the county board during the same time, and it avoids a trap. Won't be trapped by any of my clients since I figured that one out, but there's a whole lot of other folks out there that are going to get disappointed if we don't bring some change here. That concludes my testimony, Mr. Chairman. [LB166]

SENATOR JANSSEN: Okay, any questions? Ron. [LB166]

SENATOR RAIKES: The effect of that then would be to move the date for filing the personal property tax return later... [LB166]

BILL PETERS: Yes. [LB166]

SENATOR RAIKES: ...to June 1. [LB166]

BILL PETERS: From May 1 to June 1. [LB166]

SENATOR RAIKES: Yeah. [LB166]

BILL PETERS: Or actually June 30, because right now the final day for filing personal property is May 1. [LB166]

SENATOR RAIKES: Okay. [LB166]

SENATOR JANSSEN: Anyone else? Any other questions? Don't see any. Thanks, Bill. [LB166]

BILL PETERS: Thank you. [LB166]

WILLIAM R. WICKERSHAM: Chairman Janssen, members of the committee, my name is Bob Wickersham. I am a commissioner on the Tax Equalization and Review Commission. I'm appearing in support of LB166, and I ought to be careful to just say that I really only have a concern about one section and that is Section 6. That is the section, as Ms. Lang described it to you, would in some respects restrict the persons who could file a protest at the county board level. In my view, that's an entirely appropriate change for a couple of reasons. One, I think we've had a reference to spite protests. I don't think any of us believe that that is helpful if that occurs in the administration of the property assessment system. And so to the extent that we might have spite protests, I don't think we should allow them, just as a matter of course. Now,

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

Revenue Committee
January 17, 2007

I don't see how you...in advance, I don't see how you can separate that out except that if it's their property or they're responsible for payment of the tax, it's not going to be a spite protest. Secondly, if you do not like the result that you get at the county board level, you have to have standing when you come to the commission, and even if you thought you didn't have to have standing when you come to the commission, you have to have standing when you get to the Court of Appeals or the Supreme Court. You have to have an interest in the outcome of the proceeding. And those are old rules; they're both common law and statutory rules. And they're sensible at the most basic level, in that if you have standing, if you have a real stake in the outcome of a proceeding, then you will make the very best presentation possible to the persons who have to decide the issue. If you're not that person, you won't make the best presentation. And the adversarial system is designed or should be designed to produce the very best decision that is possible, not a decision that might be based on spite or some other factor, but a decision that is based on the best evidence that adversaries in the system can bring to you. Now, the issue that Ms. Lang raises about two property owners, one that is perhaps under assessed and the other that is perhaps assessed correctly. There may be a remedy in the current system for that situation, and that is for the property owner who believes that they are disproportionately assessed with their neighbor, to bring a protest based on the equalized value of their property, and we see a fair number of those at the commission. In fact, in the last couple of days we've heard one. We do hear arguments where people say my property is valued at a higher proportion of its actual or taxable value than my neighbors, and I'm entitled, and there are Supreme Court decisions to this effect, I'm entitled to be equalized to their value. If they're being taxed at 60 percent of actual value, I'm entitled to be taxed at 60 percent of value, and that's the remedy. So there is an alternative available to that taxpayer, and the alternative is to protest their own property and perhaps to have the assessment of their property lowered. Now, if the county assessor or the county board, either one, would perceive that there was, in fact, an inequity in the assessment ratios of the two properties, the county assessor and the county board have a remedy, and that is to treat the property that is undervalued as undervalued property. There's a specific procedure set out in statute. The county assessor can advise the county board that the property is undervalued. The county board gives notice of what they believe the appropriate value would be. And you can treat the problem or the issue, if it is perceived to be a legitimate issue, at the local level in that fashion. So there is an alternative. It is not necessary to have your neighbor protest and declare that your property is valued too low. They can easily protest and declare that their property is valued too high on a proportionate basis with their neighbor, and let the system take its course. Either you have the potential of being lowered or the system could actually raise the neighbor's property. [LB166]

SENATOR JANSSEN: Senator Raikes. [LB166]

SENATOR RAIKES: What if I think my neighbor's property is valued too high? [LB166]

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

Revenue Committee
January 17, 2007

WILLIAM R. WICKERSHAM: Well, you should be grateful and you might encourage... [LB166]

SENATOR RAIKES: No, not if I am equalized to a value that is too high. I mean, why wouldn't I have standing and all other of that kind of stuff you're talking about, on that basis? Look, they use his house to establish the value of my house and his is too high. [LB166]

WILLIAM R. WICKERSHAM: That would not have been the system, at least as I understand it. They would not have used your neighbor's house to set your value. Now, values are set by sales or they're set by other methodologies that are based...if it's a residence, it's going to be either the cost approach or sales. Now, your neighbor's house, if it's sold, might be a component in the determination of the value of your property, but it wouldn't be the sole determinant. That would be very unusual. Now, if your neighbor...now let me postulate this question to you, Senator: if your neighbor doesn't believe their property is valued too high, why should you? [LB166]

SENATOR RAIKES: They got more money than I've got. [LB166]

WILLIAM R. WICKERSHAM: Well, and that is exactly the point, Senator: because they will pay more tax than what you think is maybe appropriate and it would lower your burden. [LB166]

SENATOR RAIKES: All right. [LB166]

SENATOR JANSSEN: Senator White. [LB166]

SENATOR WHITE: Let's say I'm a parent and I rent, and I think that a business or a large property owner has an improper political relationship with the assessor. What's my remedy? [LB166]

WILLIAM R. WICKERSHAM: I don't know that you have one, Senator. [LB166]

SENATOR WHITE: Don't you think, as a citizen, I have a right to a fair and equal property tax even though I don't own a property, since I am entitled, as a citizen, to participate in the benefits that flow from the taxes derived on the value? [LB166]

WILLIAM R. WICKERSHAM: Senator, under the current law I don't know that you have a remedy, and LB166 would not give you a remedy. [LB166]

SENATOR WHITE: No, the current law would allow me to protest that improperly valued property. Now I agree that we might need to give notices, but say I'm a renter and I think a large factory in my school district is not paying enough, but my children need money

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

Revenue Committee
January 17, 2007

for school. Right now, I can protest that property, can I not? [LB166]

WILLIAM R. WICKERSHAM: You can protest. I don't know if you would get any relief from the county board, and if you did not get relief from the county board, I think you would not have a further avenue for relief. [LB166]

SENATOR WHITE: Really? You think that I do not have the standing, as a civil rights matter, on the equal application of taxes unless I'm a property tax owner? Only property tax owners have that right now? Is that your testimony, sir? [LB166]

WILLIAM R. WICKERSHAM: Yes, sir. That is, and I think that can be derived from decisions of the Nebraska Supreme Court. I think that is the law. Now, if you are a renter, that doesn't mean that you're not a taxpayer. You might be paying tax of some sort. I guess, automobile taxes are no longer taxes, they're fees and they're not based on an ad valorem base. But there is one decision that I'm aware of that gives a taxpayer standing in a circumstance where they were not an owner or directly responsible for the tax. That had to do with an exemption decision; it's the Ryan decision. I'll be happy to give that to you if you wish. There was a determination that a party had standing on appeal in an exemption proceeding. There are other cases that are really quite confusing about whether or not you'd have standing to protest valuation. One of them is a case called Alpha Omega. It really had to do with property owned by a former state senator. The case is hopelessly confusing, but if you're interested in that, I'll provide that to you as well. [LB166]

SENATOR WHITE: Thank you. [LB166]

SENATOR JANSSEN: Any other questions? Looks like that's it, Bob. [LB166]

WILLIAM R. WICKERSHAM: All right, thank you. [LB166]

SENATOR JANSSEN: Thank you for being here. Next proponent, please? Are there anymore proponents? Any opponents? Seeing none, anyone in a neutral capacity? That looks like we're finished with LB166, George, for the next one. LB167. [LB166]

GEORGE KILPATRICK: Thank you, Mr. Chairman. My name is George Kilpatrick, legal counsel of the Revenue Committee, here to introduce LB167 on behalf of the committee. This is a similar agency request. This one comes from the Tax Equalization and Review Commission, which there is three representatives here today that I see anyway. Their request has been broken up into two bills, and there's a reason for that, and let me explain why it's in two bills. The second one is focused upon one issue, one issue. It was in the agency's request bill last year, a bill numbered LB812. Some of the material in this bill was in that bill as well; not all. In fact it was probably less than half, but some of it was in last year's request. It got left behind. There were objections raised

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

Revenue Committee
January 17, 2007

about the part of the bill that is in the second request, in LB168, and the committee took that out. There is some other matters. And what we ended up doing in processing the bills was to try and pick what we felt were, or what you felt, the committee felt, were the most important aspects of the other bill, move forward with them, and leave everything else behind. So this bill contains some material repeated from LB812 last year, relatively minor, I guess, issues. A couple of things deal, that I will call your attention to, deal with a couple of cases. One in which a district court heard a case in original, at least I believe, in original jurisdiction, about a valuation issue through a process different from the county board of equalization and TERC and so forth, from what we thought was the law. And this simply clarifies that district courts do not have jurisdiction over valuation and issues within the purview of the TERC. And then secondly, one that was based upon where the record failed to reflect that the issue that the TERC decided the case on was taken up and determined by the county board of equalization. And the TERC reviews cases in error, and there's some language along those lines, de novo in error, and there's some language along that line. And the Court of Appeals ended up saying the TERC was without power to decide on this basis because it was not raised at the county board of equalization, a result that causes some difficulties because of the informality and lack of record and so forth at the county board of equalization process. So I will call your attention to those two, and those two items are new for this year and not in last year's bills. Are there any questions? [LB167]

SENATOR JANSSEN: Questions? Seeing none, thank you, George. Take proponents? [LB167]

WILLIAM R. WICKERSHAM: Senator Janssen, members of the committee, my name is Bob Wickersham. I'm a commissioner on the Tax Equalization and Review Commission and I'm appearing in support of LB167. As Mr. Kilpatrick indicated, there are several issues that if you were here for a hearing last year, you would have heard about them. I can go through them quickly. Again, Mr. Kilpatrick referenced Section 1 that deals with an unusual, what we thought was an unusual circumstance where the district court for Douglas County made a decision in a proceeding that...well, I and I think most other observers thought that issue should have been brought, could have only been brought to the commission. It wasn't. The district court made a decision and that was it, but it was an extremely unusual, from our standpoint, an extremely unusual proceeding. And if anyone had any doubts about what the statutory scheme is intended to result in, and that is appeals to the commission for valuation or exemption purposes, then that's what Section 1 does. It should remove all doubt. Section 2 is a kind of a administrative issue, if you will, for the commission. When the commission was formed we didn't quite know when it was going to get up and running, so commissioner terms began on the date that they were appointed. This would simply move all the commission terms to begin on January 1, so that we know when a term begins and when a term ends without trying to look back and find records that are six years old at a minimum, to determine when someone was appointed. It also, the existing language raises issues if you're

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

Revenue Committee
January 17, 2007

reappointed. Does your original appointment date govern? Does your reappointment date govern? It's just, from the commission's standpoint of certitude and clarity, just move us all to January 1 and get it out of the way. Section 3 has to do with venue provisions. If you want to bring certain actions, where would you bring those? For example, for enforcement of a commission order, you would bring that in Lancaster County as specifies venue. That's a similar provision that appears in statutes for other agencies. Section 4 has a couple of components to it. One is a clarification of language that has to do with formal hearings. The commission does not, as a matter of course, hold formal hearings, but after we reviewed the language we thought it was appropriate to clarify certain aspects of the language having to do with the retention of a court reporter, and then the collection of costs for the court reporter and other costs dependent on the outcome of the proceeding. Section 5 has to do with the, what we characterize as the Harrison Square issue, or I'm sorry, that's still in the section that has to do with 77-5016, but it has to do with what we characterize as the Harrison Square decision. That was to our estimation a very narrow decision in that it indicated that a very small issue had to be brought up at the county board for the commission to consider the issue of value. Our solution is just to say that if taxable value is at issue in the county board, we can consider all questions related to the determination of taxable value on the evidence that is presented to us. There's also the elimination of duplicating language in that section. You'll find that language also appears in 77-5018. There is a section that cleans up the provisions for the suspension of an assessor's certificate. The current section allows for two things, if you read the language, both a suspension or removal of a certificate and the removal from office. Well, the commission does not wish to be in the business of removing people from office, and we've never brought a proceeding to suspend or terminate someone's assessor certificate. But the provision suggests that we should just eliminate the language having to do with the removal from office and clarify the provisions that it would have to do with the suspension or the removal of a certificate. Another provision deals with guidelines that the commission would use while it is conducting its statewide equalization proceedings. A couple of years ago, in an attempt to advise people about the parameters that the individual commission members might consider as they were evaluating the material that was presented by the Property Tax Administrator and others, we said here's generally the framework that we will think about these items in. For our efforts we were sued, because people said that we should have adopted those guidelines as a rule or regulation. Of course, adopting those guidelines as a rule or regulation would not have given us any flexibility. We would have had to have promulgated them far in advance. We would have had to then strictly adhere to them. We wanted to simply give advice to people about what we were thinking about and how we might evaluate and consider some of the information that was presented to us without tying our hands to those things, because the information that's presented by the Property Tax Administrator and others is not, frankly, capable of squeezing into a handful of guidelines that you would always apply. There are inevitably exceptions, and if you try to put guidelines into rules and regulations it would not have been workable. At the same time, we wanted to

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

Revenue Committee
January 17, 2007

advise people, in general, what kind of criteria, what kind of analysis we might apply to the information that was presented to us. As I said, we were sued. That has been settled, but we would like to have the explicit authority to talk about the guidelines or the criteria or the standards, however you want to describe it, that individual members of the commission might use as they evaluate the information that is presented to us, so people know without trying to divine it, if you will, from what we do. There is a provision that, as noted in the discussion of LB166, conforms the guidelines for the commission in equalization to the recapture tax value that would be 100 percent rather than 80 or 75 percent. There is another change that would eliminate language that currently requires the commission to hit a number in equalization that is tied to statistical measure characterized as an indicator of central tendency. That is the median in the commission's use, but we would ask to not be tied to that specific number or that specific number derived from that statistical indicator, and simply be allowed to say that the level of value determined by the commission. Now we're going to determine the level of value based on statistical measures and we're going to use the median, but tying us to a specific factor as the current language of the statute does, does create some difficulties in the mathematics of the determination and it does reduce the flexibility that might be more appropriate in the determination of the level of value. There is another change that is, I think, largely unimportant, but I wish to call it to your attention, and that is the factor of in the statewide equalization proceedings we have persons appear on behalf of the county. Now, we don't know...the current language says that you can have a legal representative of the county appear. The commission has rules and regulations that says the legal representative can be the county assessor, can be the county clerk, can be the county attorney, can be the chairperson of the county board, but there isn't anything that really tells us who a legal representative is. And we wish to have at least one person identified clearly as being a legal representative of the county, and that is the county assessor. They're the ones who most frequently appear before the commission in the statewide equalization proceedings, and if we knew explicitly that they were a county representative, then they can do various things on behalf of the county without any doubt that they have the authority to do that. They can waive notice of hearing, for example. They can consent to the entry of an order without a hearing. There are kind of procedural issues that we think it will help us with. There are a couple of other minor things in the bill, but if you have questions about those, I'll be happy to respond to those or to questions about the more substantive matters that I've tried to describe in brief. [LB167]

SENATOR JANSSEN: Any questions? Senator Burling. [LB167]

SENATOR BURLING: Thank you, Mr. Wickersham. Do you know how many counties still use the state for their assessor services? [LB167]

WILLIAM R. WICKERSHAM: I believe there are nine. [LB167]

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

Revenue Committee
January 17, 2007

SENATOR BURLING: Nine. But this wouldn't affect... [LB167]

WILLIAM R. WICKERSHAM: No, sir. [LB167]

SENATOR BURLING: ...that procedure at all? [LB167]

WILLIAM R. WICKERSHAM: No, sir. [LB167]

SENATOR BURLING: Okay. [LB167]

WILLIAM R. WICKERSHAM: You're speaking about the assessor in the county... [LB167]

SENATOR BURLING: Representing the county. [LB167]

WILLIAM R. WICKERSHAM: ...statewide equalization? No. And we frequently have the state assessment...well, they're called state assessment managers, I think, at the moment, that can appear in those proceedings, and do, and represent the county. The language that is in the sections that deal with assumption of the assessor's function by the state, and also the definition of assessor that appears in the statutes, say that the Property Tax Administrator has assumed the duties of the county assessor. [LB167]

SENATOR BURLING: Okay. Thank you. [LB167]

WILLIAM R. WICKERSHAM: So it's our belief that they substantially stand in the shoes of the county assessor. [LB167]

SENATOR BURLING: Thank you. [LB167]

WILLIAM R. WICKERSHAM: And we hope that's right. [LB167]

SENATOR JANSSEN: Ron. [LB167]

SENATOR RAIKES: Formally adopted guidelines. Is there a parallel someplace else? I mean, not regulations, but formally adopted guidelines. Who else does that? [LB167]

WILLIAM R. WICKERSHAM: I don't know. I don't know of anybody. But, Senator, it is unusual, and it would be outside the normal requirement, if you characterize it as a normal requirement, for rules and regulations. And if the Legislature doesn't...this isn't going to sound right, it just isn't...if people don't want to know what we're thinking about, we won't tell them. But we can't tie our hands with rules and regulations because the statewide equalization process involves so many permutations or possibilities that there isn't any way to shove it into a few guidelines and make those guidelines work. Now,

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

Revenue Committee
January 17, 2007

you can have guidelines so that you know, in general, what you want to think about, but you can't say that you're going to absolutely in an ironclad fashion apply those guidelines to every specific set of facts or circumstances that come before you. We could issue a rule and regulation, for example, that said this is a rule and regulation and this is what we'll do except when we don't want to. But that doesn't help you either. [LB167]

SENATOR RAIKES: Well, you really want to, you say, formally adopt guidelines. You want to propose guidelines which you may or may not adhere to. [LB167]

WILLIAM R. WICKERSHAM: That's correct, but at least you have some notice of what we're thinking about, otherwise there isn't any. I don't think it's a good situation, because if you're going to go through the statewide equalization process, you can't do that without at least some internalized guidelines. What are you going to look at? What do you think are the important factors to look at? After you've decided what you think the most important factors to look at, out of 100 pages of material for a given county, for example, once you've identified what you think are important to look at, then even after you've done that then how do you evaluate them? What criteria do you use to evaluate the specific piece of information that you think is important, and do you want to give people any notice about what you think is important and the criteria you'll apply to evaluate that particular piece of information? But to do that in a rule and regulation will not work, in our estimation. We'd like to be able to do that because it gives people notice, but we can't, we just can't tie our hands in the fashion that a rule or regulation would. At least that's our view. [LB167]

SENATOR RAIKES: Isn't that, to an extent, what case law does... [LB167]

WILLIAM R. WICKERSHAM: No. [LB167]

SENATOR RAIKES: ...in the rearview mirror? [LB167]

WILLIAM R. WICKERSHAM: Well, case law is always dependent on the particular facts and the application of law to a specific set of facts. If you have exactly the same set of facts and exactly the same law, you get the same result. But if the facts are slightly different, you may get a different result. And we, to say that we always had the same set of facts, is not the case. [LB167]

SENATOR JANSSEN: In other words, don't ask him because he's not going to tell you. (Laughter) [LB167]

WILLIAM R. WICKERSHAM: Well, I hope I did, Senator. Please, I'm not trying to be unresponsive. [LB167]

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

Revenue Committee
January 17, 2007

SENATOR JANSSEN: No, I'm just kidding, Bob. Any other questions? Thank you, Bob. Next proponent, please. [LB167]

BILL PETERS: Mr. Chairman, members of the committee, my name is Bill Peters, P-e-t-e-r-s, appearing here on behalf of myself. My appearance is limited to strongly supporting the provision in Section 6, page 8, the new sub (7), giving the commission authority to consider all issues relating to value on appeal. Again, this is just removing one of the traps that we have out there. And it clarifies that when you get to the commission, the TERC, you can talk about equalization, you can talk about valuation, and all approaches to valuation, without having done that at the county board level. To require this to be done at the county board level, we're moving toward making the county board a administrative body of record. How do you establish that at the county level? It's more complicated than needs to be, and this solves the problem and gives everybody a chance to present their case. With that, I would have no further testimony. [LB167]

SENATOR JANSSEN: Any questions? No. Cap, do you have one or are you just scratching your head? Okay, all right. [LB167]

BILL PETERS: Thank you. [LB167]

SENATOR JANSSEN: Thanks, Bill. Next proponent? I don't see any. Any opponents? Any opponents? Anybody in a neutral capacity? Okay, we do have a letter from the Catholic Conferences. (Exhibit 4) Is that in support, George? [LB167]

GEORGE KILPATRICK: Well, it's... [LB167]

SENATOR JANSSEN: I would say they're kind of in a neutral capacity probably. Anyway, that goes on the record as a letter from the Nebraska Catholic Conferences. With that, that closes the hearing on LB167. George with LB168. [LB167]

GEORGE KILPATRICK: Thank you, Chairman Janssen, members of the committee. My name is George Kilpatrick, introducing LB168 on behalf of the Revenue Committee. This is the other bill requested by the Tax Equalization and Review Commission and it is the bill that has to do with only one issue. This would grant authority to the TERC to remand issues to the county board for further action on behalf of the county board, typically to determine value, although I suppose that wouldn't necessarily be the case. It also, and I said county board and that would be the typical case, it includes remand to the Property Assessment and Taxation Department in those instances where they are the ones doing the valuation. And typically those are centrally assessed, things like telephone companies and railroads and so forth. It is the same power. And what the TERC is concerned about is issues where they feel that the taxpayer may not have gotten the assessment they should've had, but are unable, essentially, to place a value.

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

Revenue Committee
January 17, 2007

And again, Commissioner Wickersham may be able to give...well, while he can't give specific cases, at least that are under litigation, may be able to describe, I guess, in some more detail the issues or the types of things which might arise where this power might be useful. Are there any other questions? [LB168]

SENATOR JANSSEN: Senator White. [LB168]

SENATOR WHITE: Are there other agencies with the power of remand that you're aware of? [LB168]

GEORGE KILPATRICK: Agencies of government? Not that I'm aware of. [LB168]

SENATOR WHITE: Power of remand is a term of art, correct? [LB168]

GEORGE KILPATRICK: It's... [LB168]

SENATOR WHITE: It's a specific legal meaning. [LB168]

GEORGE KILPATRICK: Yes, it has a specific legal meaning, yes. [LB168]

SENATOR WHITE: Could, under this law, the TERC remand a matter and instruct elected officials, county commissioners, to enter a specific valuation? [LB168]

GEORGE KILPATRICK: I don't know. [LB168]

SENATOR WHITE: No one at the TERC is elected, correct? [LB168]

GEORGE KILPATRICK: They are appointed officials, yes. [LB168]

SENATOR WHITE: They're not judges, they're not constitutional officers, correct? [LB168]

GEORGE KILPATRICK: The TERC is a constitutionally created office, although not in this context. For equalization, they are constitutionally created; not for appeals of valuation and exemption. [LB168]

SENATOR WHITE: I will tell you to my personal knowledge, and that's limited,... [LB168]

GEORGE KILPATRICK: Okay. [LB168]

SENATOR WHITE: ...I know of no time that we have ever entrusted the power of remand to any entity other than a court, and certainly the power of remand over duly

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

Revenue Committee
January 17, 2007

elected officials. Are you aware of any situation like that? [LB168]

GEORGE KILPATRICK: I am not. [LB168]

SENATOR WHITE: Thank you. [LB168]

SENATOR JANSSEN: Any other questions? Okay, thank you, George. Proponents? [LB168]

WILLIAM R. WICKERSHAM: Senator Janssen, members of the committee, my name is Bob Wickersham. I am a commissioner on the Tax Equalization and Review Commission and I'm appearing in support of LB168. You've already gotten a little preview of the issues that are involved in LB168 and I want to note that this morning I had a conversation with Senator White about LB168. In fact, he raised a couple of issues that I had not thought about, Senator. And if I can take just a moment to describe the kinds of situations that I think will hopefully show you the wisdom of LB168. All right. There are two requirements, if you will, for relief in front of the commission under current procedures and case law. One is that the county decision has to be shown to be unreasonable or arbitrary. Secondly, you have to show what value ought to be. You can show that the county is as arbitrary and as unreasonable as anything you've ever seen. It can make you angry that the county board or the county assessor reached the result that they did. It's absolutely, clearly, certifiably wrong, and you can be sitting in the room where that proof has been introduced and the county officials are there and there isn't any way that they cannot know that they're wrong. The evidence is uncontroverted. They're wrong, but the taxpayer or the appellant has not been able to prove what the value ought to be, what the value ought to be. That's not as easy as it sounds always. Again, you've got to prove two things: one, the county is unreasonable or arbitrary, and secondly, what the value ought to be. If you can't prove what value ought to be, you lose, even though the county decision just is wrong, and even if they know it, and even if they could fix it, even if they could fix it. Now, we have those cases. Senator White says, well, bad facts, bad situations can make bad law. Yes, it can, Senator. But those folks that don't get relief because they weren't able to prove value, but they were able to prove to everybody in the room's satisfaction that the county was wrong, may not appreciate that kind of a response, or a distinction at least, in their case. It is not a power that the commission would expect or even, in fact, as a practical matter, be able to use very often. It isn't a power that we would want so we could institute a fishing expedition. The situations in which it would be applicable are those in which the county uses, and we see more of this all the time, a computerized system, a computer software program, to determine value. And that program is dependent on specific factors being entered into it. If any one of the factors is wrong, the value that comes out is wrong. And if you have a taxpayer that comes in front of you and says, look, that's wrong, that doesn't describe this property. There's clear errors in the description of the property and you can tell that they're going to affect value, but you don't know how because you can't

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

Revenue Committee
January 17, 2007

run the program. You can't produce the result. It is those cases where we know what the factors that go into the computer program ought to be, i.e. that the house has 1,800 square feet with a finished basement. If you can put that into the computer program you've got a different value than if you described the home as 2,000 square feet, for example. But you can't tell those results just generally from the evidence that we get in front of the commission. If we can direct the county board to go back and determine value using their computer program for a 1,500 square foot house with a finished basement, as opposed to a 2,000 square foot house with a finished basement, you'll get the result you ought to have. That's how we want to use it. Now, I have talked with Mr. Peters. Maybe he'll come up and offer his own testimony. We have discussed a potential amendment that would appear on page 12 of the bill in Section 9, and perhaps I should let Mr. Peters speak for himself with regard to that. He proposed language. We thought about it a little bit. We had other language that would potentially be added to line 9 after the period, after directions. It would be if taxable value has not been proven by a preponderance of the evidence, and I don't want to get into an issue that will be raised in bills that you'll hear later, but preponderance of evidence would become a term of art for use, potentially for the use in the commission for appeal decisions. Now, let me discuss a couple of other things, and one of these is an issue that was raised by Senator White in my discussion with him this morning. Senator White said, well, does your proposal violate separation of powers issues? And I said I didn't know, and, Senator, I still don't know. But what I have been able to do since we had our conversation and think about it a little bit and review statutory provisions, rules and regulations, and no, we didn't find any other agency that can remand, but there are several statutes that specifically grant courts: these are legislative statutes that grant courts the power of remand. The most general one is 25-1926. It has been on the books since 1867--1867. Now, if you think about it, if there were separation of powers issue and if the courts had an inherent power to remand, an inherent power, no necessary authorization by the Legislature, then the various sections that we see, giving the courts power to remand in various circumstances, would not be necessary and might not be on the books. But the very oldest one has been on the books since 1867 and it's a legislative grant of power to the courts for remand. So, Senator, it might not be a separation of powers issue. I know that's not determinative, but I don't know. It's evidence to me that it is not a separation of powers issue. The other one is unusual. It arises from a decision of the Supreme Court of Nebraska in a case that is familiar to several members of the Revenue Committee and that was Bartlett v. Dawes County. It had to do with market areas and it had to do with values, but the court's order in that decision is unusual, because without--and I hope nobody on the Supreme Court is listening--without specific statutory authority or, in fact, any authority in the agencies that it directed to comply, first, it ordered the TERC to remand its decision to the county board, to the Dawes County board. It ordered TERC to issue an order of remand, with no statutory authority in the commission to remand anything, to remand that decision to the county board, and then it required the county board to reconsider its decision. Now, there was no statutory authority for the county board to reconsider a decision either, so

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

Revenue Committee
January 17, 2007

the Supreme Court in Bartlett ordered two things that were not provided for in statute: one, a remand by the commission to a county board for a specific purpose, and secondly, reconsideration of a county board decision when there was no statutory provision for that to occur. The commission did remand the decision, the county board did reconsider, and life went on, but, I mean, there was no supporting statutory authority for those orders by the Supreme Court. It all worked out, we think. So if you have questions, I'll be happy to try to respond to them. I recognize that you may have some misgivings about this proposal. Again, it was a point that Senator White made and I think that others would make as well. This makes the commission look more like a court. That's true; that's absolutely true. But the central question is, do you want us to be able to provide relief when we should provide relief? And if you think that's the case, then we need this authority. [LB168]

SENATOR JANSSEN: Senator White. [LB168]

SENATOR WHITE: Well, in Dawes, doesn't that undo your argument? That Supreme Court found that it had the power to remand without legislative aid. It just did it. Isn't that argumentative that that is an intrinsic power of the court, first instance? [LB168]

WILLIAM R. WICKERSHAM: No, sir. The Supreme Court clearly had the authority to remand the decision to the commission. The court clearly had that authority, and if there's no other source for that authority, it is 25-1926. The court clearly had the authority to remand the commission's decision to it. The question is whether there was any statutory authority for the remand by the commission to the county board, and there was not. [LB168]

SENATOR WHITE: The court regularly tells intermediaries through orders of remand, as directives, what they want it to do. Correct? [LB168]

WILLIAM R. WICKERSHAM: But we're not a court. [LB168]

SENATOR WHITE: No, you're not. [LB168]

WILLIAM R. WICKERSHAM: If there was a separation of powers issue, Senator, maybe we should...I really...I hesitate to engage in a full argument amongst persons who might not be as interested as you and I, but I'll do whatever you wish. [LB168]

SENATOR WHITE: The other question is are you comfortable as a nonelected official, exercising a power that is not limited as you've described to us? What is in that bill is unlimited power to remand, which is a very broad power. You're neither elected nor do you stand for retention like judges do. [LB168]

WILLIAM R. WICKERSHAM: The proposal that we have discussed with Mr. Peters, and

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Transcriber's Office

Revenue Committee
January 17, 2007

as I've outlined to the committee, is I think an appropriate limitation on the language in the bill. We're seeking this authority to be used in really rather limited circumstances. That's our intent. The language that I'm suggesting as an amendment would come much closer to what we actually intend or the kind of circumstances that we believe are appropriate. The question about whether or not the commission can tell or does tell elected officials what to do, is yes, and we do. If we find that property, that the county board has determined the incorrect value, we tell them what the value is. And unless there is an appeal or a contrary decision by an appellate court, that order has to be complied with by the county assessor, the county treasurer. It's entered on the books. And that applies in a variety of contexts, whether it's value, whether it's an exemption proceeding, homestead applications. Yes, we enter orders and tell elected officials what to do. [LB168]

SENATOR JANSSEN: Go ahead. [LB168]

SENATOR WHITE: But when it's time to enforce it, you have to go to a court. If the county commissioners say, you can enter all the orders you want, we're not doing it, in order to make it stick as it is, you must go to the courts. Correct? [LB168]

WILLIAM R. WICKERSHAM: The appellant, I'm assuming that if we granted relief and the county officials did not enter the relief that was ordered by the commission, yes, I believe the appellant would go to the district court and seek relief. There is another avenue for relief, if you will, and that is that there are provisions that if an assessor--and it was a portion of LB167--if an assessor fails to carry out orders of the commission, for example, the commission can bring a proceeding to suspend or revoke their license or their certificate. Now, there is also a provision that allows the commission to bring a mandamus to cause the Property Tax Administrator or an assessor to enforce their orders. There's a specific statutory authority for that type of proceeding. [LB168]

SENATOR WHITE: The mandamus would be filed in a district court, and the judge would issue the writ of mandamus. [LB168]

WILLIAM R. WICKERSHAM: The sections allow the commission to originate that proceeding and to bring that under its own authority. [LB168]

SENATOR WHITE: And you have contempt power to enforce it. [LB168]

WILLIAM R. WICKERSHAM: We do not have contempt powers. [LB168]

SENATOR WHITE: Thank you. [LB168]

WILLIAM R. WICKERSHAM: Nor do I think we should have. [LB168]

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Transcriber's Office

Revenue Committee
January 17, 2007

SENATOR JANSSEN: Senator Raikes. [LB168]

SENATOR RAIKES: A little different line. If I go to TERC on a protest, I know I've got the county board nailed on what they did was wrong,... [LB168]

WILLIAM R. WICKERSHAM: Um-hum. [LB168]

SENATOR RAIKES: ...don't I also know if I can't come up with the value, that I'm going to lose? [LB168]

WILLIAM R. WICKERSHAM: We see them day in and day out. They do not. [LB168]

SENATOR RAIKES: So they should know it, but don't? [LB168]

WILLIAM R. WICKERSHAM: They don't. [LB168]

SENATOR RAIKES: Is that what you're saying? [LB168]

WILLIAM R. WICKERSHAM: Yes, sir. [LB168]

SENATOR RAIKES: So, in a sense, wouldn't this proposal sort of excuse people for not having done what they really need to do in order to... [LB168]

WILLIAM R. WICKERSHAM: Well, okay. If everybody had legal counsel and if all their legal counsel did adequate discovery, this provision wouldn't be necessary because you could say, look, run the computer program with these factors, tell us what the value is, that's what we're going to prove. But the people that appear in front of the commission are over 95 percent pro se. The discovery, if you will, that is done, that is the gathering of evidence that is done, is done mostly by virtue of the commission's order for hearing. We require the county to produce the underlying documentation that either supports or, in some cases, doesn't support their valuation, but the commission causes the counties to disgorge most of the evidence. [LB168]

SENATOR RAIKES: And part of what you cause is not what is? [LB168]

WILLIAM R. WICKERSHAM: Well, I don't know why people don't focus on what is the real issue and that is what the value of the property is. If they did that, our proceedings would be perhaps more satisfying to them. I don't know why people are so attracted to proving somebody else is wrong as opposed to proving what is right, but proving somebody else wrong typically is easier, and then they do find it difficult to prove what is right. And because maybe it's more difficult, they take what they think is the easy track and just prove that the county is wrong. But it's not enough. It can't be enough because we can't create values for somebody, at least we don't think we can. We don't think we

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

Revenue Committee
January 17, 2007

should. [LB168]

SENATOR JANSSEN: Any other questions? Seeing none, thanks, Bob. [LB168]

WILLIAM R. WICKERSHAM: All right. [LB168]

SENATOR JANSSEN: Any other proponents? Proponents on LB168? Opponents? Bill, welcome back. [LB168]

BILL PETERS: Mr. Chairman and members of the committee, my name is Bill Peters, P-e-t-e-r-s, and it's nice to finally be on the comfortable side of an issue as an opponent. The concern that I have is with the taxpayers who are prepared, who spend the money and the resources to go to TERC. They have a hearing with TERC; they want a decision. Under the language as introduced, we could go through all that effort, probably in the range of \$20,000 to \$40,000, some properties could even get a little more dicey, and be told we get to go back and start all over with the county. That's where my objection would be. Now, as to the situation described by the chairman, I'm not involved in those. The language that I suggested to him this morning is that if you're going to have the remand, I certainly would feel more comfortable if it was limited to the situation if there was no credible evidence as value introduced. It would make my position more comfortable with the taxpayer who has gone to TERC, not that TERC necessarily has done it or do I really think the present ones would, but I'm not comfortable with the language sitting out there that they can. A tough case, I'll let the county try it again. That's basically what I'm opposed to. As far as the situation of going even pro se, the taxpayer, if they use the form, and hopefully most counties will get to using the form, put down the value that the county has on it and the value that they request. So there is a value there. It may not be the best value in the world, but if the county hasn't done it right in the first place, why hold the taxpayer to a much better standard? But my main concern here, though, is the situation where if you're prepared and you go to TERC, I think you should get a decision, and then you can appeal it. That would be the extent of my testimony. [LB168]

SENATOR JANSSEN: Okay, thank you. Any questions? Seeing none, thank you, Bill. [LB168]

BILL PETERS: Thank you. [LB168]

SENATOR JANSSEN: Are there any other opponents? How about anyone in a neutral capacity? No one in a neutral capacity? That will end the hearing then on this particular bill. And the next bill we hear will be from Senator Langemeier, who's going to tell us all about change to the provisions relating to tax liens on personal property and the collection of certain taxes. The floor is all yours, Chris. [LB168]

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Transcriber's Office

Revenue Committee
January 17, 2007

SENATOR LANGEMEIER: Chairman Janssen and members of the Revenue Committee, my name is Chris, C-h-r-i-s, Langemeier, L-a-n-g-e-m-e-i-e-r. I bring today before the committee LB155, which would provide priority status, vice versa, the lien upon personal property of an individual for unpaid personal property taxes to any lien, security interest or other encumbrance against a deposit account or a certificate of deposit which is properly filed, recorded or otherwise perfected prior to the distraint of such tax issue. And I have a few people behind us to go into this in a little more detail, and at this time are there any questions? [LB155]

SENATOR JANSSEN: Any questions? Seeing none, thank you, Chris. Have proponents, LB155; proponents please. Bob. [LB155]

ROBERT J. HALLSTROM: (Exhibit 5) Chairman Janssen, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB155. Senator Langemeier has briefly described what the bill does. It addresses the priority of personal property tax liens against those that might exist for prior perfected security interest in a very limited type of property, that being deposit accounts and certificates of deposit. Traditionally, we've seen the issue arise in the sheriff going out issuing a distress warrant when an individual has not paid their personal property taxes. A lien arises by statute and the common process is to go out and collect the tangible personal property. There's a statutory procedure set up for selling that property and then applying the sales proceeds towards the unpaid balance of the personal property taxes. What we discovered a little over a year ago, it may have been in existence prior to that time but it had not come to the attention at least of the association, was that the county sheriff in Douglas County had gone out, issued a distress warrant to a number of financial institutions, seeking to levy on deposit accounts and/or certificates of deposit relating to taxpayers who had not paid their personal property tax bills. The banks were somewhat surprised. They contacted the association, wanting to know what they should do, whether they could do anything. There's confidentiality issues regarding depositors' accounts and so forth. Ultimately, there was an action for declaratory judgment that was brought by a bank to determine the proper outcome. Based on the current statutes, and I have a copy of the Douglas County District Court ruling, it was lo and behold determined that it was proper for the seizure, if you will, of not only tangible personal property that would be potentially subject to the tax itself, but also intangible personal property in the form of deposit accounts or certificates of deposit. Based on that ruling, we have now come before the committee, suggesting that we ought to have what we think is a very narrow exception to that rule, and that narrow exception is to allow situations where a lender has taken a prior perfected security interest in a deposit account or a certificate of deposit to maintain priority against a subsequent distress warrant that is issued for unpaid personal property taxes. I've described in my testimony at page 3 the provisions or the steps that are taken by a lender in perfecting a security interest, either against a deposit account, which generally involves the concept of control under the uniform commercial

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

Revenue Committee
January 17, 2007

code, or a certificate of deposit which involves taking possession if it is a nonnegotiable CD. Also, attached to my testimony is extensive research, or the results of extensive research, that reflects that the vast majority of states do not follow the rule that has been applied in the district court decision in Nebraska. Nebraska is one of a handful of states that does provide a super priority status for the unpaid personal property tax lien that covers all personal property, tangible and intangible. Most of the other states either do not apply the lien at all to any property that is not subject to the tax itself. I've described some of the states there that only apply to goods and chattels. Other states, which is more in line with the aspect of setting up a lien priority for federal tax liens, sets up a filing requirement where you must, as the government official, file a notice either at the Secretary of State level or the county level before you will have a lien that attaches for purposes of determining priority. We're not asking for any of those perhaps more convoluted administrative headaches to be put into play. We're simply saying that if a situation arises where there is a prior perfected security interest, a lender has advanced funding on the faith of a deposit account or a certificate of deposit taken as collateral, that the personal property tax lien will not, after the fact, in the form of a secret lien, if you will, come back and automatically take priority over that interest and collateral that the lender has taken to secure the loan. And for those reasons, we feel that LB155 is worthy of your consideration to advance to General File, and would ask the committee to do so. I'd be happy to address any questions that the committee members may have. [LB155]

SENATOR JANSSEN: Any questions? Bob, I have a couple. Now, are there any...how about a regular bank account? Would that be covered? [LB155]

ROBERT J. HALLSTROM: Yes. Your deposit account, your savings account, your checking account, those are issues that are sometimes... [LB155]

SENATOR JANSSEN: Certificate of deposit, CDs? [LB155]

ROBERT J. HALLSTROM: Yes. Sometimes you take a security interest, probably more likely to involve a certificate of deposit. [LB155]

SENATOR JANSSEN: Um-hum. [LB155]

ROBERT J. HALLSTROM: It's fairly common practice and a rather attractive interest rate, if you will, to simply have a 4 percent interest-bearing certificate of deposit, and a common practice would be to make a loan with that certificate of deposit as security, say, for 1.5 or maybe 2 percent above that certificate so you know what your rate is, and that certificate is the security that you have for the basis of extending the financing. [LB155]

SENATOR JANSSEN: Okay. All right, thank you. Ron? [LB155]

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Transcriber's Office

Revenue Committee
January 17, 2007

SENATOR RAIKES: Bob, currently the default position is that on real estate, for example, that the tax collector has first lien, and our current status on personal property is that the tax collector has first lien. [LB155]

ROBERT J. HALLSTROM: That's correct. I would make a distinction, Senator, in this respect. When you look at the statute, I think it's 77-203, under the aspects of having a lien on real estate, the first lien position only applies to the real estate that is subject to the tax. So I make that distinction because it's clear that it's only the property that's subject to tax, i.e. that specific parcel of real estate on which the first lien comes into play. The county can't come in and say you didn't pay your taxes for real estate; I'm going to go grab your bank account or your certificate of deposit. So we think there's a distinction there. There's also a practice that with regard to security, loan secured by real estate, that I know that that particular real estate that I'm taking a lien on is subject to real estate taxes, and I therefore, if I want to provide an extra modicum of protection for myself, I am going to escrow as part of the loan payment process and structure the real estate taxes along. So I will be collecting those as I go along and making sure, in many cases, not all, but in many cases that those taxes are paid, and the issue of first lien priority over my loan probably isn't going to come into play, at least for purposes of the unpaid real estate taxes. Personal property taxes, on the surface, yes, you do have a first lien, but it goes beyond the property that's subject to the personal property tax itself, and that, to us, is the distinction between real and personal property. We certainly are not asking, in any respect, that any property that's subject to the personal property tax be changed in terms of the county's ability to come in and get a first lien position even after the fact. It's only the narrow category of the deposit accounts and the certificates of deposit where we've taken a prior perfected security interest. If the bank or the lender has not taken a security interest in a deposit account or a CD, the county can still come in under this proposal and take the first dibs on it, if you will. We could have come in, we could have created a notice requirement, we could have simply said that the tax lien doesn't have a first priority as to intangible personal property, but we've left open that if the lender doesn't have a security interest in that type of property, it ought to still be available for the county to come in and assist in the collection of the personal property tax bill. [LB155]

SENATOR RAIKES: Okay, thanks. [LB155]

SENATOR JANSSEN: Cap, do you have a question? No. [LB155]

ROBERT J. HALLSTROM: Thank you, Senator. [LB155]

SENATOR JANSSEN: Thank you. Next proponent? Any other proponents? Any opponents? [LB155]

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Transcriber's Office

Revenue Committee
January 17, 2007

CHRISTINA R. VINCENTINI: (Exhibit 6) Good afternoon. My name is Christina Vincentini, it's C-h-r-i-s-t-i-n-a V-i-n-c-e-n-t-i-n-i. I am employed by the Douglas County sheriff's office. My position with the Douglas County sheriff's office is as a collector for personal property taxes. The use of the levy letters that have been mentioned started in March 2005. By the time the sheriff gets a distress warrant to collect on personal property taxes almost a full year has passed since the original tax bill was mailed by the treasurer, and the taxpayer has been informed at a minimum of two times that the tax is due or past due. In many cases, several collection attempts have been made prior to levying on funds. The reasons why the bank levies are the most logical remedy in collections of personal property taxes, the sheriff's office oftentimes finds that there is no personal property of the taxpayer to seize or sell. This is usually the result of personal property being sold or disposed of by the taxpayers themselves or by a lienholder without immediate payment of the taxes as mandated by Nebraska Revised Statute 77-1214. Also, fewer costs are incurred by the counties in their collection efforts through the bank levies. It requires less personnel hours to collect; there aren't repeated attempts to go to the location, locate property or the taxpayer for collection attempts; there are not numerous phone calls made to contact the taxpayers to collect on the delinquent taxes. Also, the counties incur costs in seizing personal property for sale. When seizing personal property, there are personnel hours incurred, moving and towing fees, storage fees, advertising fees, and others including cell phone usage fees, office supplies, vehicles, and there is no guarantee of satisfying the tax with seizure. Personal property does not always sell or bring in enough revenue to cover the tax and/or the costs. The unpaid taxes and the costs incurred by the counties in an effort to collect taxes from delinquent taxpayers who pursuant to state statute 77-1726 are guilty of a Class IV felony by willfully failing or neglecting to pay any taxes assessed or charged that have become delinquent. These costs and taxes are then passed on to law-abiding taxpaying citizens. In April 2005, First National Bank of Omaha filed a complaint with the district court of Douglas County, which you have a copy of and is included in the packet that we passed out from the sheriff's office, attempting to stop the seizure of funds on deposit by the sheriff through the use of the levy letter. In July 2005 the district court of Douglas County dismissed the claim citing numerous statutory provisions and case history which allows the seizure of money and/or funds that are on deposit. The appearance of the proposed legislation, LB155, by changing both 77-203 and 77-1717 is to not only stop the use of the levy letter procedure by the sheriff, but also an attempt to move the county statutory position as first lienholder behind that of another lienholder. This, therefore, would allow lienholders and or financial institutions to have first opportunity to collect amounts due to them and force county governments to wait in line and to see if any funds are left. It is my experience that when a lienholder seizes or sells the remaining assets of a business or a taxpayer who have defaulted on their loan, the lienholder does not satisfy their liens which would result in the counties not collecting any of the taxes due. Since the levy letter procedure was put into use by the Douglas County sheriff's office in March 2005, 176 levies have been served resulting in a collection of \$201,239.26 in delinquent taxes. This figure is 58.1 percent of the total

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

Revenue Committee
January 17, 2007

collection attempted by a levy letter. Twenty-six financial institutions, including local and national, have received and complied with the letter. I would like to point out two reasons that these levy letters, in my experience as a tax collector, have come about. In general, some of the taxpayers, the delinquent taxpayers, there's a flat refusal to pay the tax and they have no personal property of value that would warrant the sheriff to seize and sell. Also, in the First National Bank of Omaha case, this was a levy attempted on a telecommunications company that was operated from out of state with no physical office location in Douglas County, and the only personal property that the business had was unmanned improvements on leased land with cables and circuit boards. There was nothing in Douglas County that could be seized and sold of any value. The only thing of value in Douglas County was the funds that were deposited with First National Bank of Omaha. The impact of the levy letter has been immensely beneficial, not only as a means of collecting delinquent taxes, but also by saving taxpayer dollars in collection efforts. Passing LB155 would not only result in substantially less collection of delinquent taxes, but also increase the costs of counties attempting to collect from delinquent taxpayers. That would be the end of my testimony. [LB155]

SENATOR JANSSEN: Any questions? Seeing none, thank you. Oh, I'm sorry. Ron. [LB155]

SENATOR RAIKES: The question is how far can you reach to get the money you're owed? Can you reach well beyond what the tax is due on? I mean, I think that's the argument as I understand it from the other side. I owe personal property tax on this piece of property, and so, oh gosh, I've got another piece of property over here or I've got, in this case, a checking account. And so you're saying it's handy for us just to grab anything, and yeah, I can understand that. Is that really the right way to do it though? [LB155]

CHRISTINA R. VINCENTINI: We're trying to be cost effective and look out for the taxpayers, and we all know that budgets and especially within the county are strained, and this is a great avenue to collect these unpaid taxes that are delinquent. I would also like to point out that the personal property taxes are paid in arrears. So by the time we get the distress warrant, I mean like right now we're collecting the 2005 taxes that were due in 2006. So it's not something that these taxpayers are not aware of. So, by the time that we do get these distress warrants, the banks have their liens, but we're not being made aware that these taxes are delinquent until almost two years after the levy. [LB155]

SENATOR RAIKES: Okay, thank you. [LB155]

SENATOR JANSSEN: Any other questions? Seeing none, thank you very much for being with us today. [LB155]

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Transcriber's Office

Revenue Committee
January 17, 2007

CHRISTINA R. VINCENTINI: Thank you. [LB155]

SENATOR JANSSEN: Any other opponents? Any opponents? Okay. [LB155]

BETH BAZYN FERRELL: Good afternoon, Chairman Janssen, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. I'm appearing here in opposition to the bill. Our board will not meet until Friday to take official positions on the bill, this bill or any other, but we have traditionally appeared in opposition to this bill. I won't repeat the testimony that you've heard from the Douglas County representative. We are opposed to this bill for those reasons. You've been distributed a copy of the case that explains the situation in Douglas County and the decision was made there. We're concerned that changes to this would, as you've heard, increase costs to counties and to all taxpayers, because if these taxes aren't collected that does affect the pocketbooks of every other taxpayer, and it starts down a slippery slope potentially. If a county can't access this particular kind of property to cover the taxes, is there a potential that something else might happen down the road? Is there some other kind of property that we might not be able to use to collect taxes or to levy on, essentially? [LB155]

SENATOR JANSSEN: Okay, any questions? Seeing none, thank you, Beth, for being with us. Anyone else in a neutral capacity? Don't see any. Chris, to close. [LB155]

SENATOR LANGEMEIER: Thank you, Chairman Janssen, members. I want to thank everybody for their testimony here today. The point of this bill is to allow an individual to go to a bank and borrow a little money based on a CD they have in the bank, and the banker have some security that they won't be tapped on the shoulder a week later to inform them that they have a personal property debt that they have no way of knowing when they're securing the loan. I think this new court ruling takes a whole premise of having the ability to borrow money away from our citizens. As far as the incurred costs with this, the county still is trying to recoup these funds, sends their letters to the bank and they get a response back from the bank that says we have a security interest in those funds so we're not going to provide them to you. I don't see how that would add additional costs other than trying to seek it in a different way. With that, I would conclude my testimony. [LB155]

SENATOR JANSSEN: Okay, thank you, Chris. That ends the hearing on LB155. Senator McDonald is here to tell us all about LB145. Welcome, Senator McDonald. [LB155]

SENATOR McDONALD: (Exhibit 7) Thank you. Senator Janssen and members of the Revenue Committee, I'm Senator Vickie McDonald, representing District 41. LB145

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Revenue Committee
January 17, 2007

requires county assessors to mail notices to all property owners who applied for and received a homestead exemption in the preceding tax year. I introduce this legislation after the daughter of one of my elderly constituents contacted me last fall. Her father is 92 and still lives in his own home in a small town in my district. He's able to continue living happily in his home with the help of caregivers who tend to his personal needs such as meals, laundry, and cleaning. His daughter lives in Iowa, but she takes care of his bills, taxes, and so on. In the past, her father always received a notice in the mail when it was time to renew his homestead exemption. In late summer, his daughter realized he had not received a notice, so she called the county assessor. The county assessor told her that they were no longer mailing out homestead exemption notices. According to the assessor, a notice was published in the local weekly paper. My elderly constituent is blind in one eye and he does not take the local weekly paper. Unfortunately, by the time his daughter called the assessor's office, her father had already missed the June 30 deadline and the July 20 extension deadline for applying for a homestead exemption. He would now be liable for the full amount of his property taxes. The \$600 in property taxes is a tremendous hardship for this 92-year-old on a very limited income. This story led me to wonder how many other elderly people in this county and others missed the deadlines and ended up being responsible for paying property taxes on an extremely limited income simply because they did not receive a notice in the mail. The state provides all of the necessary information to each county and reimburses each county for the cost of the homestead exemptions. In discussions with Property Tax Administrator and the Department of Revenue, it was determined that the date needs to be changed to on or before April 1. In addition, if we remove the reference on page 2, lines 23 and 24, and page 3, line 16, to the homestead exemption amount for the preceding year, the homestead exemption information already provided to each county by the department in February contains all the information required by LB145, except the list of documents and the county assessor's office, address, and phone number. I've prepared an amendment that makes these changes. I encourage you to advance LB145 to General File with the proposed changes. The Legislature has created and funded homestead exemptions to benefit the elderly and disabled, and make it easier for them to remain in their homes. It's a shame that in some counties the elderly and disabled may miss this opportunity to take advantage of a homestead exemption simply because they don't take the local paper. Thanks for your time and interest. [LB145]

SENATOR JANSSEN: Thank you, Vickie. Any questions? Chris? [LB145]

SENATOR LANGEMEIER: Yes, I'm going to ask one. Thank you, Chairman Janssen. A little of my ignorance here. On homestead exemption, when you prove your homestead exemption, when you fill out that form, you submit some information that's prepared by your tax accountant, correct? Do you know? [LB145]

SENATOR McDONALD: I don't know a lot of information about homestead exemptions,

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

Revenue Committee
January 17, 2007

but continue with your question. [LB145]

SENATOR LANGEMEIER: If there was a piece of paper that is produced by your accountant, which I think there is and maybe somebody can correct me on that. I believe you get a piece of paper that you submit. Wouldn't that be notice to the person that was responsible for the individual? That you have to do something with that at some point prior to the June 1... [LB145]

SENATOR McDONALD: Well, and that's probably done with their taxes. It's prior to April 15. [LB145]

SENATOR LANGEMEIER: Right. Okay, thank you. [LB145]

SENATOR JANSSEN: Any other questions? [LB145]

SENATOR McDONALD: Okay, thank you. [LB145]

SENATOR JANSSEN: Um-hum. Any proponents? [LB145]

MIKE KELLEY: Mr. Chairman and members of the Revenue Committee, my name is Mike Kelley, K-e-l-l-e-y. I appear here today as a registered lobbyist for Douglas County and at the request of the chairperson, Mary Ann Borgeson. Like the County Officials, they have not met on this bill yet, but they have indicated the majority that they do support it. I guess the feeling is anything we can do to help the old fogeys like me who can't remember a cell phone, who can't remember half the dates I'm supposed to be someplace. I have to have somebody tell me where I'm supposed to be at all times. And I used to be a county commissioner 20 years ago and one of the most frustrating things would be when someone had missed a date and by statutes you're trapped. You could do nothing about it and it really would work a financial hardship on someone. Anything we can do to increase notice, and this is even at the tax...you'll hardly ever see me in here accepting more fees or costs to the county, and the county board is willing to accept that. Anything we can do here, and this bill does that. We thank Senator McDonald for bringing it. We think it helps the special group of taxpayers who really can use help. So any kind of notice that we can give to them, we think is great. In fact, one of the commissioners even suggested maybe studying the idea of, you know, file for it once. It stays until the property changes hands, if that would be feasible. And I'm sure that will cause some kind of problem someplace in the Revenue Department, but it's just an idea. So I know sometimes with federal stuff if you file it then it's done. You don't have to keep refiling. So, I know I'm the league attorney for a little league and I'm still, my kids are long since out of there, but I'm still the league attorney because I work for nothing. And my only duty really every year, with the exception of a contract problem they have now and then, is to file for their charitable thing, and every year I keep thinking I'm going to miss it. So I worry about that myself. So this falls in the same

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Transcriber's Office

Revenue Committee
January 17, 2007

category. So any notices we can give, help these folks, would be helpful. Any questions? [LB145]

SENATOR JANSSEN: Mike, does Douglas County currently do this? [LB145]

MIKE KELLEY: You know, Roger Morrissey, I'd have to check, he does have a program of extra notification, but we think making it a part of the law would be a good idea. [LB145]

SENATOR JANSSEN: Um-hum. Would you happen to know, maybe there are county officials here, maybe they could tell me how many people or how many counties or how many cities do this? But Douglas County... [LB145]

MIKE KELLEY: Yeah, I know Roger has a special program, but I don't know if it's a special mailing or if it's just a different publication. I'm not sure exactly what he does. [LB145]

SENATOR JANSSEN: Okay, all right. Any other questions? Senator Preister. [LB145]

SENATOR PREISTER: My question is along the same lines. Roger does mail out to the seniors and does give them notice, so it's a particular mailing that he does, and I was wondering how many other counties did that since Douglas probably has the largest number of seniors. At least most of them are getting the notice, but perhaps, the other question is if it's not being done in some counties is it because of budget constraints, I assume, that they're not doing the mailing, and then how does that get absorbed? [LB145]

MIKE KELLEY: I'm assuming that's true, but I'd have to check with NACO and see how far that goes. I'm sure money is always the issue. [LB145]

SENATOR PREISTER: Sure, thank you. [LB145]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Mike. [LB145]

MIKE KELLEY: Thank you. [LB145]

SENATOR JANSSEN: Next proponent, please? Any other proponents? Any opponents? Anyone in a neutral capacity? Here we go. [LB145]

CATHERINE LANG: Chairman Janssen, for the record my name is Catherine Lang, Property Tax Administrator for the state of Nebraska, and I'm appearing in a neutral capacity on this bill to make a couple suggestions if the committee is interested in moving this bill out of committee. One of the things that we would suggest that you

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Transcriber's Office

Revenue Committee
January 17, 2007

consider is currently the Department of Revenue prepares a document and provides it at about this time of year to the county assessor. That document, it shows all of the prior year's applicants who had been approved by the county assessor, whether or not they were qualified or disqualified because of income. So we send the county assessor a document for each of those claimants. They're separated between qualified and not qualified on the income test, and then the assessor is free to do with those documents as they will, whether they mail them to each claimant or whether they screen them and mail them to the claimants that are still eligible in their county or whether or not they do other things like put a notice in the paper and then keep the applications on file and then bring them out when the property owners come in. We would recommend that the bill be amended to continue or to require the Department of Revenue to provide that. It would not increase the cost because that's what we're currently doing. So we would make that recommendation to the committee. Also, to answer, I think, Senator Langemeier's question, not every homestead exemption claimant is working with a tax preparer. There are a number of them that don't file federal or state income tax returns because they may not have exceeded the income levels to be required to file those. So they may be filling out an income statement required to be filed with the homestead exemption application that they're filling out themselves and not using a professional. So they may not get any notice that way. So they could still fall through the cracks that way. And with that, I'd be happy to answer any questions you might have. [LB145]

SENATOR JANSSEN: Any questions? Don. [LB145]

SENATOR PREISTER: Yes, Ms. Lang, you're suggesting that we amend it so that we essentially require you send the notice you're currently sending. [LB145]

CATHERINE LANG: That we send it to the county assessor. [LB145]

SENATOR PREISTER: That way the county certainly gets the information to help them in sending out a future notice. [LB145]

CATHERINE LANG: That is correct. [LB145]

SENATOR PREISTER: You're already doing it. You just think this clarifies that it's important that that information is sent to the county? [LB145]

CATHERINE LANG: Well, if I were a county assessor, what I would be worried about is that if the bill were to be adopted as is, and then the Department of Revenue were to decide I don't think we'll do that anymore, there would be nothing to require the department to continue to do that. You'd have to go back in and amend the law. Since we're already doing it, since it's already part of the ongoing operations of the Department of Revenue, by amending the bill now you don't have any fiscal costs to do it, and that way then the department will continue to do it because that will be the

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

Revenue Committee
January 17, 2007

document that the county assessors will then rely on going forward. [LB145]

SENATOR PREISTER: And that way in the future the county isn't in a bind, forced to do something but may not have the information in which to do it. [LB145]

CATHERINE LANG: That's correct. [LB145]

SENATOR PREISTER: Okay. [LB145]

CATHERINE LANG: And we then continue to provide what we can provide to them, and then whether what we'd want to just double check, and we would work with Senator McDonald on this, is that if there's requirements in addition to what we're already doing, that that could be, then, part of the county assessor's responsibility, for example, name and address of the county assessor. We wouldn't be putting that on our form, but they could add it when they send it to the property owner or to the claimant. [LB145]

SENATOR PREISTER: Sure. [LB145]

CATHERINE LANG: And we'll then work with her to make sure that all of those things are technically correct. [LB145]

SENATOR PREISTER: Thank you. [LB145]

SENATOR JANSSEN: All right, any other questions? Carroll? [LB145]

SENATOR BURLING: Ms. Lang, the counties are dependent on your department sending them that information every year? They don't do this themselves? [LB145]

CATHERINE LANG: That is correct. They wait for us. We provide them with that information and then they go forward from that point. At the current time, some assessors do mail them, currently, some assessors do not, do other things. What this law would then do is require them to be mailed to the claimants. [LB145]

SENATOR BURLING: Thank you. [LB145]

CATHERINE LANG: Um-hum. [LB145]

SENATOR JANSSEN: Okay, any other questions? If none, thank you, Cathy. Next neutral? [LB145]

BETH BAZYN FERRELL: Good afternoon, Chairman Janssen, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. As I said

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

Revenue Committee
January 17, 2007

earlier, we have not taken positions on bills yet. We just had a couple of suggestions and comments that have come in from counties on this bill. We don't think it's a bad idea at all. There are counties, as you've heard, that are sending out this notice. One concern has been the cost, and the way that the bill is written at this point counties could send out just a postcard, whatever is the most cost effective method of notifying individuals, as opposed to sending out the information that comes from the Department of Revenue. That would be a cost difference, obviously, between a postcard and a larger mailing. Secondly, this came from a small county. They said, well, when we get the information we just pull from the file the name of an individual. If we know they've passed away during the year, we just pull that information and don't send it to them, because we know that, you know, they're not going to be eligible for the homestead exemption. The way the bill is drafted at this point, it's mandatory to send it to everyone on the list. So those are the only comments that we have at this point. [LB145]

SENATOR JANSSEN: Thank you. Questions? Seeing none, thank you. Anyone else in a neutral capacity? Seeing none, Senator Langemeier, would you like to close? [LB145]

SENATOR LANGEMEIER: It's McDonald. [LB145]

SENATOR JANSSEN: Oh, oh, oh, I'm sorry, Vickie. [LB145]

SENATOR LANGEMEIER: I'll close, but I don't think she would want me to. [LB145]

SENATOR JANSSEN: I'm sorry. I didn't catch up with the last bill. I was still on Senator Langemeier's bill. [LB145]

SENATOR McDONALD: Okay, all right. Well, thank you for the opportunity to close. [LB145]

SENATOR JANSSEN: Yeah, you're welcome. [LB145]

SENATOR McDONALD: This is great. [LB145]

SENATOR JANSSEN: Any time. [LB145]

SENATOR McDONALD: I want to thank those appeared today for their constructive criticism and suggestions. Homestead exemptions are very important to our elderly and to our disabled, and in many cases missing that date does create a hardship to them and their families. You know, I'll be glad to work with anyone to help improve this and I think that it's important that, you know, maybe we just add the language to any living person that's received it last year, just as simple as that. It would be an exclusion for those that had passed away. So I think that this is a very simple bill, but I think it's important to some of our rural communities, especially when we only have weekly

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

Revenue Committee
January 17, 2007

papers. And a lot of the elderly people, I know several of them that can't afford to get the paper or can't read it when they do get it, and so they choose not to get it and miss those important deadlines. And if we can make it just a little bit easier for them and their families that continue to live in their own homes and take care of it. It shouldn't be a big hardship on those counties to submit just a notice letting them know that that information is required. [LB145]

SENATOR JANSSEN: Well, it sounds like a lot of them are doing it anyway, so...or making an attempt to. [LB145]

SENATOR McDONALD: Well, it's not for the people that are doing it already. It's for the people that are not doing it already. [LB145]

SENATOR JANSSEN: All right, okay. [LB145]

SENATOR McDONALD: Those are the ones that we're concerned about. [LB145]

SENATOR JANSSEN: Okay, thank you, Vickie. [LB145]

SENATOR McDONALD: Thank you. [LB145]

SENATOR JANSSEN: That ends the hearings for today. [LB145]

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

Revenue Committee
January 17, 2007

Disposition of Bills:

LB145 - Advanced to General File, as amended.

LB155 - Indefinitely postponed.

LB166 - Advanced to General File, as amended.

LB167 - Advanced to General File, as amended.

LB168 - Indefinitely postponed.

Chairperson

Committee Clerk