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Revenue Committee  
February 14, 2007

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[LB294 LB332 LB356 LB484 LB519]

The Committee on Revenue met at 1:30 p.m. on February 14, 2007, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB356, LB484, LB519, LB294, and LB332. Senators present: Ray Janssen, Chairperson; Carroll Burling; Abbie Cornett; Chris Langemeier; Don Preister; Ron Raikes; and Tom White. Senators absent: Merton "Cap" Dierks, Vice Chairperson. [LB356]

SENATOR JANSSEN: Good afternoon, ladies and gentlemen. Welcome to the Revenue Committee. I'll introduce the members of the committee that are here at the present time. For the record, my name is Ray Janssen. I'm the shepherd of this show. Senator Preister, to my far left. Senator Burling is on Don's right. And Senator Abbie Cornett is my immediate left. To my far right is Erma James, the clerk. Senator Langemeier is on her left from Schuyler. And George Kilpatrick is the committee counsel. I don't think I missed anybody. A few things I want to run over with you here. Cell phones. Shut them off. Don't put them on buzz or anything else. I don't want to hear them going buzz either. Sign-in sheets. If you're going to testify, they're by each back door. When you come up to testify bring that sheet with you and drop it off in that little box right in front of Erma there. We'll hear four bills--LB356, Senator Cornett's bill; LB484, Senator McDonald's; LB519, Senator Howard's; LB294 is Senator Mines; and LB332, I saved the best one for the last. That's my bill. So with that, I believe we will start with LB356. Senator Cornett to tell us all about that fabulous piece of legislation on greenbelting of agricultural land. Oh, Senator White has joined us from Omaha. Senator Cornett. [LB356]

SENATOR CORNETT: Good afternoon, Chairman Janssen and fellow members of the Revenue Committee. My name is Abbie Cornett, C-o-r-n-e-t-t, and I represent the 45th Legislative District. I'm here today to introduce LB356. The principal purpose behind LB356 is to protect farmers, property owners from higher property taxes just because their property is annexed by the adjacent city, even though the use and zoning continue to be agricultural. As cities grow, there will undoubtedly be undeveloped agricultural areas that should logically be included within the corporate limits of the city. The city could annex the property and trigger the loss of greenbelt valuation which will negatively affect the property owner in two ways--higher valuation and therefore higher property taxes and the recapture of back property taxes. We feel this is unfair to the property owner and not conducive to the preservation of agricultural land for there to be such a significant tax burden just as the result of annexation. The bill will also allow for logical growth of a city where many other restraints are present. Many cities have floodplain areas or in Bellevue's case, Offutt Air Force Base and its associated noise zones, that may never be used for anything other than agricultural use. While these areas may be annexed by a city, this bill would, as stated above, protect the property owners from higher taxes as a result of being annexed. By promoting the logical growth of a city, this

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

Revenue Committee  
February 14, 2007

---

bill also promotes efficiency of service delivery. If an area is not annexed in order to preserve a property owner's greenbelt valuation it could result in pockets of county territory surrounded or nearly surrounded by a city. The area would still be served by the county or other entity for snow removal, law enforcement, fire protection, and other services. In many cases, the service provider would have to travel through the city to service these pockets. It would be much more efficient if these areas were annexed and served by the city. Thank you for your time and consideration of LB356. And we are looking at an amendment and the testifiers behind me will explain that a little bit further. I thank you for your time and if you have any questions... [LB356]

SENATOR JANSSEN: Any questions? Don't see any, Abbie. Thank you. We'll take proponents first. Anyone in favor of the legislation. [LB356]

CHRIS SHEWCHUK: (Exhibit 1) Good afternoon, Senator Janssen and members of the Revenue Committee. My name is Chris Shewchuk, S-h-e-w-c-h-u-k. I am the planning director for the city of Bellevue and I'm going to expand on some of the issues that this bill addresses that Senator Cornett addressed initially. I've given everybody a map of the city of Bellevue and I'd like to point out some of the issues that we face that Senator Cornett mentioned. Although they're small, you can follow me here on the...we have a large area in here that is floodplain. It's floodplain in the Papio Creek and it's off the end of the Offutt Air Force Base runway. So development there is very limited. Pretty much all you can do is agricultural use or very light type uses. And it appears to us that the area will remain agricultural for a long time. And as you can see through the yellow on these maps that we have city limits or city incorporated area on both sides of this floodplain and flight area. We feel it would be more efficient for the city to be able to annex these areas, provide services to these areas without having the county to come out, drive through the city to provide, like Senator Cornett mentioned, snow plowing or county sheriff services, things of that nature. The city would just be able to serve those areas along with the rest of the city area that's already in the city limits. And passage of this bill would allow the city to annex these areas without the farmers or the property owners losing their greenbelt status. We feel it's a win situation for everybody. Other areas that we have, as you all know, Offutt Air Force Base is on our south border. It is very important for us to move beyond Offutt Air Force Base into the area south of the base. In the very near future, next few years, we will have a highway bridge coming across the Missouri River that will lead to significant development of that area we feel. And we would like to initially protect that area and bring it into our zoning jurisdiction at this time before something else is approved there, I'll say by the county board, that would not necessarily be in the best interest of Bellevue. By allowing us to annex the agricultural land around the base, that would allow us to extend our two-mile jurisdiction down into this area that we feel will be our new front door or at least a back door into Bellevue in the next few years. Right now, just recently we had proposed annexing some of this area. The major concern of the property owners was losing their greenbelt status. In at least one case there was close to \$200,000 back taxes that the property

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

Revenue Committee  
February 14, 2007

---

owner would have had to pay. We understand that the recapture is being phased out in the next few years, but it would still be an increase in property taxes for these property owners just based on losing their greenbelt status. So we would like to be able to annex these areas for efficient provision of services for the city, and also to extend our two mile zoning jurisdiction so that we can control these areas and have them develop the way the city feels they should develop. I'd be happy to answer any questions. [LB356]

SENATOR JANSSEN: Any questions? Chris. [LB356]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. Thank you for your testimony. And in this map, I need a little orientation. It's such a close-up view. [LB356]

CHRIS SHEWCHUK: Yeah, I had to get the whole city. [LB356]

SENATOR LANGEMEIER: Yeah. I'm losing quite a bit here. Tell me the community bases in here. [LB356]

CHRIS SHEWCHUK: This is all Bellevue here and the yellow down here is also the city limits of Bellevue. [LB356]

SENATOR LANGEMEIER: Okay. [LB356]

CHRIS SHEWCHUK: This is Highway 75 and Kennedy Freeway, Highway 370. [LB356]

SENATOR LANGEMEIER: And then over on the side over here that's cut off? [LB356]

CHRIS SHEWCHUK: We have LaVista at the top and Papillion at the lower part of that. [LB356]

SENATOR LANGEMEIER: Okay, that was going to be my question. Now how did you annex this portion without going through there? How did you get around it? [LB356]

CHRIS SHEWCHUK: This was done before the cases involving Hastings where strip annexations were declared illegal. We came down Fort Creek Road, which is...we came down a road and over a road. Again, down and over. Which now we cannot do, obviously, based on the statutes and the court cases regarding the strip annexations. So those areas were annexed initially in the early eighties, I believe, and then once we were there we were able to expand that. But to get there was done through this, what I would still call a strip annexation, down the highway. [LB356]

SENATOR LANGEMEIER: Okay. And this wet area then, in your jurisdiction...I mean, you over cover it with your jurisdiction. [LB356]

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

Revenue Committee  
February 14, 2007

---

CHRIS SHEWCHUK: Yes. [LB356]

SENATOR LANGEMEIER: Your two mile...does LaVista also touch into that then? I mean, are we going to have a race to see who can take that wet area up first? [LB356]

CHRIS SHEWCHUK: We have an agreement with both Papillion and LaVista as to what our extraterritorial jurisdiction will be. So unless somebody breaks the agreement there will not be the race to get there. [LB356]

SENATOR LANGEMEIER: Okay, great. Thank you. [LB356]

SENATOR JANSSEN: Chris, what is the distance from the runway? Isn't this the runway right here? [LB356]

CHRIS SHEWCHUK: No. The runway is where I've done the green on here on the base. [LB356]

SENATOR JANSSEN: Okay. All right. Okay. [LB356]

CHRIS SHEWCHUK: And the noise zones and the crash zones come up about like that... [LB356]

SENATOR JANSSEN: Okay. [LB356]

CHRIS SHEWCHUK: ...and they're also off the back part of the southeast corner as well. [LB356]

SENATOR JANSSEN: I thought this was the area that you're wanting to annex. Is that correct? [LB356]

CHRIS SHEWCHUK: We will eventually want to annex. And again, because of the...and you'll notice that the Papio Creek runs through there so there is a considerable amount of floodplain as well and floodway that will not be able to be develop... [LB356]

SENATOR JANSSEN: At the present time. [LB356]

CHRIS SHEWCHUK: Yes, sir. [LB356]

SENATOR JANSSEN: But there is a plan, I think, to start doing some diversion and so on in those areas, isn't there? [LB356]

CHRIS SHEWCHUK: Diversion of? [LB356]

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

Revenue Committee  
February 14, 2007

---

SENATOR JANSSEN: The NRDs? [LB356]

CHRIS SHEWCHUK: I'm sorry? Diversion? [LB356]

SENATOR JANSSEN: Well, diversion dams and so on. [LB356]

CHRIS SHEWCHUK: I'm sorry. [LB356]

SENATOR JANSSEN: Diversion dams and so on. [LB356]

CHRIS SHEWCHUK: That plan that the NRD is working on will, I believe, take care of the runoff that's caused from continued development. The Papio Creek still goes through there. The levies do not provide hundred year protection. So there is still a wide floodplain in the area and then also the floodway. And furthermore, we do have an ordinance as part of our zoning ordinance related to the air force base. It's called an AICUZ ordinance. It's the Air Installation Compatible Use Zone that we have adopted and it restricts uses off the end of the runway. There was a crash zone, then what is called an Accident Potential Zone 1 and Accident Potential Zone 2, which severely limits the amount of development that can go on there. Fortunately, they line up. The floodplain, the noise zones, crash zones line up, but they still provide a large area right in the middle of the city that likely will never develop. [LB356]

SENATOR JANSSEN: Well, if you annex that what could you put in there? [LB356]

CHRIS SHEWCHUK: There is very little that can go in there, honestly. What we're looking at if we annex is...this area if we annex would be I think for the efficient provision of services, because we have city, county, city in various places. So there would have to be either agreements as far as who's plowing the road. The county does it all, the city does it all, or you know, interlocal agreements that way. Same thing with provision of the sheriff's office. There are some houses in there. Why does the sheriff need to come through Bellevue to get to this area when, you know, there may likely be a Bellevue officer in the city very close to it as well? [LB356]

SENATOR JANSSEN: Okay. All right. Thank you. Abbie. [LB356]

SENATOR CORNETT: Chris, hasn't some of this land that we're talking about already been annexed and then deannexed? [LB356]

CHRIS SHEWCHUK: We had one area and, again it's very difficult, it was right here, down here on this corner, that we did annex. It's got the city on two sides and the air force base on two sides. So it is surrounded and it should be part of the city. The city did annex it. The property owner came back to the council after getting his, I believe it was like a \$60,000 tax bill, for the recapture. And the council agreed to repeal that ordinance

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

Revenue Committee  
February 14, 2007

---

and effectively deannex the area. [LB356]

SENATOR CORNETT: Isn't it fair to say that you can annex any of these areas that you want now under existing law, but what you're trying to do is allow the farmers to continue farming this land? [LB356]

CHRIS SHEWCHUK: Yeah, as long as we meet the statutory criteria for annexation. [LB356]

SENATOR CORNETT: Annexation. [LB356]

CHRIS SHEWCHUK: Yes. [LB356]

SENATOR CORNETT: But the goal here is so you do not put this land in basically, which would be sitting fallow, because it can only be used for certain things now that you'd like to annex... [LB356]

CHRIS SHEWCHUK: Right. [LB356]

SENATOR CORNETT: ...and you can annex, but what we're trying to do by it is allow the farmers to continue farming. [LB356]

CHRIS SHEWCHUK: That's correct. By annexing them under the current law, again they do lose their greenbelt status. There are higher taxes. They've told us when we looked at some of these things before that they can't afford to continue farming the land if they're annexed, because they lose their greenbelt status and have the higher taxes. So it acts to not protect the agricultural land which is the goal of the greenbelt. [LB356]

SENATOR CORNETT: One last question. Is it fair to say that if we do not pass some form of a greenbelt exemption for annexation, at least for the Bellevue area, that you're probably going to go ahead and annex those areas and drive the farmers out? [LB356]

CHRIS SHEWCHUK: I think that is a fair assumption, yes. [LB356]

SENATOR CORNETT: Okay, thank you. [LB356]

SENATOR JANSSEN: Okay. Any other questions? Don't see any, thank you, Chris, for being with us today. [LB356]

GARY KRUMLAND: (Exhibit 2) Senator Janssen, members of the committee, my name is Gary Krumland, last name is spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities appearing in support of LB356. We support the bill because right now, as you've heard from Senator Cornett and Chris, that cities are very often in a

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

Revenue Committee  
February 14, 2007

---

situation where in order to do the orderly growth, the planned expansion of the city, they want to do annexation. Occasionally, there is some property that is being farmed and then the city has a choice of do we annex it and if the farm area has a greenbelt exemption they lose that if they do it. So the city says do we do the orderly growth or do we take away the greenbelt exemption? And that's a hard choice sometimes, because it could have a serious consequence on property taxes for the farmer. The general laws for annexation say that cities are not allowed to annex property that's agricultural, that is rural in character. And what I handed out is a copy of a court case that was decided a few years ago, to show that there are quite a few situations where land is being farmed, but because of the circumstances, the surrounding development and things like that, that it is agriculture but it's more urban or suburban in nature and therefore subject to annexation. And these are the kind of parcels that are in question. Where they're basically surrounded by development, and in order for the city to continue to grow they need to bring that parcel within the city, but to do so that farmer would lose the greenbelt status. So this bill will solve that problem. It'll allow the cities to continue to do their normal growth, the planned growth, but it won't harm the farmer who's doing the agriculture in that area, and continues to do that as long as they continue to have the exemption. As Senator Cornett mentioned, we just learned that because of the unique way that the city of Lincoln handles their growth and utilities expansion and annexation, that it may be appropriate to exempt cities of the primary class from this bill. I don't have an amendment to offer because just the...when we just learned about it, but I'd be happy to develop some language and work with the committee so we can get that to you very soon. So if that would solve their problem, but it is a problem that first class cities and even some of the smaller cities have been facing. So we do support the bill. [LB356]

SENATOR JANSSEN: Gary, what about a metropolitan class? Could they have that? Could they just come in and take that now? [LB356]

GARY KRUMLAND: Well, apparently the annexation policy for metropolitan class is that they are not restricted in the agricultural land, rural in character, that there's no restriction on that. That was taken away just a couple years ago. So they can annex agricultural land right now. So this could probably benefit them, too. That because of the way they do it they can't take any kind of agricultural land. [LB356]

SENATOR JANSSEN: Okay, all right. Any other questions? Carroll. [LB356]

SENATOR BURLING: Thank you, Gary. Has the definition of rural or urban in character been addressed by the courts in any time? [LB356]

GARY KRUMLAND: It's been done on a case by case basis. It hasn't been a strict definition, but what they do is look at the parcel of land, look at the surrounding circumstances. Generally, they would say if it is surrounded by development and it's

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

Revenue Committee  
February 14, 2007

---

probably in the path of the normal growth of the community, then it probably loses its rural character. It still may be agriculture, but it loses its rural character. If it's, however, just right on the edge of the community and there is no development around it, it's not really an area of growth, then they would say that it is still rural in character and it's not subject to annexation. But it's been kind of a...you have to read all the various cases to kind of come up with that. [LB356]

SENATOR BURLING: It's kind of an answer after the fact, not something we can use to really go on in general then. [LB356]

GARY KRUMLAND: Yeah, but I think like it probably would only be used in those situations like you've heard that Bellevue is facing where they've got areas that either are surrounded completely by development or probably because of floodplain, because of other circumstances never will be developed. And it's appropriate that they continue being used for agriculture and therefore appropriate that the farmer has the greenbelt exemption. [LB356]

SENATOR BURLING: Okay. [LB356]

SENATOR JANSSEN: Any other questions? Ron. [LB356]

SENATOR RAIKES: Gary, there is a provision in statute for a conservation or preservation easement. Why doesn't that work for this? [LB356]

GARY KRUMLAND: I know this just gives another chance...this only applies when a city is annexing. I guess I don't know specifically why in those situations why they didn't in Bellevue, but... [LB356]

SENATOR RAIKES: Well, if my memory is correct, I think that provision was used in Lincoln when some agricultural land was brought into the city limits and it was continued to be used as agricultural land. [LB356]

GARY KRUMLAND: Yeah, there is that provision that if someone gets that then they continue. Yeah. [LB356]

SENATOR RAIKES: Again, as I remember, I don't see here the details of it, but I think that it has to be an agreement between the city and the landowner and that's basically all that's required. [LB356]

GARY KRUMLAND: Yeah, I don't recall that for sure, but I think that's correct. There is provision for that, yeah. [LB356]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Gary. Any other

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

Revenue Committee  
February 14, 2007

---

proponents? [LB356]

ROD STORM: Mr. Chairman, committee members, my name is Rod Storm, city administrator from Blair, R-o-d S-t-o-r-m. Again, we're here to support the bill. The concerns that the city of Bellevue has are some of the same concerns that we've expressed over the last year or two relative to the greenbelt. We fully support in Washington County, the supporting of agriculture and the problems that agriculture has had in being able to sustain. A year ago we had an annexation for a subdivision and some continued commercial area that the city pursued and annexed certain area, and the landowner, in turn, has now put that property up for sale because he cannot farm it and pay the taxes relative to the greenbelt. We think that this bill is a good bill, because it allows us as a city to maintain the growth and the development that we need that's good for the urban area, that's good for not only Blair but Washington County and the whole metro area as well as the state. And at the same time, allows that farmer to be able to continue to farm as long as they want to. With my farming background, I know how hard that is for those individuals and we respect that, but at the same token, we as city planners and developers need to be able to do what's necessary at times to continue the orderly growth of our communities. And we think this is another tool to make that so that we can help those areas where the individuals want to continue to farm that they can do so. And at the same token, we can continue to promote the orderly growth of the community. [LB356]

SENATOR JANSSEN: Questions? Rod, what is the difference in that farmer's taxes from what they were when they were not within the city limits? [LB356]

ROD STORM: Well, the value itself probably went from, I'm guessing, around \$1,600, \$1,700 an acre with the greenbelt value to somewhere around in the edge of Blair probably \$9,000-\$10,000 an acre. So probably five to six times the tax obligation. [LB356]

SENATOR JANSSEN: Almost ten times. Okay, all right. Yeah, I would imagine they're a little upset with that. [LB356]

ROD STORM: And we understood that, but... [LB356]

SENATOR JANSSEN: Sure, but you had to... [LB356]

ROD STORM: ...we had to do what was necessary for the orderly growth of the community. [LB356]

SENATOR JANSSEN: Okay. Seeing no other questions, thank you for being here. Any other proponents? [LB356]

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

Revenue Committee  
February 14, 2007

---

JAY REMPE: Senator Janssen, members of the Revenue Committee, my name is Jay Rempe, R-e-m-p-e, state director of governmental relations for Nebraska Farm Bureau, here today in support of LB356. This issue was brought to our attention by some of our members up in Sarpy County that I don't think they're directly involved in the city of Bellevue issue, but they're close enough that it has raised their concern and they do have concerns about...and their fear is that the city of Bellevue will annex the territory and the greenbelt status will be lost. And so we support this for all the reasons that have been pointed out earlier as far as the impacts to farmers that are caught in these areas. I will point out, in the greenbelt program that the disqualification under the program is usually initiated by the taxpayer themselves. They file a written request to ask to be disqualified and then they understand the recapture taxes or the land is sold and put into another use. And certainly that is understood. This is the only time where an action could be taken and they are forced out of the greenbelt program without--to my knowledge--without the action being initiated by the taxpayer. So this, I think, provides a pressure valve or at least where they are not negatively impacted when that case might happen. So for that reason we support the bill and would be glad to work with the committee to see it advance. [LB356]

SENATOR JANSSEN: Questions? Seeing none, thank you, Jay. Any other proponents? [LB356]

BETH BAZYN FERRELL: Good afternoon, Senator 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. We support the bill for the reasons that you've heard about providing services efficiently. This would help not have to provide services in those pockets that have been annexed all the way around. I'd be happy to try and answer any questions. [LB356]

SENATOR JANSSEN: Questions? Seeing none, thank you, Beth. Any other proponents? Opponents? Opponents? [LB356]

MARVIN KROUT: (Exhibit 3) Good afternoon. My name is Marvin Krout, M-a-r-v-i-n K-r-o-u-t. I'm the director of the Planning Department for the city of Lincoln and Lancaster County. In this case, I'm here primarily to talk about the interests for the city of Lincoln. We did not have an understanding of the purpose of the bill until about two hours ago when I was able to talk to the Bellevue planning director. I do understand Bellevue's concerns with protecting its future growth area and trying to find the tools that will help them do that. I guess what I'm here to tell you is that our opposition is qualified in that if a bill can be amended so that it holds Lincoln harmless, I think the city of Lincoln would not object to it, but as it stands now this bill does affect the city. And even though we're just a few miles down the road from Douglas County and Sarpy County, we're probably many more miles away in terms of the way that Lincoln and Lancaster County do their planning and do their development. Not to say that either one is right or

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

Revenue Committee  
February 14, 2007

---

wrong, but over the years the two areas have developed very different ways of developing their communities. I would classify Lincoln's manner of growth as the more classical manner of growth and the one that I think the state statutes originally contemplated, which is that land is annexed at the time that services are ready and are provided and vice versa. And so when the city extends services and pays taxpayers and rate payers pay considerable funds to extend services into a growth area, the idea is that you're opening up land and trying to encourage the sale and the conversion of land to urban purposes to accommodate additional population and additional employment for the community. And so we are not surprised because the city has invested in the infrastructure that's brought up to these properties that the land would increase in value and there would be a desire, we hope, on both property owners' part and the community's part to see the conversion of that land to urban purposes. We have had incidences where land has been at the edge of the community and the city has not annexed it, but the land has been held out because of the greenbelt value, even though the services were there. What the city currently can do is annex the property and because the value is there, encourage the conversion of that land to urban development because land does come in and it is taxed at a higher value. We think that there are mechanisms that are in place, including the conservation easement that Senator Raikes mentioned including zoning, which is recognized by the county appraiser when it is...and if you're under a crash zone at an airport or a location like that or if you're in a floodplain or wetlands, all of that is noted by the county appraiser when they're looking at land. But if land is encouraged to be held out of development because of the extension of greenbelting, without the city's cooperation in that effort, then I think the potential is, and we've seen in fact, what has happened is either the city has to bypass land that it has planned to be provided with services and urbanized and have to extend services further and to open up other land that is available or the landowner is able to hold out and obtain a premium for the price that ends up raising the cost of land and raising the cost of lots and raising the cost of new development in the community, which tends to put a damper on the city's ability to grow. We do cooperate with landowners who have large tracks of land, don't see that there's a market immediately for bringing all of that land in and developing it at the same time. So over a 10 or 15 year period the land may be annexed in stages so that land can be left outside the city and left in greenbelt, and that's the practice that the city has used. Lincoln, if you read the local paper today in the editorial section, has a reputation nationally for being a model of smart growth for growing in a compact way and in an efficient way. And we rely on the tools that we have, and to us annexation is an important tool and the way that taxes relate to that is important. So what may work for Bellevue may not work for Lincoln, and we would ask you to be very cautious. We'd be glad to work with the city of Bellevue and with the League on an amendment that would hold Lincoln harmless in this case. [LB356]

SENATOR JANSSEN: Any questions? Ron. [LB356]

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

Revenue Committee  
February 14, 2007

---

SENATOR RAIKES: Marvin, listening to the testimony, did you hear a circumstance described in which the conservation easement would not work to satisfy the objectives of the city? [LB356]

MARVIN KROUT: No, I can't say that the conservation easement wouldn't work in the cases that were being described. [LB356]

SENATOR RAIKES: Okay, thank you. [LB356]

SENATOR JANSSEN: Any questions? Mr. Krout, did I understand you right? The city of Lincoln does not annex until they have the infrastructure up to that property? Or did I hear wrong? [LB356]

MARVIN KROUT: That's right. That's the city's policy and we think that's what the annexation law says. [LB356]

SENATOR JANSSEN: Okay, but then when you do run your sewer and water to that area, then you go about the process of purchasing the property then, right? [LB356]

MARVIN KROUT: Well, the city doesn't purchase the property but the city encourages the annexation and development of that land. We very rarely annex property that the developers aren't asking to be annexed... [LB356]

SENATOR JANSSEN: All right. I'm sorry. [LB356]

MARVIN KROUT: ...and coming in with, but the importance of having that tool is there. [LB356]

SENATOR JANSSEN: I see. I stated that wrong. Annexing it rather than purchasing. [LB356]

MARVIN KROUT: Right, right. We don't annex automatically. You know, we do work with developers. We do realize there's only a certain market and try to leave land in for agricultural purposes as long as there's not demand for its conversion to urban purposes. But what we don't want to create are hold outs of large tracts of land that may get surrounded by the city because the landowner is able to rely on the artificially low tax rate considering the value that the city has put in with infrastructure. [LB356]

SENATOR JANSSEN: Now that's what you've done as the city is growing north, right? [LB356]

MARVIN KROUT: In all directions. [LB356]

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

Revenue Committee  
February 14, 2007

---

SENATOR JANSSEN: But I noticed the one going north, the development that's happened there because when I leave Lincoln that's the way I go. [LB356]

MARVIN KROUT: Right. [LB356]

SENATOR JANSSEN: And it's remarkable the growth that has taken place out there... [LB356]

MARVIN KROUT: We're glad to see it. [LB356]

SENATOR JANSSEN: ...on the north side. [LB356]

MARVIN KROUT: Hope for some more. [LB356]

SENATOR JANSSEN: All right. Any other questions? Carroll? [LB356]

SENATOR BURLING: Mr. Krout, if this bill were law could the city of Lincoln not continue to do what they've been doing? Would this prevent them from doing their thing? [LB356]

MARVIN KROUT: Well, we would be able to annex properties but there would be no encouragement for a property owner to sell and convert his land for urban purposes. The incentive of avoiding the urbanized tax rate would allow him to hold on to the land for an indefinite period of time. And there may be personal reasons or other reasons why that land might be sitting there, but we think that it's appropriate and equitable for land that has been provided with services and is in the city and is developable to be taxed at a rate commensurate with other land that's similarly situated. [LB356]

SENATOR BURLING: Okay. [LB356]

SENATOR JANSSEN: Any other questions? Seeing none, thank you. [LB356]

MARVIN KROUT: Okay. [LB356]

SENATOR JANSSEN: Any other opponents? Anyone in a neutral capacity? Seeing none, Senator Cornett waives closing. That will end the hearing on LB356. Is Senator McDonald present? There she is. LB484. [LB484]

SENATOR MCDONALD: (Exhibits 4 and 5) Thank you. Thank you. Chairman Janssen and members of the Revenue Committee, I'm Senator Vickie McDonald representing the 41st Legislative District. LB484 eliminates a statutory provision that requires rural and urban fire departments and county agricultural societies to request payment of their tax proceeds through a warrant on the county treasurer. Cities, villages, and school

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Revenue Committee  
February 14, 2007

---

districts, and ESUs receive an automatic payment of the previous month's tax proceeds by the fifteenth of the following month. Cities of the metropolitan class--which is Omaha--and Class V school districts--which is Omaha Public Schools--are paid once a week. LB484 would add rural and urban fire departments and county agricultural societies to the list of political subdivisions that are paid automatically on the fifteenth of each month by the county treasurer. Eliminating the obsolete warrant requirement would streamline the process for the county treasurer and the boards of the political subdivisions and make the process uniform for all political subdivisions. I'm going to give you a copy of the warrants. It's a example of some of the warrants that are passed out. This is a very simple bill that doesn't cost anything to implement. Many of my bills are brought by constituents that just see some issues that could be resolved through legislation and this is one of them. I do have a constituent of mine here to testify after me and hopefully you advance LB484 to General File. [LB484]

SENATOR JANSSEN: Any questions? Chris. [LB484]

SENATOR LANGEMEIER: Thank you, Chairman Janssen, and thank you Senator McDonald bringing this. I have a number of counties that I've had this complaint about from people, but some of my counties have just thrown the warrant system out on their own and they're not even enforcing having to submit the warrants. Do you see that in your district or have you heard about that? [LB484]

SENATOR MCDONALD: You know, I think that's a question that I'll have you ask the gentleman following me, because, you know, I have not been part of county government so I don't know if that's an option or not. If it is it's not being utilized and it is in state statutes. So it's probably a process that we need to just go and clarify to make sure that all counties are uniform in that situation. [LB484]

SENATOR LANGEMEIER: Okay, thank you. [LB484]

SENATOR MCDONALD: Very similar to the one that I brought you before concerning the homestead exemption, which is done by all except eight counties, but those eight counties refuse to do the mailing of the homestead exemptions and sometimes we have to pass state statutes to make sure that everything is done uniform. And it's not being done so same thing in this situation. So I would ask that question to him and let him reply. [LB484]

SENATOR LANGEMEIER: I will do that. Thank you. [LB484]

SENATOR MCDONALD: Okay. [LB484]

SENATOR JANSSEN: Carroll. [LB484]

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

Revenue Committee  
February 14, 2007

---

SENATOR BURLING: Senator McDonald, you shared with us how it's done with subdivisions with larger budgets than this is addressing--monthly, weekly, or whatever. Is there any provision, if we went to this route, how often it would be submitted to the governmental subdivisions under this bill or does... [LB484]

SENATOR MCDONALD: I think it's by the fifteenth of each month and I think there's probably--and you'd have to ask the gentleman behind me--I think there's a minimum. If there's a certain amount it wouldn't be transferred unless it was, you know, a certain amount, but that's something you'll have to ask him. But it would be done by the fifteenth of each month if it reached a certain level. [LB484]

SENATOR BURLING: That was my question. Monthly, sometimes there might not be very much. [LB484]

SENATOR MCDONALD: Right, and I think that's one of the things that you'll need to ask him. It's my understanding that if it's less than a certain amount, then it will accumulate until the next month. [LB484]

SENATOR BURLING: Okay. [LB484]

SENATOR JANSSEN: Any other questions? Vickie, to your knowledge, are they the only subdivision that have to do this or are there other governmental subdivisions that have them? [LB484]

SENATOR MCDONALD: As far as the ones that I listed, which would be the adding the rural and urban fire departments and the county agricultural societies to the list of political subdivisions... [LB484]

SENATOR JANSSEN: Okay, ag societies. [LB484]

SENATOR MCDONALD: Let me check the bill here. We're adding them to the list right now. It's shall pay to each city, village, school district, and educational service unit are already listed. So we're just adding... [LB484]

SENATOR JANSSEN: The only ones that aren't are the rural fire protection districts and what was it...ag society? [LB484]

SENATOR MCDONALD: Ag society. Rural and urban fire departments, and the county agricultural societies to the list of political subdivisions to be paid by the fifteenth of each month. [LB484]

SENATOR JANSSEN: Okay. Thank you. [LB484]

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

Revenue Committee  
February 14, 2007

---

SENATOR MCDONALD: Okay? All right. Thank you. [LB484]

SENATOR JANSSEN: We have proponents. [LB484]

HANK THIEMAN: Good afternoon, Senator Janssen and fellow Senators. My name is Hank Thieman, T-h-i-e-m-a-n. I'm the chairman of the county board in Boone County. And I appreciated my Senator McDonald introducing this bill on my behalf. I asked her to do that and I didn't know if she'd get it done this year, but she did. So I appreciate that, Senator. I'm here representing the rural fire boards and the ag societies. In my research they are the only two that use the warrant system. And if you know what I mean by the warrant system, the treasurer issues a warrant and they've got to come in and get it cashed, a check. So it's kind of an antiquated thing. I think it's just a cleanup bill from some prior bills. I think they just got kind of skipped over and was maybe ignored. In my research, it is the only two entities that don't get to just have a check sent to them. And it is a \$25 minimum. You know, if it's less than that then they don't get it unless six months time goes past, then they would issue the money. In my notes I also want to testify that the county boards do actually oversee the budgeting process for these two entities. It's within our 5 percent limitation. So we got a handle on their spending anyhow. So I really don't see why just issuing a check would be a situation where it would get out of control because it all gets audited anyhow. So I don't see as anything where it gets out of control anymore than any other entity of local government. So that's all I have to say. Thank you very much. Unless you've got some questions... [LB484]

SENATOR JANSSEN: Questions? Senator Langemeier. [LB484]

SENATOR LANGEMEIER: I'll ask one. Thank you, Chairman Janssen, and thanks for coming down through the snow from Albion today. You talked a little bit about the spending getting out of control. Really in these warrants you just put the request in for the money, they call the treasurer and find out how much is there anyway... [LB484]

HANK THIEMAN: That's right. [LB484]

SENATOR LANGEMEIER: And then you write it on there and send it in. And the treasurer is telling you how much to put on it and you're not really telling anybody what you spent it on or you're going to spend it on. [LB484]

HANK THIEMAN: That's true. [LB484]

SENATOR LANGEMEIER: It's just the request, correct? [LB484]

HANK THIEMAN: That's right. It's already budgeted and it's just a request for the money that's been levied. And I know that, Senator Langemeier, there are some counties that

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

Revenue Committee  
February 14, 2007

---

don't use that warrant system. They just give a check, but legally they really should be using the warrant system instead. So this would clean that up so they're doing it properly is all. [LB484]

SENATOR LANGEMEIER: That's why I didn't name them. [LB484]

HANK THIEMAN: Yeah, right. [LB484]

SENATOR LANGEMEIER: Thank you very much. [LB484]

HANK THIEMAN: Okay. Thank you. [LB484]

SENATOR JANSSEN: Thank you. Any other proponents? Any proponents? Any opponents? Anyone in a neutral capacity? Seeing none, Senator McDonald? [LB484]

SENATOR MCDONALD: Concerning Senator Langemeier's question, state statutes do say that you have to have a warrant. So those that are not doing the warrant actually aren't following state statute, but they're doing a good thing, unfortunately, but it is in state statute and that's why need to change it so it makes sure that it is uniform. And so that those that aren't following it can follow it and then those that aren't following need to use the new process hopefully, once this bill is drafted and then moved. Thank you. [LB484]

SENATOR JANSSEN: Thank you, Senator McDonald. That ends the hearing on LB484. Senator Howard is with us to tell us about LB519. [LB519]

SENATOR HOWARD: I brought my own glass, but if I could get some more water that would be wonderful. [LB519]

SENATOR JANSSEN: Go right ahead. [LB519]

SENATOR HOWARD: Thank you. [LB519]

SENATOR JANSSEN: The floor is all yours. [LB519]

SENATOR HOWARD: (Exhibit 6) Good afternoon, Chairman Janssen and members of the Revenue Committee. For the record, my name is Senator Gwen Howard and I represent District 9. I'm here before you today to introduce LB519. Thank you. This bill with the proposed amendment requires each county assessor to inspect and review a percentage of the taxable real property parcels in their county by class or subclass annually. The county assessor shall then adjust the value of other taxable real property parcels in the county so that the values are uniform and proportionate. This bill very specifically requires that the assessors assure that over a four year period of time all

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Transcriber's Office

Revenue Committee  
February 14, 2007

---

taxable real property parcels are inspected and reviewed. The purpose of this bill is to reduce or prevent the impact of sticker shock for real property owners. Without a standardized requirement for the review of taxable real property, individuals property taxes may stay at consistent levels for many years without accurately reflecting the current market value of their home. When adjustments are made following long periods without inspection and review, homeowners frequently experience significant increases in property tax valuation. These sudden jumps in taxation can seriously challenge any homeowner, but particularly individuals living on fixed or limited incomes. During the last assessment period in Douglas County, for example, some homeowners experienced property valuation increases and subsequent tax increases of 40 percent or more. One individual who contacted our office experienced a tax increase of 70 percent. I know that many of my colleagues have also heard from constituents who are outraged by sudden large increases in their property taxes. The homeowners I spoke with did not question the values that their homes were assessed at, but they expressed concern that there were disparities between the market value and the assessed values of their homes for many years, and then abruptly adjustments that led to tax increases that were in some cases unaffordable. When I first decided to address this issue for constituents, I considered a variety of options that might limit the sudden increases that consumers were experiencing. After consulting with some county assessors and the Nebraska Department of Property Assessment and Taxation, I arrived at LB519. I've asked that staff from the Nebraska Department Assessment of Property and Taxation be present today to respond to any technical questions that you might have. LB519 is a fair bill. It doesn't cap or restrict property taxation in any way. It provides statutory requirements for standardized timelines for review of taxable real property parcels. It is simply a measure to ensure that property values are as uniform and proportionate as possible without causing sudden significant financial challenges to homeowners. Thank you. [LB519]

SENATOR JANSSEN: Any questions? Senator Cornett. [LB519]

SENATOR CORNETT: Senator Howard, since you used Douglas County as an example, what is the average length of time that the property owner in Douglas County goes without reevaluation? [LB519]

SENATOR HOWARD: You know, that's a good question. I wish I could give you a concise answer. I really don't know. I could tell you from my experience that, in my case, it was many years. And when I was hit with a big increase, I noticed on the bill they told me I had a finished basement. And it was only at that point that I realized they were charging me for something I didn't even have. So it can go an extended period of time. [LB519]

SENATOR CORNETT: What is the longest time period you have heard of? [LB519]

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Transcriber's Office

Revenue Committee  
February 14, 2007

---

SENATOR HOWARD: You know, I'm trying to think back with some of the contacts that we've had, but I would say a number of years. [LB519]

SENATOR CORNETT: Would you say that Douglas County is not running at 98 percent assessed value? [LB519]

SENATOR HOWARD: I don't know. Possibly the representative from the state can answer that. [LB519]

SENATOR CORNETT: Thank you. [LB519]

SENATOR JANSSEN: Senator Langemeier. [LB484]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. Thank you for your testimony. [LB519]

SENATOR HOWARD: Thank you. [LB519]

SENATOR LANGEMEIER: On the 25 percent, is that restricted to 25 percent of agriculture, 25 percent of commercial, 25 percent of residential? I mean, some years we'll have...like right now we're experiencing horrendous increases in land values, but not in home values. Maybe some decrease in home values. Is that 25 percent narrowed down to particular areas or could they just do farm ground this year and that would qualify? [LB519]

SENATOR HOWARD: You know, I would have to really think about that. The reason that I brought this bill in, clearly, was for urban considerations, because it had caused a problem in Omaha. Enough of a problem that some people were considering whether they could actually stay in their homes. We could certainly discuss whether agricultural land should be included or excluded, depending on what would be the better option. [LB519]

SENATOR LANGEMEIER: Okay, thank you. [LB519]

SENATOR HOWARD: You bet. [LB519]

SENATOR CORNETT: Senator Howard, one more question. [LB519]

SENATOR HOWARD: All right. [LB519]

SENATOR CORNETT: And I'm sorry to put you in this spot here. [LB519]

SENATOR HOWARD: No, no, no. [LB519]

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Transcriber's Office

Revenue Committee  
February 14, 2007

---

SENATOR CORNETT: I have a bill in Education that you heard that brought up this very issue of a valuation between counties. Is it fair to say that counties don't all assess at the same way currently? [LB519]

SENATOR HOWARD: I would have to agree with you that my knowledge, my limited knowledge, of this is they don't. [LB519]

SENATOR CORNETT: And if you have two counties that are next to one another, one of them that is reassessing every year to every two years, and you have homes in Omaha that are not being reassessed for five, ten years that they're not paying the same percentage? [LB519]

SENATOR HOWARD: Well, clearly if you don't have your home reassessed for a number of years I would say you're not paying the same percentage and the state is losing revenue. [LB519]

SENATOR CORNETT: Thank you. [LB519]

SENATOR JANSSEN: Other questions? Seeing none, thank you. [LB519]

SENATOR HOWARD: I passed. Good. [LB519]

SENATOR JANSSEN: All right. [LB519]

SENATOR HOWARD: Thank you. [LB519]

SENATOR JANSSEN: All right. We have proponents, please. Any proponents? Any opponents? [LB519]

NANCY SALMON: Good afternoon, Senator Janssen and members of the Revenue Committee. My name is Nancy Salmon, S-a-l-m-o-n. I'm the Hamilton County assessor and I'm here in opposition of LB519. This all sounds really good in theory. My question is budgeting and staffing of the offices. Several of the assessors' offices in the states, the assessor is the county clerk, clerk of the district court, and I don't know if we put a number on what they need to get done every year could cause some problems. Currently, the assessor's office has to do a three year plan to tell what we plan to do in the next three years. My office, I do plan to do 25 percent reviews a year. This year I probably hit the 35 percent number because we reappraised Aurora city, which is my largest parcel count. And agricultural land, due to the NRD, with the land issues that all of you are aware of that we've had to work with, if I count those too, we've probably done 50 percent of our parcels this year. I haven't read the amendment. I guess that maybe it's the 25 percent taken out. Maybe four years is a little much. Maybe we need

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

Revenue Committee  
February 14, 2007

---

five. I'm not sure this needs to be handled statutorily. We have guidelines, regulations from the Property Tax Administrator. I guess I would maybe like to see it handled that way. We do, like I say, in our county, every county has their own way, but I hope we don't put a financial burden on some of the counties seen statutorily, and we see some assessors losing their certificates because the county boards will not give them the funding to be able to actually physically inspect these properties. I have four staff members in my office. I do have two that two days a week they're out assessing properties, except right now when we're in the office busy because we have to have our valuations set by March 19. So that's what we're up to right now so obviously no one's out. We had our pickup work and our review done by February 1. I'd be happy to answer any questions that you might have. [LB519]

SENATOR JANSSEN: Any questions? I don't see any. [LB519]

NANCY SALMON: Okay, thank you very much. [LB519]

SENATOR JANSSEN: Thank you. Any other opponents? Other opponents? Anyone in a neutral capacity? There's neutral. Here comes our neutral lady. [LB519]

CATHERINE LANG: Chairman Janssen and members of the Revenue Committee, my name is Catherine Lang, Catherine with a C, last name Lang, L-a-n-g, and I'm the Property Tax Administrator for the state of Nebraska. I appear here today in a neutral capacity on LB519. I'll be happy to answer any questions that any Senators have. I would like to give just a little bit of background with regard to the bill. Under current law, state statute requires that all property be at its actual value each and every year. I think that we all know that that's probably not a probable task that can be imposed on the county assessors, and in fact, case law indicates that to achieve this would be impossible and their requirement is that we need to achieve the required levels of value and achieve uniform and proportionate values. What I think that this bill does and the concept contained in this bill, in particular in light of the amendment that Senator Howard has offered to the bill, that it provides some statutory structure to help define what is an adequate assessment process. The benefits of the bill, as Senator Howard did mention, would be to curtail spike valuation increases. Our office receives numerous phone calls from constituents across the state that express concern when their valuation increases significantly. Most of the property owners will tell you, as Senator Howard described, that they don't disagree with that final valuation. They just cannot believe that it could increase so significantly in one year. This is not limited to any one county. We hear it from across the state. This will also assure current and accurate property descriptions. The valuation process is highly dependent on the physical characteristics gathered on the property. Do you have a finished basement? Is the square footage correct? And items such as that that do impact value. And in particular if a assessment office is relying heavily on the cost approach, those physical descriptions can have a definite impact on the valuation. So if those descriptions are current and

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Transcriber's Office

Revenue Committee  
February 14, 2007

---

accurate, a property owner will hopefully gain confidence that the valuation is close to actual value. This bill also specifically recognizes the requirement for equalization. In the past, there has been a district court case. It did not go to the Nebraska Supreme Court, but a district court case in Douglas County that overturned the actions of the then county assessor who was doing neighborhood by neighborhood valuations. One of the flaws that I believe was indicated by that case is that that's all they were doing. They were doing the neighborhoods, but then doing nothing else. So in other words, if your neighborhood wasn't reviewed for a number of years, your value wouldn't change. What this bill specifically requires is that when you go out to do the classes or subclasses of property that you're going to be inspecting, that you also then examine the level of value of the remaining classes and subclasses of property and make appropriate adjustments if necessary. A concept like this will stabilize the budget needs of the county assessment function and it will also stabilize the valuation changes for local governments that tax that value. Certainly there are contrary positions that one could examine in this concept. It could be viewed as an unfunded mandate or that it limits local control. I think without the amendment that Senator Howard offered, I think that would be correct. To mandate 25 percent of the parcels is probably too restrictive. I think that her amendment would certainly address that question. It will result in valuations changing more frequently. However, if a property owner is not happy when their valuation increases significantly, perhaps it is better to tell them that if we can keep up with the market your valuation may change more frequently, but at least it will be gradual. Lastly, this may increase the number of valuation notices that are issued by a county assessor each year, especially if they're increasing valuations by a lesser percent but doing more properties. And with that, I'd be happy to answer any questions. [LB519]

SENATOR JANSSEN: Any questions? Ron. [LB519]

SENATOR RAIKES: One, I guess. If I got a valuation notice and I found that it was a sharp increase, but yet it was still within range, should I complain or should I be happy? [LB519]

CATHERINE LANG: Well, it's very difficult to tell a taxpayer that they should be happy because perhaps they were undervalued in the prior years. What they're reacting... [LB519]

SENATOR RAIKES: But there's a way to correct that. You know, I could go back and pay the extra I owed on all the years when I wasn't...okay. [LB519]

CATHERINE LANG: That's the reality. [LB519]

SENATOR RAIKES: Let me ask you this. Is this appropriately a part of statute? [LB519]

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Transcriber's Office

Revenue Committee  
February 14, 2007

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CATHERINE LANG: Other states do have provisions like this in state law. I don't think it's inappropriate to have it in statute. Could it be done by regulation? Probably. But currently in state law we sort of have that mandate in law that it says every year at actual value, but we know from case law and we know from administrative experience that that's not what we're doing. What a bill like this does is provide some structure so that we have an understanding of what is an adequate assessment process. [LB519]

SENATOR RAIKES: So what is now in statute without this, what does that offer you in the way of a basis for regulation? Would that be sufficient to allow you to put something like this in regulation? [LB519]

CATHERINE LANG: If a bill like this were adopted into statute? [LB519]

SENATOR RAIKES: If it weren't. [LB519]

CATHERINE LANG: If it weren't? Could it be done... [LB519]

SENATOR RAIKES: Could you put this in regulation given what we currently have in statute? [LB519]

CATHERINE LANG: What we've done is we've left that to the local discretion of the elected county assessor. And one of the things that the Legislature has done is to direct the assessor to issue a three year plan so that people realize what's coming. Part of the intent of that plan was to try to lay out over that three year period of time or it's an annual review. So it grows...you know, it's each three years going forward that someone like the Property Tax Administrator could look and determine is the county assessor going to cover all property over the next few years. And if a county was ignoring or not even touching a class or subclass of property then the Property Tax Administrator under 77-1330 could institute proceedings to correct what would be in his or her mind concerning assessment practices. And that's another way that a bill like this would be enforced is under those same provisions. We would expect to see, over a four year cycle, that the assessor would be inspecting all property in the county. [LB519]

SENATOR RAIKES: Okay, thank you. [LB519]

SENATOR JANSSEN: Cathy, the counties that have the state assessor now, what is their practice? [LB519]

CATHERINE LANG: This is essentially what we are striving for. We are close... [LB519]

SENATOR JANSSEN: About 25 percent. [LB519]

CATHERINE LANG: Yeah, well, the idea is that over a four year cycle we will have

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

Revenue Committee  
February 14, 2007

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inspected all real property parcels and it does include agricultural land--all real property parcels in the county. One of the reasons that I agree with the amendment that Senator Howard is offering on removing the 25 percent restriction is what if I were to choose to do all my industrial property in a year? Industrial property it may not even be 10 percent of the parcels, but they're such difficult parcels to assess that it may take as much effort as it would be to do all of my residential property in one year. So I agree that the amendment sort of allows for that local assessor to look at the lay of the land over a four year cycle and decide how do they want to spread it out over four years. [LB519]

SENATOR JANSSEN: Can they do it over four years? I mean, is it a hardship for them to do that? [LB519]

CATHERINE LANG: That's a very good question and you heard the assessor from Hamilton County say is it the right time frame? We know of states that have a four year assessment cycle. We know of states that have a six year assessment cycle. [LB519]

SENATOR JANSSEN: Okay, any other questions? Chris. [LB519]

SENATOR LANGEMEIER: Thank you for the clarification on the including ag land. I still see that you could spend a year on ag, a year on commercial, industrial, a year on something else, and then coming back to your residential in that fourth year and still having that jolt effect, sticker shock effect, when you reassess your house every four years. [LB519]

CATHERINE LANG: Well, except that would be true if that is all you did in one year. But, for example, when I describe this--and I have described it frequently to county assessors or county board members--if you--and this is not how I would recommend it being done, but I'm going to use it as an example--if you took your county and you quartered it and you went and you did your physical inspection in one quarter of the county, this provision, this bill, requires that you analyze the level of value of the remaining three quarters and make appropriate adjustments. So pretend nothing has been done and this is your first year. And you walk in and you're going to do this first quarter of the county, and you go out and you do your inspection, and you realize that you're going to do--let's use an exaggerated number--you're going to do a 20 percent value increase. Things are so outdated that it's going to require a 20 percent valuation increase in that quarter of the county based on all that work you just did. You would then examine, using your sales assessment ratio study or what you have learned from this particular quarter of the county, to make adjustments in those other three quarters. So in a sense, you could imagine that whole county could increase. The next year you'll go do another quarter and you'll go in there and you'll do the detailed work. You'll look at all the properties. You'll bring your descriptions up to current. And maybe you'll learn that it's only going to now require in that quarter, a 5 percent increase. Knowing that you have an acceptable range between 92 and 100, maybe your other three quarters in that

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

Revenue Committee  
February 14, 2007

---

year are not out of line. Soon maybe you don't touch the other three. But now you come around and you're in your third year and you're in your third quarter of the county and again, now it's maybe more than five. Maybe it's seven or eight because the market continues to increase. Well, now these other three quarters might have...or the second quarter might not be out of whack, but these two might be so you'd increase them. So it's not that we propose that you do something in one year and never look at it again in terms of its level of value over four years. You would still need to come back and examine all of your classes and subclasses for level of value. But what this bill does, the concept that's in this bill, is to assure that you have complete, accurate information over a reasonable period of time, a rolling process, for your assessment cycle for all your property. [LB519]

SENATOR LANGEMEIER: Thank you. [LB519]

SENATOR JANSSEN: I think they do mine every year. (Laughter) Any other questions? Thank you, Cathy. [LB519]

CATHERINE LANG: Thank you. [LB519]

SENATOR JANSSEN: Anyone else in a neutral capacity? Anyone else? All right. Senator Howard to close. Go right ahead. [LB519]

SENATOR HOWARD: While there are certainly homeowners throughout Nebraska that may appreciate that their property taxes have remained relatively unchanged for years on end, most of them are well aware that eventually the other shoe will drop. Still others are concerned about large, abrupt changes in the property valuations and subsequent taxes that they have experienced. Keeping valuations current will decrease the incidence of sticker shock experienced by homeowners who face conflicting financial priorities as they attempt to cover the cost of 30 percent, 40 percent, or even greater property tax increases from one assessment to the next. Slow, incremental increases based upon uniform property value appreciations are fair and reasonable. I encourage your help in making this improvement in the way we assess property taxes in Nebraska and advance LB519. Thank you. [LB519]

SENATOR JANSSEN: Thank you for being here today. [LB519]

SENATOR HOWARD: Thank you. [LB519]

SENATOR JANSSEN: And that ends the hearing on LB519. Is Senator Mines here? There he is. [LB519]

SENATOR MINES: Yes, sir. [LB519]

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Revenue Committee  
February 14, 2007

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SENATOR JANSSEN: Senator Mines, the floor is all yours. [LB519]

SENATOR MINES: Senator Janssen, thank you very much, members of the committee. For the record, my name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District and I am here introducing LB294. LB294 changes the standard review for appeals to the Tax Equalization and Review Commission. The current standard requires the taxpayer appealing a decision from the county board of equalization to prove the decision is arbitrary or unreasonable. The taxpayer must establish that the assessed value placed on their property is the result of a systematic exercise of intentional will or failure of plain duty, and that the assessed value is grossly excessive in comparison to similar projects. We believe this is an exceptionally high standard to meet. TERC was intended to provide a system for review of property tax assessments that's both accessible and affordable to the average taxpayer, while at the same time providing a level of expertise on the part of the commission capable of handling complex valuation appeals. However, because the taxpayer is rarely able to meet the exceptional high standard, I think the system is virtually inaccessible to the average taxpayer. Changing the standard of review provides the taxpayer increased potential to access the system as it was intended. The proposed standard eliminates unreasonable and arbitrary language, and instead requires a taxpayer to prove the board's valuation decision was incorrect by the greater weight or preponderance of the evidence. It then requires the taxpayer demonstrate value by a greater weight of evidence and allows TERC to make a determination of the value and I believe this would make the system more accessible to the average person. There are experts galore behind me and I'm going to waive closing, Mr. Chair, but I would encourage the committee to give strong consideration and advance the bill. Thank you very much. [LB294]

SENATOR JANSSEN: Any questions? Senator Raikes. [LB294]

SENATOR RAIKES: Senator Mines, do you run the risk with this of basically having the process start all over again at the TERC? [LB294]

SENATOR MINES: It may be unintended and it is unintended, but I think it's important that when additional evidence is available that the average person is able to bring that evidence forward and have it equally considered. And that, I don't believe, is part of that process today. [LB294]

SENATOR RAIKES: My confusion is additional evidence. So you're talking about only in the circumstance when there's some information that wasn't there before? [LB294]

SENATOR MINES: Right, right. And that opportunity doesn't exist today to have it fully considered as I understand it. [LB294]

SENATOR RAIKES: Okay. [LB294]

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

Revenue Committee  
February 14, 2007

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SENATOR MINES: But we have people behind me that can certainly do that. [LB294]

SENATOR RAIKES: Okay, thank you. [LB294]

SENATOR MINES: Thanks. [LB294]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Mick. [LB294]

SENATOR MINES: Thank you. Again, I'll waive, Mr. Chairman. [LB294]

SENATOR JANSSEN: Um-hum. All right. Okay. Proponents. [LB294]

JERRY SLUSKY: (Exhibit 7) Good afternoon, Mr. Chairman, members of the committee. My name is Jerry Slusky representing the Sisters of Mercy and the Nebraska Association of Commercial Property Owners on this matter. Just by way of a little bit of history, if I may, I think you all know that before 1995 if you wanted to appeal a decision of the board of equalization, any of the county boards sitting as a board of equalization in July, you would have to take it to a district court. In order to take away or to soften up that very difficult and expensive process of litigation of these cases the TERC was introduced and we did examine quite a bit of the legislative history of 10 years ago, and certainly it was one of the primary purposes was to have a more taxpayer friendly place. I think it still has a \$25 filing fee. It's faster and supposedly the hearing is supposed to be informal, unless you've specifically asked for a formal hearing. Rules of evidence don't necessarily apply. So taxpayers, and I've spoken on this several times to different groups, and I always mention in my remarks that if someone thinks that the TERC hearing is someplace to go down there and just present your case, unfortunately they're wrong. You really do need to be significantly prepared and I'm going to talk about that in a minute. So what are the procedures? If a taxpayer's house gets raised from \$200,000 to \$300,000, he gets a raise notice in May from his assessor, he has a chance to go down and visit with the board of equalization. And in a lot of counties--certainly Lancaster and Douglas and maybe that's because of their size--the board of equalization, the county board, are engaging what they call referees which are provided in the statute. And these referees are seasoned real estate appraisers. So a taxpayer comes in and presents their evidence that, you know, three houses down the street sold for \$250,000 last year and you've got me at \$300,000, and you try to make a case. The assessor will be there also and stating to the referee that they have some comparables that are different. And frankly, what happens after that referee hearing is that you wait about three weeks and you'll get a notice. That's all your hearing. It's about a 10-minute little session. They have piles of these appeals sitting on their desk, and I have evidence to this, but about 90 percent of the referee decisions get stamped exactly with what the assessor proposed. So that, in essence, is the so-called board of equalization hearing that our taxpayers in the state of Nebraska have before

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

Revenue Committee  
February 14, 2007

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they are launched into what we call TERC. So now the TERC...the taxpayer says, gee, he priced my house at \$300,000. I really think it's only worth \$250,000 and I'd sure like to appeal that. That is costing me too much money or my farmland is too high or my building is too high or whatever. So they apply to the TERC. And what we've handed out to you is off the state website for the TERC. And I would like to direct your attention to the lower right hand corner that I have circled. What does that taxpayer have to do? What this is really asking is what does the taxpayer have to do at TERC to win their case? And I found, frankly, this language astonishing. This is all the taxpayer has to do. They have to show that the county board's decision was incorrect and as Senator Mines said, unreasonable or arbitrary. So you don't even have a way. If the taxpayer came in with an appraisal that said his house is worth \$250,000 and the assessor had one showing that's worth \$300,000, okay, the TERC are seasoned people. They're appraisers, lawyers, etcetera. They ought to be able to listen to the evidence and make a decision as to who has the better comparables, the better evidence, and go forward, but you don't. Taxpayer doesn't even get on the playing field. They're down there at TERC. They put in their case, but they have to prove not only is it incorrect, but it's unreasonable or arbitrary. Now that is a huge mountain to climb whether you're a lawyer, "nonlawyer," anybody appearing at the TERC has a huge standard to overcome. It goes on to say it was incorrect, and arbitrary or unreasonable, has to be made by clear and convincing evidence. So now you have to say okay, it's incorrect. It's unreasonable or arbitrary and I have to determine that at the TERC by clear and convincing evidence. The county is not required to present evidence. So here you have the county represented by the county attorney and a seasoned appraiser assessor, all with these credentials sitting on this side of the equation. And you have this taxpayer in a taxpayer friendly "court." I used to think it was an administrative hearing. It's a court. Saying okay, how do I win here? And they tell you. So that's all you have to do. If the taxpayer--and this happens a lot of times at that TERC--presents their case and it's kind of a weak case because they don't understand appraisal law, they didn't bring an attorney, they didn't hire an appraiser, county doesn't do anything. Taxpayer has not met their burden. Hasn't even come close to meeting their burden. And the TERC, according to the current rules, will dismiss that case. Appeal over. So at this point, if the county does choose to put in evidence then they would put on their case, appraisal would be submitted on the record, and the taxpayer or their attorney would have the right to cross-examine the appraiser who did the work for the county. It's not just a cross-examination on how much value, how did you get to your value, what did you do? You have to go behind the process and see if the process was flawed. And really not until you open that up do you have any chance of meeting the burden at the TERC. It's extremely, extremely difficult. I'm going to share something with you that comes out of a Court of Appeals case just last May, our Court of Appeals of course, they make the statement even more strongly, stronger than before. Here's a quote. In an appeal from a county board of equalization, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion, unless it is established by clear and convincing evidence that the valuation placed on the property when compared

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

Revenue Committee  
February 14, 2007

---

with valuations placed on other similar property...now, stop here. The \$300,000 house, assessor has two \$250,000 comps, or I do, and the assessor has \$300,000 comps. We both present our evidence. No. You have to show that the similar property is grossly excessive. So I don't know what that means. I think it means \$100,000, \$200,000, \$300,000 off the mark. Being way off the mark. And on top of that is the result of a systematic exercise of an intentional will or failure of plain duty by the assessor and not mere errors of judgment. Oh my goodness, folks. That is, for anybody, impossible to really get to to find a flawed process and a very poor valuation. So what do we want to do about this? Our suggestion is simply to take the unreasonable and arbitrary standard out. Let's have a fair hearing. Let's let the assessor bring in their evidence and the taxpayer bring in their evidence. You've got, by statute, a very real estate knowledgeable panel of people on the TERC who know real estate appraisal law and appraisal techniques, and they can make a determination. The statute, LB294. Like to do this on page--if you have it--on page 4, line 16. I'd like to point out something very interesting about this statute. Line 16, Section 7 says the commission shall hear appeals and cross appeals as inequity and without a jury and determine de novo all questions raised in the proceedings upon which the order, etcetera, is based. Now for a lawyer that sounds like okay, I'm going to get a hearing here. Assessor puts their evidence out. Taxpayer puts...have a hearing. The TERC takes a look and says okay, let's make a decision. Who's got the best case? But oh no. Now we go 180 degrees back and we go down to Line 20. In all these appeals, excepting those arising under another section, if the appellant presents no evidence then the order should be affirmed. No problem. But it goes on and this is really the key sense. If the appellant presents any evidence--and most likely if they came to the TERC they would, I'm on line 24--to show that the order, decision, determination, or action appealed from is incorrect, such order, meaning the decision of the board of equalization, shall be affirmed. So now the taxpayer has proven that the assessor's decision and the board of equalization's opinion is incorrect, but it still mandates, the way our law is written today, it mandates that the TERC affirm it unless evidence is adduced establishing that the order, decision, etcetera, was unreasonable or arbitrary. Frankly, again, awfully high standards. Why is this important? I'll conclude. We have a client here...Sisters of Mercy operates about 20 some low-income housing in the state of Nebraska. We've done work for them for a number of years and they have a great system, a great process. They take in people who really are down and out and they take them into these low-income housing units and they train them, they work on resumes, they try to get them back in the workplace, and they just do magnificent work. Well, number one, they're not tax exempt. Low-income housing in Nebraska is a business and it's not tax exempt. And we took this one up to...I think it got to the Supreme Court. Okay. So now they're taxed. And you're going to hear from a young lady here who's gone to the TERC with a very high tax on the property. What happened at the TERC, they presented their evidence, assessor presented some evidence. TERC went for the assessor and now these homes--and she'll tell you this--are threatened to being closed. They have taxes that don't even come close to justifying the revenue, in particularly the net revenue, off that property.

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

Revenue Committee  
February 14, 2007

---

Don't even come close to justifying that. Look, this is Nebraska. This is America. And I'm not trying to play apple pie, but my goodness, folks. This is not fair. This is not fair. And we are a fair people in the country, a fair people in this state, and I think we ought to at least treat our citizens that way. And all of us pay taxes and contribute to the success of this magnificent state and I would just suggest to you that this bill should be passed once and for all and give us a fair and reasonable hearing. Thank you very much. [LB294]

SENATOR JANSSEN: Any questions? Tom. [LB294]

SENATOR WHITE: Counsel, I have a question regarding the language, and perhaps I'm missing something, but on page 5 the replacement language still seems--at least in my reading--to readopt the unreasonable or arbitrary or unlawful standard. Is that how you read that? The underlined language? [LB294]

JERRY SLUSKY: Now you're at the top of page 5 on line 1? [LB294]

SENATOR WHITE: I'm sorry. I'm on the wrong one. Clearly, got it. It's been replaced. Pardon me. So this would return it just to greater weight of the evidence. Is that correct? [LB294]

JERRY SLUSKY: Exactly. [LB294]

SENATOR WHITE: The question I had, Counsel, to that is do you know of any situation in the law where new evidence is adduced, and yet you have a standard that is an appeal standard? [LB294]

JERRY SLUSKY: No. [LB294]

SENATOR WHITE: Other than this. [LB294]

JERRY SLUSKY: No, never seen it. [LB294]

SENATOR WHITE: New evidence is adduced in front of the TERC, correct? [LB294]

JERRY SLUSKY: Yeah. [LB294]

SENATOR WHITE: But the standards are strictly on the highest level of appellate scrutiny. [LB294]

JERRY SLUSKY: Yes. And the truth is, Senator... [LB294]

SENATOR WHITE: Deferential, I should say. [LB294]

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

Revenue Committee  
February 14, 2007

---

JERRY SLUSKY: ...there's no record. All they have is that this is the number that came from the board of equalization. There is no record down there. [LB294]

SENATOR WHITE: And you're satisfied this standard would be adequate? [LB294]

JERRY SLUSKY: Yes. This is a fair and adequate standard for this business. [LB294]

SENATOR WHITE: Is this the same standard the district court essentially would apply if it was doing this? [LB294]

JERRY SLUSKY: Yes, sir. [LB294]

SENATOR WHITE: Thank you. [LB294]

SENATOR JANSSEN: Ron. [LB294]

SENATOR RAIKES: My question, again, is this the same as starting over again at the TERC? [LB294]

JERRY SLUSKY: I don't think so and that was raised this morning by somebody and I had a chance to think about that a little bit, Senator. Very frankly, with this standard right now, taxpayers and their counsel and appraisers are pushed through a system at the board of equalization. It's pretty rapid, not well thought out, and a lot of homework is not necessarily done. And when somebody loses at the TERC, they lose because the assessor or his people probably didn't do their homework. I frankly think this cleans up the whole system and that's... [LB294]

SENATOR RAIKES: I'm not sure I...when someone loses at the TERC, so the county wins at the TERC, that's because the county didn't do its job? [LB294]

JERRY SLUSKY: Well, what I'm saying is it is so strongly skewed for the county assessor and the board of equalization at the TERC that they are better off just sort of pushing us through and getting us out of there and onto the TERC knowing that there's very little chance that we can win up there. And when we ask for more hearings or more time with the board we get referees who essentially, to a great extent, just do what the assessor did and the thing gets stamped about two weeks later and it gets sent down here as a final valuation. [LB294]

SENATOR RAIKES: So the results of hearings at the TERC reflect this. Almost nobody hardly every wins there. [LB294]

JERRY SLUSKY: There are some. There are people that meet this, where the assessor

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

Revenue Committee  
February 14, 2007

---

has not done his homework. There's something flawed in the process. There's a gross valuation difference. And you have a very good appraiser, \$5,000, \$10,000 they come down from all over the country to win at the Nebraska TERC. And then they have to hire a guy out of Minneapolis who is incredible at demolishing assessors on cross-examination at the TERC. And once that assessor's credibility is demolished then now it's like oh, wow, this really is unreasonable and arbitrary what went on down there. And those are the cases that I think get through. [LB294]

SENATOR RAIKES: Some evidence here that about 30 percent of the cases receive at least some adjustment complete or otherwise. That doesn't sound out of line to me. [LB294]

JERRY SLUSKY: Well, it's really hard to tell unless you have all the statistics, but I am telling you that person after person after person who gets involved with the TERC are telling us and a bunch of us that do this work, that it...(recorder malfunction-some tape lost) [LB294]

GINA FREIMUTH: ...was actually founded in Omaha, Nebraska by the Sisters of Mercy 25 years ago. They founded Mercy Housing because a group of nuns got together and saw a direct need that there was a real shortage of good affordable housing for families who were technically, economically poor. So they formed a corporation and that corporation is Mercy Housing. Since that date 25 years ago exactly, Mercy Housing has grown. We now operate effectively in 40 states. We're headquartered in our national offices in Denver, Colorado, and it's a fabulous organization. The core mission of Mercy Housing is to provide a good-quality, affordable place to live for a family who income qualifies and is economically poor, in a good part of town, in a healthy part of town, with services that help them get to that next level. Mercy Housing's mission is all about not just the family and providing a good place to live, but about making our community overall healthier. We serve approximately 5,000 families here locally in Nebraska, and then nationally over 100,000 families. It is extremely important that we look at this process and achieve a fair valuation in the past have been very unsuccessful at that. This upcoming year in 2007 we will go for an exemption. If unsuccessful, and if we go back to the TERC and work with a fair valuation and are unsuccessful there, we will definitely most likely have to sell our properties here in Lincoln. We have three properties here in Lincoln. We operate at Mercy Housing, it's a nonprofit organization once again, so it operates on a budget that is directly a fine line. So if our taxes are at a certain point in our high, which they are this year, we cannot afford that. We will be forced to sell. So I have to go back to my national office and explain this to them. They will subsidize it for a year, but then that is it. So we will be forced to sell our properties in the exact state that our organization was founded in. So I think that's about it. Thank you. [LB294]

SENATOR JANSSEN: Questions? Chris. [LB294]

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

Revenue Committee  
February 14, 2007

---

SENATOR LANGEMEIER: Thank you, Chairman Janssen. And thank you for your testimony. Would it be your testimony that on your rentals you have in Lincoln, Nebraska that you are renting them at a lower rate than what I would call market rate? [LB294]

GINA FREIMUTH: Absolutely. [LB294]

SENATOR LANGEMEIER: And so would it not be fair to have your property evaluated on a market value rental rate even though you charge less? [LB294]

GINA FREIMUTH: Would it be fair? I don't think so. I don't believe so, no. It would to me be fair to evaluate the property on what the actual resident is paying, the lower amount. That is our income that we're achieving. So an example, if a family, say a market rent for a two bedroom or a three bedroom apartment is \$600, we're charging about \$300 and less. So that's the income that we're generating, which is very minimal. So if we were to be assessed on the higher value, that's where we run into trouble. [LB294]

SENATOR LANGEMEIER: Okay, thank you. [LB294]

SENATOR JANSSEN: Tom. [LB294]

SENATOR WHITE: You're a charitable organization, but let's say I wanted to rent that to my child and I decided to take \$200, instead of market rate of \$600, is it fair then that it be valued at the income stream of \$200? [LB294]

GINA FREIMUTH: Okay, can you repeat the question, because you have to income qualify? The actual resident of the home has to income qualify appropriately to live there. [LB294]

SENATOR WHITE: Oh, believe me, my children would income qualify. (Laughter) The point, though, is that that could be abused could it not? [LB294]

GINA FREIMUTH: I don't think so. [LB294]

SENATOR WHITE: Thank you. [LB294]

SENATOR JANSSEN: Any other questions? Don't see any, thank you. [LB294]

GINA FREIMUTH: Thank you very much. [LB294]

SENATOR JANSSEN: Next proponent. [LB294]

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

Revenue Committee  
February 14, 2007

---

LARRY RUTH: Senator Janssen, members of the committee, my name is Larry Ruth. I come up here for the very limited purpose of putting the position of the Nebraska Chamber of Commerce and Industry on the record in favor of the bill. Mr. Sedlacek is at another hearing and asked me if I would do that. And I would also point out, Senator White and Senator Langemeier you might be interested in this as you were asking questions of the previous testifier, there is another bill, it's LB703 that I discovered this morning that goes to the appropriate way of valuating property of this kind of a taxpayer, namely the Sisters of Mercy. And I don't believe she's here asking for a change in the way you evaluate. She's asking for a fair procedure so that it gets reviewed in an appropriate manner. Thank you. [LB294]

SENATOR JANSSEN: Questions? Any other proponents? [LB294]

KORBY GILBERTSON: Good afternoon, Chairman Janssen, members of the committee. My name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association and the Nebraska State Homebuilders Association in support of LB294. Both the realtors and the homebuilders voted to support this measure as a reasonable standard for review for the average taxpayer appearing in front of TERC. I'd be happy to try to answer any questions. [LB294]

SENATOR JANSSEN: Any questions? Don't see any, Korby, thank you. [LB294]

KORBY GILBERTSON: Thanks. [LB294]

SENATOR JANSSEN: Any other proponents? [LB294]

JAY REMPE: Senator Janssen, members of the committee, my name is Jay Rempe, R-e-m-p-e, state director of governmental relations for Nebraska Farm Bureau and we do have policies that supports a bill like LB294 and just wanted to be on record in support. [LB294]

SENATOR JANSSEN: Okay. Questions? Seeing none, thank you, Jay. Next proponent. [LB294]

BILL PETERS: Mr. Chairman, members of the committee, my name is Bill Peters, P-e-t-e-r-s. I'm appearing on behalf of myself, but you know, it's a TERC bill and I couldn't refrain from joining in. Mainly in response to some of the questions. I was around, in this room, over the many sessions, when TERC was created. In fact, I was a representative of an organization that opposed the separation, the constitutional amendment separating the department. I think we officially were neutral on the subject, but at one time we did oppose the formation of TERC. However, in the later years as it was developed, we were somewhat in support and discussed what we saw as needed

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

Revenue Committee  
February 14, 2007

---

by the taxpayers. TERC has not reached its potential. A good part of the reason is the Legislature. There's a need in TERC for a formal procedure. When you're dealing with the \$50 million, \$100 million properties. We don't need a bunch of referees coming in off the street. And you never know in these cases until you get there. However, where TERC has not been able to reach its potential has been, one, because of funding. We talk about being taxpayer friendly. Well, I view taxpayer friendly as one thing for a Fortune 500. And taxpayer friendly is something else for a citizen off the street coming in protesting their own home. I think there are alternative dispute resolution approaches, which TERC has experimented, I would say, with or has some experience, except there's no funds for those. I think it would also speed up the process if TERC had the ability and the funding to deal more with their volume cases and then concentrate on the larger cases. So part of the failure of TERC is not entirely the statute or TERC, though they've got to accept their share. We do start over at TERC and I think that is good. I view the county boards of equalization, when they're functioning properly in the referee system if it ever functions properly, as sort of a winnowing process solving a multitude of problems. And the county boards do solve a lot of problems, but there's some that just got to go somewhere else to be solved. If it's only because the taxpayers want somebody other than a bunch of people paid by the county that they're mad at to start with to do the valuation. So there is that combination. Getting back to the bill, the first time you read that standard and you start writing a brief you get a little bit nervous. Arbitrary, capricious, unreasonable, illegal...you can find all those in the court cases. My first time I did that I thought, my, the county attorney ought to bring an action to remove all these people from office if they've done an illegal act, which is almost the burden of having to prove. By the same token, and my last comment is that my opinion is that it's not unreasonable to put the burden on the taxpayer. I don't think the county should have to establish their case, mainly because we just can't afford to pay the county enough to do that on all cases. I think this bill reaches a happy compromise. I'd be happy to answer any questions. [LB294]

SENATOR JANSSEN: Any questions? Don't see any, thank you, Bill. Ron, did you have one? Oh, okay. [LB294]

BILL PETERS: Thank you. [LB294]

SENATOR JANSSEN: Any other proponents? Any opponents? [LB294]

BOB WICKERSHAM: Chairman 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 on behalf of the commission in opposition to LB294. I have some sense that in view of the proponents that if we took the greater weight that I know how this would turn out, but I think that is not the standard for the Legislature and I don't think that's the appropriate standard for this review by TERC. When I was listening to the earlier testimony I tried to make notes about some of the items that I thought were

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

Revenue Committee  
February 14, 2007

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clearly erroneous--which is another standard for review, by the way--that I should bring to your attention. First, you had language read to you from a court case. I don't know whether that was a...I think it was a court of appeals case. That's language from the court of appeals. That isn't language from the statutes. You won't find that language in the statute as is and that is not the standard of review that is applied by the commission. At least it is not applied in the standard value cases that I think most people are interested in. There's another variety of case and it's the equalization cases, and the courts have repeatedly and insistently recited the standard that was read to you as the standard for review in equalization cases--in equalization cases--and those are different than standard value cases. If you're going to come in and argue that your house is worth \$100,000 as opposed to \$150,000 that's a value case. If you're going to come in and argue that your neighbor's house is worth \$150,000, but is only valued at \$100,000, while yours is also worth \$150,000, but is valued at \$150,000 that's an equalization case. And the courts--I will reiterate--have insistently and persistently said that the standard of review for those kinds of cases is different than the value cases and they have said that in spite of the language that is in the statute. Now some of you will recall that in 2001, in an attempt to moderate that kind of language from the courts, that the Legislature, in fact, modified the existing statutes by repealing 77-1511. That was the standard that had been placed, or the statute that had been in place, since 1959 governing decisions of the district court or in fact setting a standard of review for the district courts from decisions from county boards of equalization. That standard was in place--I will reiterate--since 1959. The Legislature, in 2001, struck 77-1511 and made the current version of language in 77-5016 conform. We actually had two standards of review that were applicable to TERC before we did that. There was one in 77-1511. There was also one in 77-5016. So one of them was eliminated. What was left was almost--almost--purely the standard of review that had been applicable to the district courts since 1959. Now part of what was eliminated was the old language that said if the district court found that the value was too low that the value could be raised. It is the current opinion of the commission that we can't raise values beyond the notice values that were given by the assessor or by the county board, but the old language--the old language--was that the district court could raise values if you proved at the proceeding that the value was higher than had been shown either by the assessor or by the county board. That was eliminated. Now you also had read to you language from Section 7 of 77-5016. That language is no longer law. It was no longer law as of last Friday when the Governor signed LB167. That is not the current review process. To the extent that that language caused anybody difficulties that language has been repealed. I was confused by the testimony of one of the witnesses, seemingly in the belief that by changing the language that somehow that value wasn't an issue--or I shouldn't say wasn't an issue--but somehow it's easier to prove value. It's somehow easier, in the language that's proposed, to prove value. I don't think that's the case at all. We heard somebody say that you need to come to TERC with an appraiser. That you need to have a high-priced lawyer. Well, that would be my advice if you have a multimillion dollar property, because the valuation issues in those kinds of cases are very complex and

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

Revenue Committee  
February 14, 2007

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you do need experts, and you're a damn fool if you don't show up with them. But this wouldn't necessarily change that nor would it change the obligation that anybody has to prove what value ought to be. The TERC cannot make up a value. Someone has to be able to prove to us what value is on a given date. If you don't do that you can't win. And if you need an expert to do that, you need an expert. If it's a home and you can prove that by bringing us, for example, sales of comparable properties and showing us, in fact, that they are comparable properties and that they're sold in a manner that is an arm's length transaction and that they're within a reasonable time of the assessment date, you can win and people do and we'll be happy to furnish you with the statistics if you're interested in statistics. But I think the far more important question is not whether people win. It is whether they have proved that they should win. We're not in the business of...we're not a political business. We're not in the business of trying to make people happy. We're not in the business of trying to ease things along. We're in the business of making decisions on proof and that's what we require and that's what we would still require even if you change the statutory standard. Somebody is still going to have to prove what value is. Now if they don't want to prove what value is you should develop some other kind of a form for them, because it won't work unless you have to prove value. The question about what happens at the county board level I think was associated with the old language in Section 7 so I don't know if I want to comment on that further, but the practices in counties varies considerably. Sometimes we get a transcript. Sometimes it's a transcript of sworn witnesses. Sometimes there is, as they suggest, nothing from the county board proceedings. But the idea that in TERC proceedings that we have no evidence at all from the county is flatly incorrect. What the commission requires, and in fact it is also part of statute, because it's records that the counties are now mandated to keep...two years ago you mandated that the counties keep certain records. And then the commission adopted rules and regulations and through its orders requires the county, in every single proceeding that has to do with the value of property, to produce a substantial amount of information. What we require is that they furnish all of the information used by the county to set the value. In other words, we require the county to produce all the paperwork that will tell us what the county did to set the value, either the assessor's value or the county board value, whichever one it is. If they've got records that comes in and is produced as evidence at the hearing. So the idea that we don't have any idea what the county did, how they did it, why they did it is flatly incorrect--flatly incorrect. We have information from the counties. And I'll tell you that in the process that sometimes that the information that the county presents to us is used against them, because it shows their own records. Their own records show that they're not correct. Now that doesn't happen all the time, but it does happen. Their own records show that they are incorrect. And it shows in other instances that it's arbitrary and unreasonable that they simply aren't right by any stretch of the imagination. Their own records that we've required them to produce. The question about whether or not, in a new proceeding, you should give any deference to a prior decision maker is probably the more difficult question that is posed in what I've heard today, but let me suggest to you that if you do not want the commission to give

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Transcriber's Office

Revenue Committee  
February 14, 2007

---

deference to the decisions of the prior decision makers then I agree wholeheartedly with the testimony of Mr. Peters. We're going to need more money. This year the commission has 1,400 appeals. Somebody thinks they can win under the current standard of review. Somebody thinks they can win after they've read the information that the commission puts out advising them how to proceed and how to develop their evidence and how to make a presentation. Somebody thinks they can win. We're going to have about 1,400 appeals. Now that's more, quite frankly, than we can handle if we held hearings on every one of those appeals. We do not have time to do it. We cannot manage that many appeals. To the extent the effect of passage of this legislation, if it's adopted in the form that I see it now, would increase the number of appeals to the commission, we will, at some point, be absolutely unable to handle the workload with our current resources and with our current processes. So we'll be asking you to change that. Now I don't want to suggest that as a threat. It's not a threat. I think it's a fact. We are very, very, very close to our absolute capacity in what we can do to handle our workload. A year ago we did, as Mr. Peters suggested, use an alternative dispute resolution process. We used mediation. We paid for it. It was authorized by the Legislature. We paid for it in full. We used it in Douglas County. We spent a little under \$20,000, \$18,600 in Douglas County. And we had, for what was our estimation, the proof of a process that would work. We said to Douglas County and others that we could not afford, on our budget, to do that process year in year out, because that only handled about 100 appeals. At 1,400 appeals you can guess how much it would cost to run that kind of a process. We told the counties that we will be happy to try to find money and we submitted a budget that requested money. We'll fund half. We'll fund half of the process. We can't fund it in full. We'll fund half of the process. No county has taken us up including Douglas County where, frankly, the bulk of our appeals for this year have arisen. So there are ways to do things. You can change our processes, but I'm here to tell you that in my opinion they work as is and I'm weary of the result that I think I can see coming if the legislation that you have in front of you is adopted unmodified. Was that too much? [LB294]

SENATOR JANSSEN: No. I thought you were just getting warmed up. (Laughter) [LB294]

BOB WICKERSHAM: Well, this is...well, maybe so. [LB294]

SENATOR JANSSEN: Any questions? Ron. [LB294]

SENATOR RAIKES: So I'm not happy with my value at the county board and I go to TERC. The information from the county is there. You request and they provide the information they use to come up with my value. [LB294]

BOB WICKERSHAM: Yes, sir. [LB294]

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

Revenue Committee  
February 14, 2007

---

SENATOR RAIKES: I prove my value and it's different from the county's value. [LB294]

BOB WICKERSHAM: You'll win. [LB294]

SENATOR RAIKES: Okay. So isn't the question really what I consider proof and what you consider proof? [LB294]

BOB WICKERSHAM: Well, that is the process and we have people come to us with what they think is proof of value and you're correct, Senator. It isn't proof of value. And then they don't win. [LB294]

SENATOR RAIKES: And did I hear you say that this change would not effect the... [LB294]

BOB WICKERSHAM: You've still got to prove value. [LB294]

SENATOR RAIKES: ...the definition of proof of value? [LB294]

BOB WICKERSHAM: No, you've still got to prove value. We can't enter an order that says a house is worth \$100,000 unless we have proof that a house is worth \$100,000. [LB294]

SENATOR RAIKES: So okay, and I'm being slow about this. I apologize, but it seems that with the implication from the proponents' side is that there is a clear result that reasonable people would agree on that the county's wrong and I'm right, yet I lose. [LB294]

BOB WICKERSHAM: Well, I find that difficult to speak to, because the commission typically sits with three, oftentimes with four, and the great majority of our decisions are unanimous. So you have four other people who have some knowledge and some experience and they agree on a result. [LB294]

SENATOR RAIKES: But in any case, this change would not affect proof. [LB294]

BOB WICKERSHAM: The need to prove value. [LB294]

SENATOR RAIKES: Okay. [LB294]

BOB WICKERSHAM: Senator, if I may, from my analysis, the existing statutes and then in part the language that you have in front of you, presents three different questions. The first question that is presented by the existing statutory language, and this was also the subject of a discussion in the Legislature some several years ago, and that is when can the commission dismiss a case? The existing language answers that question. It

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

Revenue Committee  
February 14, 2007

---

says that the commission, in fact, shall dismiss a case if there is no proof that the county board decision was incorrect. Now in our application the standard of incorrectness is a very low standard. We don't dismiss cases. All right? Now, but that was a discussion a couple of years ago, because people came to the Legislature and said the TERC is simply dismissing cases and we never get to hear the county's evidence. Never get to hear the county's evidence. Well, the fact of the matter is that you don't have to have the county's evidence. The county is not required to present evidence under the existing statutory frame, although we require them to produce the documents that support the value. They may never present witnesses, but they're not required to make a presentation because the burden of proof is in their favor. Well, anyway, we don't dismiss. The second question is should you pay any deference to the prior decision makers? The statutory language is clear. Yes, you should. And then the third question that gets answered in the framework of the legislation that you have in front of you is what kind of relief can you grant? Well, you can grant the relief that is shown by the greater weight of the evidence. And incidentally, greater weight of the evidence--I don't think anybody mentioned this--does not mean that you have the scales of justice out there and somebody gets tilted one way or the other. That isn't what it means. At least, not according to the jury instructions that the courts use. It simply means that you think something is enough evidence for you to think that something is true. Now that is less evidence than is necessary for a standard of clear and convincing evidence where you have to be firmly--I don't want to be reiterative--but you have to have a greater degree of certainty that something is correct. Clear and convincing evidence is the evidence which produces, in the trier of fact, a firm belief for conviction that...about the existence of a fact to be proved. So it's something more than what might be implied in the language of a greater weight of evidence, but again, don't think of greater weight of the evidence like the scales of justice. That isn't what it is. And the standards for what is arbitrary and unreasonable for persons who are preparing briefs is not hard to understand and it isn't hard to know what that is. There are clearly defined terms in the opinions of the Supreme Court and the court of appeals and if you're interested in those definitions I'll recite them for you if you think a recitation has any meaning, just a bare recitation. They're not impossible phrases to know what the meaning of them is and they're not impossible to reach the kind of proof that is necessary to show the commission that something was indeed arbitrary or unreasonable. [LB294]

SENATOR JANSSEN: Any other questions? Carroll. [LB294]

SENATOR BURLING: Thank you, Bob, for that information even though it might have been more than I could absorb. [LB294]

BOB WICKERSHAM: Well, I could repeat it. (Laughter) No, all right. [LB294]

SENATOR BURLING: Put it in a nutshell for me. I thought I heard some proponents say

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

Revenue Committee  
February 14, 2007

---

that this language in this bill would be more taxpayer friendly and I think I heard you say that the language in this bill really wouldn't change the process that you use when somebody comes before TERC. Am I right? [LB294]

BOB WICKERSHAM: Well, I think it would change the process. It would change the way in which we make decisions, but you have to prove value to win and it won't remove the requirement that in order to win you've got to prove value, and that's what most people fail to do. I've said before and on many other occasions and in other contexts, people come to the commission and the easiest thing for them to do is to show that in some respect the county is unreasonable. That really isn't that hard to do sometimes. Or arbitrary even, because sometimes the counties, as I've said, the counties' own records show it and they had to produce those. But what gets real hard for them is to show what the taxable value or the actual value is. And that's the part that they always find real hard to do and it isn't entirely easy. [LB294]

SENATOR BURLING: So your opposition is not so much that this would be the wrong way to go. It's just not necessary. [LB294]

BOB WICKERSHAM: Well, by reducing the standard on the review to a standard that is incorrect I'm afraid that it will give the wrong impression to...for one thing, it gives the wrong impression you can win if you just show somebody is incorrect. That's not true. Although, the second sentence goes on to say you have to prove by a greater weight. But what is appropriate in the current language is that it does give deference to the prior decision makers and it doesn't make TERC just another super board of county board of equalization. I mean, we're not going to hear every appeal. People know that you've got to meet a certain standard and you've got to be more than just dissatisfied. You're going to have to have some proof and you're going to have to have a showing before you ever get to the issue of what the value of the property is that the county's decision was unreasonable or arbitrary. [LB294]

SENATOR BURLING: Thank you. [LB294]

BOB WICKERSHAM: And that is not impossible to do. [LB294]

SENATOR JANSSEN: Any other questions? Tom. [LB294]

SENATOR WHITE: 76-1606 (sic-77-1606), what kind of appeals are governed by that? That if you look at page 4 of the bill. It says in all appeals excepting those arising under Section 77-1606. [LB294]

BOB WICKERSHAM: 77-1606, there are a couple of statutes in that framework--three to my recollection--and those have to do with appeals of levies, because the county court... [LB294]

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

Revenue Committee  
February 14, 2007

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SENATOR WHITE: Okay, but it doesn't deal with value. [LB294]

BOB WICKERSHAM: It does not deal with value... [LB294]

SENATOR WHITE: Okay. [LB294]

BOB WICKERSHAM: ...and the standard there is, if I remember correctly, contrary to law. There's a specific statutory provision because, again, that's a decision of the county board but it is a decision which sets the levy. It's not a value question or an exemption question. [LB294]

SENATOR WHITE: Well, if the average taxpayer fails by failing to prove value then whatever we do here really won't matter. Correct? [LB294]

BOB WICKERSHAM: It will matter in some other cases, for example, and it does matter in value cases, but it would matter for example, in exemption cases. It could matter in other kinds of appeals that we hear. We can also hear appeals on homestead applications. We can hear appeals on motor vehicle values or motor vehicle exemptions. There are appeals we can hear on determinations of the Property Tax Administrator concerning the sales roster, concerning the probably misadjusted value, centrally assessed values. There are a whole host of things that we could hear and occasionally do hear, although the far greater volume is in the, what I would characterize, as standard value cases. One of the most difficult things for us is when really we have no good evidence of value and the current language allows us to make a decision. And that does not happen infrequently. [LB294]

SENATOR WHITE: Well, the proposed language allows that just as well. If they don't have any evidence of value... [LB294]

BOB WICKERSHAM: If it is... [LB294]

SENATOR WHITE: ...they don't have evidence of value... [LB294]

BOB WICKERSHAM: If it is... [LB294]

SENATOR WHITE: May I finish my question, please? The courtesy of that would be appreciated. [LB294]

BOB WICKERSHAM: Yes, Senator. [LB294]

SENATOR WHITE: Thank you. If they don't have any evidence of value, it doesn't matter what the standard is. You just throw it out. [LB294]

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

Revenue Committee  
February 14, 2007

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BOB WICKERSHAM: If the standard is incorrect and we have to determine value then the next phrase says if the decision was incorrect, which means we have to determine value, then taxable value could only be determined by the greater weight. Sometimes we don't have that. [LB294]

SENATOR WHITE: And so if you don't have evidence of... [LB294]

BOB WICKERSHAM: I mean, what we have, Senator, is no value from the taxpayer. No proof of value from the taxpayer, but we have proof that the county's decision was unreasonable or arbitrary, and under those circumstances and under this language, I don't see how we could make a decision. [LB294]

SENATOR WHITE: You send it back saying it appears the county's decision was arbitrary... [LB294]

BOB WICKERSHAM: Senator, we have no power to remand. [LB294]

SENATOR WHITE: No, you issue an opinion saying it does appear the county's decision was arbitrary, but because the taxpayer failed to provide a value we can give you no remedy. This happens all the time in courts, does it not? [LB294]

BOB WICKERSHAM: I'm not aware, sir. And the standard wouldn't be arbitrary in this instance, it would be incorrect, which is a very low standard. And if someone proves that a decision was incorrect then they're entitled to have a determination of value. That's what the language implies, at least to me. And if it's incorrect and if they're entitled to a determination of value, but we have no evidence to determine value, what should we do? [LB294]

SENATOR WHITE: Issue an opinion saying you can give them no relief. [LB294]

BOB WICKERSHAM: It says that we'll determine value. It says taxable value shall be redetermined based upon the greater weight of the evidence. [LB294]

SENATOR WHITE: And you say there is no evidence so you cannot redetermine it. So you can give them no relief. [LB294]

BOB WICKERSHAM: Well, maybe that would be an adequate legislative record for us to do that, but I don't think, Senator, in all deference, I don't think that's what the language says. And that's a problem. I don't think it says that. Now if you've made enough of a legislative record and we could go back and we could apply that that helps, but it doesn't address the other concern and that is whether or not you want to fundamentally change the way the commission works and if you're going to be prepared

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

Revenue Committee  
February 14, 2007

---

when we come back to you in a couple of years or maybe a year. [LB294]

SENATOR JANSSEN: Any other questions? Seeing none, thank you. Anyone else in opposition? [LB294]

BETH BAZYN FERRELL: Good afternoon, Senator 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 don't think there's anything I can add to what Commissioner Wickersham has said in respect to our opposition to the bill. I would just like to restate what he said. The question here is whether people have proved that they should win and we believe that the standard should remain as it is. Be happy to try and answer any questions. [LB294]

SENATOR JANSSEN: Questions? Seeing none, thank you. Anyone else in opposition? [LB294]

KRISTIN LYNCH: Good afternoon, Chairman, members of the committee. My name is Kristin Lynch. I'm a deputy county attorney with Douglas County. My name is Kristin, K-r-i-s-t-i-n, Lynch, L-y-n-c-h, and I am here today in opposition to LB294 representing both the Nebraska County Attorneys Association and the Douglas County Attorney's Office. County attorneys across the state of Nebraska represent the county board of equalizations in TERC proceedings. And while, of course, as county attorneys we believe in fairness, we do not agree with what LB294 sets forth. LB294 significantly lowers the standard review before the TERC. We would even argue that this standard is lower than the current standard that is now before the boards of equalization. Currently, the boards of equalization at least operate under the presumption that the assessor's value is correct. We believe that this is even lower than that. At best, we believe that this significant reduction and the standard of review will duplicate the board of equalization protest process as has been spoken of earlier. We contend that the appellate review should narrow the scope of a review and not expand the scope of duplicate the review. By creating this lower standard of review, we believe that the counties can only anticipate that there will be a significant increase in the protests to TERC in any given year. Currently, in Douglas County alone there are approximately 5,200 BOE protests per year and about 10 percent of those go on to appeal to the TERC. We believe that we would see a significant increase in that from 500 to upwards of we don't know if it lowers that standard. If there's something to be corrected we don't believe that this is the appropriate place to correct it. Folks seems to be glossing over the actual board of equalization process. In your larger counties, I know Lancaster, Sarpy, and Douglas referees are hired. These referees do...while they do consider a significant number of protests they are professionals and we believe that they give an adequate review and adequate deference. In fairness to the political subdivisions as well, we believe that changing something at this point in the process creates a risk of creating an unstable property tax base. Counties and political subdivisions rely on a

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Transcriber's Office

Revenue Committee  
February 14, 2007

---

certain property tax assessment for any given tax year at the time they set their levies. By doing this at the TERC appellant point, and if it does end up significantly reducing a large number of property valuations out there, we believe that the levies that folks rely on, the property tax assessment base that they rely on, their operations could be greatly affected by this. That's the end of my comments. If anybody has any questions I'd be more than happy to answer them. [LB294]

SENATOR JANSSEN: Senator Langemeier. [LB294]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. Thank you for your testimony. What would be the counties' attorneys' stance if TERC ceased to exist? [LB294]

KRISTIN LYNCH: I don't think the county attorney's office has taken a stance on that. [LB294]

SENATOR LANGEMEIER: Thank you. [LB294]

SENATOR JANSSEN: Any other questions? Seeing none, thank you for being here today. Any other opponents? No more opponents. Anyone in a neutral capacity? Seeing none, that will...I think Senator Mines waived closing if I'm correct. That will end the hearing on LB294 and we'll hear LB332. [LB294]

SENATOR CORNETT: Senator Janssen to open on LB332 [LB332]

SENATOR JANSSEN: Thank you, Senator Cordett--Cornett--and members of the... [LB332]

SENATOR CORNETT: That's a new one. I haven't heard that one before. [LB332]

SENATOR JANSSEN: It's kind of like a trumpet only it's a little smaller and a little shorter. (Laughter) LB332 would amend Section 77-5016 to change the burden of proof for taxpayers appealing valuation decisions from the county board of equalization to TERC. Under LB332, the TERC is to dismiss and appeal if there is no evidence to show that the county's decision is incorrect. The decision is to be affirmed if the commission determines that the county's decision is unreasonable, arbitrary, or unlawful. LB332 adds the word unlawful and that's what it does--adds that word. Questions? [LB332]

SENATOR WHITE: You're too tough for me. (Laughter) [LB332]

SENATOR JANSSEN: Pretty simple bill, really. [LB294]

SENATOR CORNETT: Seeing none, thank you, Senator Janssen. First proponent.

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

Revenue Committee  
February 14, 2007

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[LB332]

BOB WICKERSHAM: Senator Cornett, 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 LB332. The bill is largely, as described by Senator Janssen, if I might point out a couple of the finer points in the bill. It does make a slight change in the provisions. As I've discussed with you earlier, I think there are three questions. When should or could the commission dismiss a case? Secondly, when can the commission grant relief? And thirdly, what proof is necessary for relief? There's a slight change in the provisions that deal with the issue of when can the commission dismiss a case and that is that the standard becomes permissive rather than mandatory. It says we may dismiss instead of requiring us to dismiss if there is no showing that the prior decision was incorrect. The second question about the burden of proof, that is when could the commission grant relief, is unchanged, except for the language of unlawful and I've had prior discussions with Senator White and I believe he's correct that the better terminology there would be contrary to law. The term unlawful, perhaps, does bring to mind in persons that something is a crime. Unlawful seems to have that connotation with it. The connotation that something is contrary to law is more in keeping with the civil nature of the issues that would come before the commission. The third provision is that like the previous bill, LB294, that it would require proof of value by a preponderance of the evidence. Preponderance of the evidence is perhaps a more common terminology for greater weight. At least it's an older terminology. The terminology for greater weight is what is now being used by the courts, as I indicated earlier, in their jury instructions. And they say that greater weight and preponderance of the evidence are the same thing. Again, I wouldn't want to mislead you and suggest that that means, if you will, if you can remember the old scales of justice that you weigh things out. That is not what the language indicates, at least as instructed by the courts in civil cases. What this does add--and it is, I think, an important addition--is that sentence about the proof that is necessary of value in a value case. And I will note explicitly that this would not be applicable, for example, to an exemption case or the other kinds of cases that the commission hears. The current standard based on court decisions is that once there has been a showing that the county board's decision was arbitrary or unreasonable or, in fact, the other decision maker that we're hearing an appeal from and we also would hear appeals from potentially the Department of Motor Vehicles, the Tax Commissioner, the Property Tax Administrator, that once it is shown that those decisions are unreasonable or arbitrary then you can grant relief. It is in the value cases where the courts add that after that showing then "the reasonableness of the value" is at issue--the reasonableness of the value is at issue. Now whether you think that means that it's by the preponderance of the evidence or the greater weight, the more current terminology, or something else, it isn't exactly clear what that means and the current language in the statute doesn't alert a person who wanted to file an appeal to the commission that that was part of what they might be required to do. Although, I think the materials that the commission disseminates does do that. But

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

Revenue Committee  
February 14, 2007

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certainly having that in the statute, I think, would be a benefit to persons who wanted to file an appeal to the commission so they could have a better chance of determining what they would have to do. I'd be happy to try to respond to questions if you have any. [LB332]

SENATOR CORNETT: Any questions? Seeing none, thank you. [LB332]

BOB WICKERSHAM: All right, thank you. [LB332]

SENATOR CORNETT: Next proponent? Seeing no further proponents, opponents? [LB332]

LARRY RUTH: Thank you, Senator Cornett and members of the Revenue Committee. My name is Larry Ruth, R-u-t-h, and I'm representing the Nebraska Association of Commercial Property Owners and we're in opposition to LB332. It's really been a very good discussion today. It kind of reminds me of law school in a way and I would like to come back to a couple of the fundamental issues that are before you. And they really are very fundamental. I would just draw your attention on LB332 to page 4, lines 21-24. This bill, like LB294, also assumed that the de novo language would still be the law at the time of this hearing and Commissioner Wickersham pointed out that that has been changed, and just changed last week. But LB332, likewise, points out that the current law at the time that this bill was introduced had what's called a de novo standard. And de novo standard just means you try the case again. That's what de novo means. You have new evidence that can be adduced. Now the point to be made is this. The law has been inconsistent. You can't have a de novo section here in Section 7 and then on appeal tighten it down to a burden of proof or to a standard review, which is less than that. So I applaud the Legislature in passing LB166. It took away an inconsistency. Perhaps, it would have been better for us to come in and join the issue on LB166, but it seemed to me that with two bills on the specific question of what the standard of review should be that it would be better to join it at this hearing, which we have done. Now let's look really carefully at the standards and refocus this to what I think is the most important point. What are the standards that are to be used in LB332 compared to LB294? In LB392 (sic-LB332) on page 5, line 13, it talks about evidence. Now this is newly adduced evidence. In the language before it's newly adduced. I think it's recognized that there can be newly adduced evidence at the TERC. To then require, with evidence, that you turn to a standard of review, which is to be used in the appellate bodies when you have a stale record below and no new evidence above seems to me to be preposterous. It doesn't make sense. That's why with LB294 we move to a burden of evidence--a question of evidence. And that's when we came up with the greater weight of the evidence. Now you can call it preponderance of the evidence. That also makes sense. You could look at a different one like clear and convincing. You could even look at a criminal standard, I suppose, beyond a reasonable doubt, but obviously you wouldn't want to do that. We took the standard which we thought made the most

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

Revenue Committee  
February 14, 2007

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sense and that is the greater weight of the evidence. Now the question has been raised whether or not there should be deference given to the board of equalization below and I suggest that LB294 gives that deference, because it says the action appealed from shall be affirmed unless the appellant comes forward and proves by a preponderance of the evidence--or that is the greater weight of the evidence--what it should be. So the deference is there. And someone also suggested that LB294 did away with the ancient--ancient, and I say ancient because Cathy Lang told me last year it was over 100 years old--the ancient presumption of validity of the county assessor's decision as to what the appraisal should be. I don't see that we've changed that a bit. So I think when you focus back to what the standard of review should be and you recognize that it in fact is a standard which is based on new evidence, we should then move to an evidentiary standard. And that's where we would suggest you turn. Thank you. [LB332]

SENATOR CORNETT: Thank you, Larry. Any questions from the committee? Seeing none, thank you. [LB332]

LARRY RUTH: Thank you. [LB332]

SENATOR CORNETT: Further opponents? Neutral testimony? Seeing none, Senator Janssen to close. Senator Janssen waives closing. That closes the hearing on LB332 and hearings for today. Thank you very much for coming this afternoon. [LB332]

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Transcriber's Office

Revenue Committee  
February 14, 2007

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Disposition of Bills:

LB356 - Indefinitely postponed.

LB484 - Advanced to General File.

LB519 - Advanced to General File, with amendments.

LB294 - Indefinitely postponed.

LB332 - Indefinitely postponed.

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Chairperson

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Committee Clerk