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Revenue Committee
March 08, 2007

[LB355 LB627 LB688 LB703]

The Committee on Revenue met at 1:30 p.m. on Thursday, March 18, 2007, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB355, LB627, LB688, and LB703. Senators present: Ray Janssen, Chairperson, Merton "Cap" Dierks, Vice Chairperson; Carroll Burling; Abbie Cornett; Chris Langemeier; Don Preister; Ron Raikes; and Tom White. Senators absent: None. [LB355]

SENATOR JANSSEN: Good afternoon, ladies and gentlemen. Welcome to the committee on Revenue. For the record, my name is Ray Janssen from the 15th Legislative District. With us today are Senator Preister to my far left, Senator Burling to his right, Senator Abbie Cornett to my left. And to my extreme right is Erma James, the committee clerk, and to my far right here is Senator Ron Raikes from Lincoln, and next to him is George Kilpatrick, legal counsel for the committee. I want to ask you please to turn your cell phones off and pagers while you're in the hearing room. Sign-in sheets are by each door. If you would have them filled out before you come up to testify that would make the process a little quicker. And then give that sheet to the clerk over on my right. We'll follow the agenda as posted on the door. We will take proponents first, then opponents, and then those in a neutral capacity. We'll hear these three bills--LB355, LB627, LB688, and LB703. Senator Cap Dierks, the vice chair of the committee, has joined us also. With that, we will start off. I don't think I forget anybody or anything. I went through my checklist that Erma gives me. And with that, we will start off the hearings with LB355, which is Senator Cornett's bill, and she's going to tell us all about changing the provisions relating to the taxation of aircraft carriers--oh, I mean air carriers. (Laughter) Senator Cornett. [LB355]

SENATOR CORNETT: Aircraft carriers, I think that would be the wrong state. [LB355]

SENATOR JANSSEN: I'm sorry? [LB355]

SENATOR CORNETT: Aircraft carriers would be the wrong state. [LB355]

SENATOR JANSSEN: Okay. All right. [LB355]

SENATOR RAIKES: Nebraska Navy? [LB355]

SENATOR CORNETT: There you go. [LB355]

SENATOR JANSSEN: Yeah. [LB355]

SENATOR CORNETT: Then we might not need the bill. But anyway, thank you, Chairman Janssen and members of the Revenue Committee. My name is Abbie

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Cornett, C-o-r-n-e-t-t, and I represent the 45th Legislative District. LB355 is being offered on behalf of the members of the commercial airline industry to make taxation of airline transportation property consistent with the current Nebraska law on taxation of railroad transportation property. This bill would amend Section 77-1248 regarding the property taxation of airline flight equipment owned by common carriers. The language used in this bill exactly mirrors the language currently in existence in Section 77-693 applicable to the railroad industry. There are currently a number of tax protests pending before the Property Tax Administrator filed by air carriers asserting there is a lack of equalization with the rail carriers. This bill would provide a clear authority to the Property Tax Administrator to deal with those protests and avoid the uncertainties of litigation. This bill not only affects personal property taxes, not real property taxes. For any further technical information I would defer to the testifiers in support of this bill that will be following me. I thank you for your time and consideration of LB355 and I will attempt to answer any questions you may have in this regard. [LB355]

SENATOR JANSSEN: Any questions? Seeing none, thank you, Abbie. [LB355]

SENATOR CORNETT: Thank you. [LB355]

SENATOR JANSSEN: We will take proponents to LB355. Those in favor of the bill. [LB355]

NORMAN WRIGHT: Good afternoon, Chairman Janssen, members of the committee. My name is Norman Wright, W-r-i-g-h-t, 5261 South Quebec Street, Denver, Colorado. I represent a group of airlines that have filed tax protests before the Property Tax Administrator's Office. Airlines are one of those classes of taxpayers that are centrally assessed not locally assessed. So they are assessed by the Division of Property Taxation and then we filed a protest with them. The basis for the protest that has been on file is that part of Nebraska's constitution, Article 10, Section 7, creates an opportunity for those kinds of taxpayers that have special protection under federal law are prevented from being discriminated against state and local taxation. The railroads have a provision under current Nebraska law, known as Section 77-693, that allows the Property Tax Administrator to gather certain data relative to the market value versus the taxable value of primarily we're talking about car lines, which is a more similar parallel to airlines. And if the discrimination through the formulaic approach that's laid out by 77-693 exceeds 5 percent error rate, if you will, then the Property Tax Administrator's Office can make adjustments to the car lines value. The protests that were filed by air carriers is that they also have federal protection. The railroad protection is contained in something called the 4R Act under federal law. The TEFRA Act that was enacted at the federal level contains the parallel provision, virtually the same language that protects air carriers. In the course of informal negotiations with the staff of the Property Tax Administrator's Office, I believe that she would confirm that while she recognizes that there is parallel federal protections at the national level, she feels that she needs direct

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input from the Legislature as to how to do that, how to then formulate that in terms of adjusting the actual values for tax purposes at the Nebraska level. So rather than continue to pursue the litigation, although it is still pending, what we agreed to do was to offer a statute, which is now LB355, which would take the exact same language that's contained in 77-693. And 77-693 is contained in the railroad section and appears to be confined to railroad taxation, and move it into the section of laws that involve air carrier taxation. So that's all we've done is take the same formulaic approach and move it into the airline so that Ms. Lang's staff has the same clear direction by formula as to how to make these adjustments if the air carriers can demonstrate as the car lines have been able to do, demonstrate that the current system does contain more than 5 percent error. If it doesn't contain more than 5 percent error then no adjustment would be made. But if they are able to satisfy that threshold then the same formulaic approach currently applied to the railroads would apply to air carriers. And that's really all this bill does. And so with that, if you don't have any further questions I'd certainly be happy to answer any that you do have. [LB355]

SENATOR JANSSEN: Any questions? I don't see any, thank you. [LB355]

NORMAN WRIGHT: Thank you very much. Appreciate it. [LB355]

SENATOR JANSSEN: Next proponent, please. Are there anymore proponents? Are there any opponents? [LB355]

JOE KOHOUT: Mr. Chairman, members of the committee, Joe Kohout, K-o-h-o-u-t, appearing today as registered lobbyist on behalf of Douglas County. Our concern about LB355 is strictly a financial one. We became aware, frankly at the publication of the fiscal note, about the impact this would have on receipts on our General Fund. We have performed a very preliminary estimate. We became aware of that this morning, specifically because the supporters, frankly, brought it to our attention and we appreciate that. But our fiscal office ran a check and feels that the impact of this legislation, at least in Douglas County, would be about a \$250,000 hit to our General Fund. So our concerns are strictly financial and strictly based on the loss of revenue that we would see. So we'll be happy to work with the supporters if there's anyway we can mitigate that. [LB355]

SENATOR JANSSEN: Any questions? Joe, now is this just for the city of Omaha? [LB355]

JOE KOHOUT: Douglas County. [LB355]

SENATOR JANSSEN: Douglas County. [LB355]

JOE KOHOUT: Yes. [LB355]

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SENATOR JANSSEN: So this tax goes into the county then. [LB355]

JOE KOHOUT: As I understand it, and I'm going to really screw this up because I don't understand how it comes back, but my understanding is that counties receive a portion of this money back once it comes to the Department of Property Assessment and Taxation, if I understand that correctly. And so when there's this reduction the counties themselves will take a hit and I believe the fiscal note recognizes about a \$950,000 hit to counties. So our share of that, we think, based on our initial review of that, and frankly, Senator, it was a very cursory review very late in the morning, about a \$250,000 hit to Douglas County. [LB355]

SENATOR JANSSEN: Okay. Any other questions? Don't see any, Joe. Any other opponents? [LB355]

BETH BAZYN FERRELL: Chairman Janssen, members of the committee, for the record my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. Like Mr. Kohout indicated, this was not typically a bill that would have appeared on our radar screen at all until we saw the fiscal note. This is something that we would like to go on record as opposing, because any decrease in revenue that's coming into the county typically translates into an increase in property taxes. Try to answer any questions. [LB355]

SENATOR JANSSEN: Any questions? Senator Burling. [LB355]

SENATOR BURLING: Thank you. How many counties receive funds from the airline tax? [LB355]

BETH BAZYN FERRELL: As I understand it, and it may be that someone could correct me on this, from information that I've looked at on the Property Tax Administrator's website all 93 counties receive some money from this. [LB355]

SENATOR BURLING: Okay. [LB355]

SENATOR JANSSEN: How is that prorated then? [LB355]

BETH BAZYN FERRELL: That's another one... [LB355]

SENATOR JANSSEN: You know, if Douglas County looks at, what, \$250,000, is that part of the appropriations or does it get appropriated to the rest of the counties? [LB355]

BETH BAZYN FERRELL: There is a specific formula, but I am not able to describe that anymore. There may be someone else that would be able to describe it more

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accurately. [LB355]

SENATOR JANSSEN: All right. Okay. All right. Okay. All right, I think we'll probably get the answer there. Any other questions? Thank you. Anymore opponents? Neutral? [LB355]

CATHERINE LANG: Chairman Janssen and members of the Revenue Committee, my name is Catherine Lang, Catherine with a C, Lang, L-a-n-g. I'm the Property Tax Administrator for the state. I'm here in a neutral capacity on LB335 (sic-LB355) and I would be happy to try and answer any question you have regarding the air carrier tax and the intent of this bill. [LB355]

SENATOR JANSSEN: Okay. Ron. [LB355]

SENATOR RAIKES: Cathy, among the centrally assessed properties are pipelines and I think some telephone company property and that sort of thing. [LB355]

CATHERINE LANG: That's correct. [LB355]

SENATOR RAIKES: So are we doing this procedure with pipelines? [LB355]

CATHERINE LANG: No, we are not. They currently do not have a federal law that grants them this kind of protection. So with regard to the entity, and that would be the railroad industry, the entity that we do currently make this adjustment for it is solely by virtue of the fact that they have federal protection, in their case under the 4R Act, and in this situation the air carriers have their federal protection under the, what is commonly referred to as TEFRA. The other industries do not have the same federal protection. [LB355]

SENATOR RAIKES: So you're telling me that airlines and railroads are similar in their degree of federal protection? [LB355]

CATHERINE LANG: Yes, I am. [LB355]

SENATOR RAIKES: Okay. So is this a recent change in federal law for... [LB355]

CATHERINE LANG: No, not recent. [LB355]

SENATOR RAIKES: So how long have we been assessing airlines like we now are? [LB355]

CATHERINE LANG: We have been assessing airlines the way we currently are doing it since the introduction of the net book tax methodology for personal properties. So back

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in 1992. [LB355]

SENATOR RAIKES: Why does this come up now? [LB355]

CATHERINE LANG: It's a matter that they brought to our attention over the last couple of years. They finally decided to move it forward through litigation. My position was that I needed specific statutory authorization to recognize the implementation of the protection authorized by federal law and through the last couple years it has finally then come to the Legislature's attention. [LB355]

SENATOR RAIKES: Okay, thank you. [LB355]

SENATOR JANSSEN: Carroll. [LB355]

SENATOR BURLING: Ms. Lang, do I get the feeling that if we don't act the courts will? Or do you not want to comment on that? [LB355]

CATHERINE LANG: You know, I don't know that. [LB355]

SENATOR BURLING: Okay, but this would bring the taxation of airlines more in line with the way railroads are taxed? [LB355]

CATHERINE LANG: In my opinion, yes it would. It would bring them within parity, because they too have federal protection. And so it would offer to the airline air carriers the same protection that is afforded them by federal law that we currently do for railroads and car lines as a result of the 4R Act. And the specific provision of Nebraska law that recognizes this adjustment that Mr. Wright described as the formulaic adjustment to recognize the differences in the assessed value of their property and the assessed value of other personal property in the state. [LB355]

SENATOR BURLING: And just how the tax revenues are distributed among counties, do we have time to do that today? [LB355]

CATHERINE LANG: It is distributed to all counties. It goes to their general fund. All counties receive a portion of the air carrier tax because it is distributed based on the percent of property taxes levied. So if the whole pot of air carrier tax dollars is a million dollars and Douglas County represents 40 percent of the property taxes levied, they will get 40 percent of the funds. [LB355]

SENATOR BURLING: I understand. [LB355]

SENATOR JANSSEN: Okay. Cathy, what percentage of value are railroads reduced? [LB355]

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CATHERINE LANG: Oh, off the top of my head I don't have that. I'd be happy to get that for the committee. We do know what that is. We could provide that to you. [LB355]

SENATOR JANSSEN: We're talking about carriers here. So you know, it would... [LB355]

CATHERINE LANG: I'd be happy to get that for the committee. [LB355]

SENATOR JANSSEN: Could you? [LB355]

CATHERINE LANG: Yes, I would be happy to do that. [LB355]

SENATOR JANSSEN: Appreciate that. Any other questions? Seeing none, thank you, Cathy. [LB355]

CATHERINE LANG: You bet. Thank you. [LB355]

SENATOR JANSSEN: Anyone else in a neutral position? Seeing none, Senator, would you like to close? [LB355]

SENATOR CORNETT: I'll make my closing very brief. This is a somewhat extremely complicated issue, because the federal regulations in regards to railroads and airlines are not something we deal with typically. I would be happy to work with the committee on this bill and work with the people that are in opposition to it. It is a difficult matter, but I feel it is something that we need to address because of the pending litigation and the fact that we do recognize the same type of protections for railroads. Thank you very much. [LB355]

SENATOR JANSSEN: Okay. Any questions? No. That ends the hearing on LB355. Senator Dierks, you're up in the bullpen here. Go right ahead, Cap. [LB355 LB627]

SENATOR DIERKS: Thank you, Senator Janssen, members of the Revenue Committee, my name is Cap Dierks, spelled D-i-e-r-k-s, and I represent Legislative District 40. I'm here today to introduce LB627. LB627 adds the words trade fixtures to the definition of fixtures. The bill also declares that trade fixtures are tangible personal property and not real property. Trade fixtures is a legal term for machinery and equipment. The bill makes sure that trade fixtures are tangible personal property regardless of the degree of attachment to real property. And that is used directly in commercial manufacturing or processing activities conducted on real property regardless of whether the real property is owned or leased. LB627 represents the current practices of the Department of Property Assessment and Taxation and most county assessors. The bill simply puts this interpretation of trade fixtures into the

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Nebraska statutes. Thank you for your time and attention. I'll try to answer any questions you may have. [LB627]

SENATOR JANSSEN: Questions? Ron. [LB627]

SENATOR RAIKES: Cap, is this going to change anybody's tax bill that you know about? [LB627]

SENATOR DIERKS: Well, I don't think so, but I think we're just trying to clarify the language in the law so that it's easier for people to understand the interpretation. Maybe there will be some. I don't know what that is, but maybe Cathy Lang can tell you. She'll be up here in a minute. [LB627]

SENATOR RAIKES: Okay, thank you. [LB627]

SENATOR JANSSEN: Any other questions? Don't see any, Cap. Okay, proponents. [LB627]

CATHERINE LANG: Chairman Janssen and members of the Revenue Committee, my name is Catherine Lang, Catherine with a C, Lang, L-a-n-g. I'm the property tax administrator for the state of Nebraska. I am here today in support of LB627 and I want to thank Senator Dierks for introducing this bill. The purpose of this bill is to codify existing administrative practices regarding the classification of items as real or as personal. This bill will place into property tax law the longstanding legal concept of trade fixtures. The language of the bill mirrors court decisions regarding trade fixtures as personal property. Currently, the Department of Property Assessment and Taxation and most county assessors are making the determination of real and personal property based on this standard. This situation comes into play in a couple of areas. For example, the incentive programs where there is an exemption for certain personal property used by large manufacturing concerns across the state. The department administers those incentive programs from the property tax perspective and this definition is what we have been using since the inception of LB775, and now through LB312. Additionally, assessors are faced with the same determination when they, too, are looking at property owners in their county who have large manufacturing concerns. In recent years, though, this interpretation has also been applicable in the assessment of ethanol plants. I believe a statutory recognition of this longstanding interpretation is in order. Amending the statutes in this way will provide clarity and consistency in the assessment process and I urge your support of this bill. I'd be happy to answer any questions. [LB627]

SENATOR JANSSEN: Any questions? Ron. [LB627]

SENATOR RAIKES: There's no anecdote here. It just all of a sudden dawned on you

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that we should make this change? [LB627]

CATHERINE LANG: This is an issue we have been facing since the battles that we faced with regard to real versus personal property. Especially since 1992, the consistent approach that we have urged and the approach that we have applied when we have done the assessment, be it in the LB775 area or for the companies in the counties where we are the assessor, this is the definition that we have used, and we have called these items personal property. Now that doesn't mean that there is 100 percent consistency across the state, and because of some inconsistencies, I'm concerned about the potential erosion and change in a direction that we've had in place since 1992. And so it is based on that that I urge the support of this bill. [LB627]

SENATOR RAIKES: Okay, thank you. [LB627]

SENATOR JANSSEN: All right, now Cathy, give me a scenario of where a comparison of some of this equipment with, say, a meat grinder? [LB627]

CATHERINE LANG: Okay, I will give you that comparison. I'll give you the example that we first walked through when we were facing this issue in the Department of Revenue and that related to LB775 and it related to a meat-packing facility in Nebraska. And these were at the same time, this was all happening during the years where we were having the personal property crisis. What's real? What's personal? And after resolution of those matters by our Nebraska Supreme Court, we then had to then in implementation of LB775 go out and look at, for example, a meat-packing plant. Well, if you look only at the test of annexation, application, and intent--those are the three tests that we use to determine is this item real or is this item personal--you go into a meat-packing facility and the entire conveyor system is attached to the property. So you'd say to yourself, well, my goodness. It's affixed. So you have annexation so strike one, it must be real. Application. Now application is a little more subjective and one of the comments that could be made was, well, my gosh, for that facility to be a meat-packing plant you have to have that conveyor system. Well, my goodness, that conveyor system must be real estate. It's applicable to the use of that property. I'm going to switch that definition on you in just a minute so bear with me. And then third, intent, and the court has always said intent--and they said this in the Northern Natural Gas pipeline case--intent was the most important standard. Well, if you were to go out and ask the taxpayer, so do you intend, when you pick up and leave as a meat-packing plant, that you're going to leave that conveyor system in place? And the answer from the taxpayer would be no, I'm going to take it with me or we're going to sell it. And so you have this conflict. Here's the most important test and the taxpayer is saying no, it's not real estate, it's personal. You have these two other tests that appear to tell you that they're real. I will switch one definition on you and that's the definition of application. A meat-packing facility is really a large warehouse of some sort that, through the addition of all these things, through the addition of special wiring and so on and so forth, they've

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made it a meat-packing plant. So is the valuation of that structure because it's a meat-packing plant or it's a large warehouse with lots of stuff in it. Not stored stuff, but operating equipment. And our position was, after binding arbitration, that we went through this process and believe that it is appropriate and we have, since 1992, adopted this position that all of the items inside the meat-packing facility were personal property. Now in that case they would be eligible for the LB775 exemption, which then furthered the intent of LB775, and I think that all made sense after we got through that process. But those are the issues that we have dealt with and we do have some concern. There is an issue in the state of Nebraska right now where there is not total agreement. And my purpose in being here today is to try and urge the Legislature to adopt this definition to incorporate into state law this longstanding interpretation which I believe is legally defensible and assure that we have consistency across the state. [LB627]

SENATOR JANSSEN: So this would just enforce what you're already doing. [LB627]

CATHERINE LANG: In my opinion, it would. [LB627]

SENATOR JANSSEN: Okay. Any other questions? I don't see any, thank you for the explanation. [LB627]

CATHERINE LANG: You bet. [LB627]

SENATOR JANSSEN: Any other proponents? [LB627]

CHUCK WOODSIDE: Good afternoon, Chairman Janssen and members of the Revenue Committee. My name is Chuck Woodside, W-o-o-d-s-i-d-e. I'm the general manager of KAAPA Ethanol at Minden, Nebraska, and I'm here to testify in favor of LB627. KAAPA's ethanol experience over the last four years is the perfect example of why it's necessary for you to advance this legislation. KAAPA ethanol is a 59 million gallon ethanol production facility. We began production in November 2003 and our company is comprised of almost 500 Nebraska unit holders who had the foresight and desire to invest in their rural communities via ethanol production. While ethanol has seen significant growth in the state of Nebraska contributing to the economic benefit of rural communities across the state, the issue that we face is a lack of a clear definition. The lack of definition can create, and has in the case of KAAPA Ethanol, double taxation of assets and inequalities in the taxation of real and personal property. I want to make sure that each of the committee members understands that this is not just an ethanol issue. The definitions and clarifications of this legislation apply to all manufacturing entities in the state of Nebraska. This issue can have a large impact on economic development across the state in many industries. Where there's an uncertainty in how a facility will be taxed and viewed by the taxing authorities, investors will likely look elsewhere in investing long-term assets. This legislation is necessary to instill the confidence in how assets will be viewed by the state of Nebraska. I want to

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give you just some quick background into KAAPA's experience and use it as the case study for why, again, this legislation is necessary. Our plant was originally built as a 40 million gallon per year ethanol manufacturing facility at a total cost of \$47.5 million. It was constructed in Kearney County and inside the city limits of Minden. Construction began in the fall of 2002 and was completed in November 2003. In 2005, our plant was appraised by the Kearney County assessor. That same year, we filed our personal property tax for the sum of \$36 million of undepreciated assets, and also submitted our depreciation schedule filed with our federal tax return as documentation for the county. The Kearney assessor assessed the real property at \$44.8 million, determining that only the office furniture and equipment were personal property. The sum of the two figures, which is our self-reported personal property tax, and the real property tax that was appraised by the county assessor comes to \$80.8 million, way beyond the initial investment that was made at \$47 million at that time. When that valuation was made the total dollars that we put into the facility was actually \$49.8 million. KAAPA then appealed the assessed value of the real and the personal property to the County Board of Equalization. The County Board of Equalization was uncomfortable in the definition of what constituted real versus personal property; however, they clearly saw the issue presented that assets were being taxed twice--once as real property, once as personal property. And, again, the real property is determined by the county assessor and the personal property as submitted on our personal property tax schedule. The county board then lowered our personal property valuation to the level identified by the assessor of \$400,000, but leaving the real estate value at \$44.8 million. We appealed this valuation to TERC and ultimately settled at those numbers. The lowering of the personal property valuation was a great expense to the city of Minden and to the Minden public schools as well as others. In addition, the issue was only resolved for that year and again we received our 2006 tax valuation at the higher real property level after we had once again reported our personal property schedule in accordance with the tax schedule of \$36.7 million. And that valuation is currently under appeal. An example of the application of this statute would be that during the fermentation process we must keep our fermenters at a constant cool temperature. And in order to do this we use a chiller, a large refrigeration unit. And this piece of equipment chills the water that we then use circulate through our fermenters. While this unit is large and attached to the floor, similar to a building fixture, its function is very much a part of the manufacturing process, therefore making it a trade fixture. However, in the viewpoint of at least one county assessor, it's real property. In reviewing the valuations of ethanol plants in other counties, it became clear that many county assessors have a different view of the differentiation between real and personal property. This confusion causes inequalities in taxation across the state of similar facilities and can put facilities at a competitive disadvantage to its competitors due to the tax valuations at the county level. The County Board of Equalization wanted further definition of what is real versus personal property and we agree that this is needed. By equipping them in this manner, we can deal with the issue more completely at the county level. I'd like to thank the committee for their time this afternoon and your consideration of the merits and benefits of furthering the

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differences in real and personal property under tax laws, and ask for your votes in favor of LB627. At this time I'd be happy to entertain any questions the committee may have with respect to my testimony. [LB627]

SENATOR JANSSEN: Any questions? Ron. [LB627]

SENATOR RAIKES: So the impact on you as a taxpayer, you mentioned the double taxation part... [LB627]

CHUCK WOODSIDE: That's correct. [LB627]

SENATOR RAIKES: ...but in addition, personal property is going to depreciate whereas real property would not. So over a period of time it would make a difference in the tax obligation. [LB627]

CHUCK WOODSIDE: It certainly would as you depreciate the assets. I know that in some counties the feeling is that other past experiences with other, you know, operating ethanol plants that have been in business longer than we have been is that there's enough of a replacement of those assets as they go through that the valuation doesn't drop dramatically. The key part, I think, and this is what I want to make sure everybody understands, we paid \$968,974 in property taxes for 2005 in 2006. And our issue is not with the amount. It's the split between the real and the personal. And this becomes particularly significant where tax increment financing is involved, because tax increment financing those real property dollars actually come back to the company. So under TIF valuation, from a company perspective, the best thing that could happen is to have everything under real property and have TIF, because in essence those dollars go to pay the TIF financing. And our point is that probably half of that money, and at that same time you've got to remember that the personal property goes to the taxing authorities, but the real property taxes go to pay the debt until it's paid. Well, in our case the city of Minden and the schools under our personal property, out of that \$900,000, got \$17,000. And the balance of that is going to come back. And, you know, we joke about the fact that it's difficult to give away money, but in fact that is the case, is that the schools and the city of Minden would have benefitted far better, shorter term, had the definition been further clarified. [LB627]

SENATOR RAIKES: Do you do mostly corn or milo or what do you... [LB627]

CHUCK WOODSIDE: We're all corn. [LB627]

SENATOR RAIKES: All corn. What are you paying for corn now? (Laughter) [LB627]

CHUCK WOODSIDE: It's over \$4 today. [LB627]

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SENATOR RAIKES: Does that work for you? [LB627]

CHUCK WOODSIDE: Yes, it does. [LB627]

SENATOR RAIKES: What do you sell ethyl alcohol for? [LB627]

CHUCK WOODSIDE: Ethanol is over \$2. We're probably getting just under \$2 back at the plant today. [LB627]

SENATOR RAIKES: So when does it no longer work? If ethyl alcohol stays at \$2, when do you quit buying corn? [LB627]

CHUCK WOODSIDE: You know, I think there will be plants in other parts of the country. We have a real advantage given our location, because we don't dry any of our wet distilled grains to ship out. All of our wet distilled grains are sold wet to the feedlots in the area. We use about a third less natural gas than do, you know, the competitors in Iowa. And it's a significant advantage. I would anticipate that somewhere between \$4.50 and \$5 at \$2 ethanol, we start to see some plants in some part of the country start to shut down. There's a plant starting up in Phoenix and the basis is 60 over. The Chicago Board of Trade today delivered corn. [LB627]

SENATOR RAIKES: Phoenix, Arizona? [LB627]

CHUCK WOODSIDE: It's right outside of Phoenix. [LB627]

SENATOR RAIKES: An ethanol plant? [LB627]

CHUCK WOODSIDE: And, you know, I think that's significant. I think, you know, our economics are far better than that of those in other areas. But you're starting to hear some concern on some of the plants that...you know, particularly the ones that are just starting up and have a tremendous amount of debt load. I mean, their economics are even more difficult than those of us that have been fortunate to be in operation for three years. [LB627]

SENATOR RAIKES: Thank you. [LB627]

SENATOR JANSSEN: Any other questions? How many years did you say you've been there? [LB627]

CHUCK WOODSIDE: We actually started in November 2003. So just almost 3.5 years now in operation. [LB627]

SENATOR JANSSEN: You've been in production. [LB627]

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CHUCK WOODSIDE: That's correct. [LB627]

SENATOR JANSSEN: All right. Any other questions? Don't see any. Thank you. [LB627]

CHUCK WOODSIDE: Thank you for your time. [LB627]

SENATOR JANSSEN: Next proponent. [LB627]

BILL PETERS: Mr. Chairman, members of the committee, my name is Bill Peters, P-e-t-e-r-s. I'm appearing today in front of this committee as tax counsel for KAAPA Ethanol. I really have nothing to add to the testimony that you've just heard, particular that of Cathy, regarding the present interpretation of the laws. Just a couple small comments. While KAAPA Ethanol is faced with a situation where the county is treating that ethanol plant differently than 15 other counties would treat it, it's not unique to ethanol. I've talked to taxpayers in other counties that have similar questions, so it's a minority of concerns with this same definition. I cannot find any place where our court has applied the, basically, the trade fixture analysis to the tax situation, though our court has definitely recognized trade fixtures over the years. And some of them have been rather substantial. There was a case in 1932 where--it came out of Fremont--a boiler hit a dry cleaner in the cleaning establishment, and it was so big they had to remove the wall to get the boiler out. And, you know, that was considered to be a trade fixture. So the concept of trade fixtures really, I think, grew up primarily in the landlord-tenant and the financing categories. But the definitions have been there, and as Cathy reported, since the inception of LB775 this has been the approach that has been used by the state and the interpretation of those exemptions as well as the administration of the property tax laws. With that, already having been redundant, I would be happy to answer any questions? [LB627]

SENATOR JANSSEN: Any questions? Don't see any, Bill, thank you. Any other proponents? [LB627]

LORAN SCHMIT: (Exhibit 1) Chairman Janssen, members of the committee, my name is Loran Schmit. I appear here in support of LB627. I'm a registered lobbyist for KAAPA Ethanol and for other ethanol producers. I just want to reiterate what previous witnesses have stated and the issue as it pertains to real and personal property does affect many, many businesses across the state, primarily the provision in LB775 that exempted certain classes of personal property from tax is applicable here, because if the conception followed by the Kearney County assessor were to spread across the state there would be a number of the class that have qualified for LB775 exemptions on personal property that would be drastically affected. So I have a short statement to present to you and would be glad to answer any questions. [LB627]

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SENATOR JANSSEN: Any questions? Don't see any, Loran. Thanks for being here. [LB627]

LORAN SCHMIT: Thank you. [LB627]

SENATOR JANSSEN: Any more proponents? Proponents? Any opponents? Anyone in a neutral capacity? Don't see any, Cap. Senator Dierks waives closing. That ends the hearing on LB627. I do believe that Senator Karpisek is here with LB688. Senator, welcome to the Revenue Committee. [LB688]

SENATOR KARPISEK: Thank you, Chairman Janssen, esteemed members of the Revenue Committee. My name is Russ Karpisek, K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. LB688 would create the agricultural land use advisory committee to assist and advise the Property Tax Administrator in developing an income-based approach to valuing agricultural and horticultural land for property tax purposes. These recommendations shall be reported to the Legislature by the Property Tax Administrator on or before December 1, 2007. Members who have been on the board previously probably recognize this as LB600 from Senator Coordsen. Senator Coordsen was my senator years ago when I really looked up to Senator Coordsen, one reason I wanted to be here and I'm trying to follow up on a little bit of his work. The little bit of a difference here is this would be a proposed study to study what would happen if we could change to an income value rather than a property value right now or the assessed value. The main reasons I wanted to bring this up are, number one, recreational use of land. In my area we have some land that isn't probably very good farm ground, but is being bought for big amounts of money for recreational use. And then it affects the neighboring land or the whole county. Also, the 1031 exchange is making a big difference from the Omaha area coming out and buying property out in the rural area. So we have some other people to speak. I just wanted to say that I realize that this had been before the committee before. I think it does merit some to look at it again and I guess I would just like to say that I'm proud to try to keep up a little bit of Senator Coordsen's work. So if there's any questions I'd be glad to try to answer them. [LB688]

SENATOR JANSSEN: Questions? Ron. [LB688]

SENATOR RAIKES: Russ, we do have special use valuation. And to some extent, the way that's used or the way that's applied, that is a kind of an income-based approach. [LB688]

SENATOR KARPISEK: Kind of. For the recreational or that sort of thing. My concern is we have many different kinds of land, dirt in the state. And it doesn't all run, you know...sometimes it's a very cut and dried line. The guy over here might really have

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good land and the guy over here doesn't. But they're both taxed relatively the same. This one may produce 200 a bushel of corn and this one produces 150. No matter, you know, the same usage and the same farming techniques. We have someone from the University of Omaha that has done a lot of research and we think could use some GPS to actually be able to look at the kind of make up of the soil and tax that way. My intent on this bill is not to so much lower property tax, because I know that we need the income, but to make it more fair. Then also if we did want to start to tweak it somehow we would have a better way to tweak it rather than going down, say, to 65 cents or 60 cents per acre or 60 percent per valuation. Maybe we could tweak it a little bit on what it can produce. I just think it would get away from that. We just see a lot of things, especially ag land now. We know with corn we just talked about it being over \$4 a bushel. It's really driving prices of land up, which is affecting people that have had their land in their family for maybe 100 years. And so I would like to get away from that part of it. Now I have heard well, I bet nobody would like this now with the \$5 a bushel corn. Well, nobody is saying that it would make your rates go way up, but if you are making some good yield on this land you would pay a little more. If you're not, you're not. If the bushels or the price goes up you pay a little more. It just seems to be a more equitable fair way. And I would just like to look at it. When we talked about dropping this bill, one of the people wanted to put it then and it will go into effect date certain. I said no, I would rather not do that until we find...I mean, that would have been the death of it right away. But I'd like to see what it would do. And there are...I think Kansas does it this way. There are some other states that do it. So I just think it would merit a look not costing a whole lot. [LB688]

SENATOR JANSSEN: Questions? Cap, did you have a question? You're getting by pretty... [LB688]

SENATOR KARPISEK: Well... [LB688]

SENATOR JANSSEN: Well, I might make a couple of comments. [LB688]

SENATOR KARPISEK: Sure. [LB688]

SENATOR JANSSEN: I remember Senator Coordsen arguing this for years, you know? He was never successful. [LB688]

SENATOR KARPISEK: No, he was not. (Laughter) You know that I'm pretty hardheaded already in the short time you've known me. [LB688]

SENATOR JANSSEN: No, I wouldn't say that. Not an old butcher. [LB688]

SENATOR KARPISEK: The other thing I think that Senator Coordsen would not give in was capitalization rates. He wanted one, I think, for the whole state. Like I told Senator

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Raikes, I believe we have different areas in the state and I would be very happy to look at different cap rates throughout the state. I think to open this thing up...even in my opinion...I mean, right now livestock is usually what I've heard based--a livestock lot is based on dry land agricultural land. I don't want to get the livestock producers all upset, but you know they're maybe making more money off of that land than if they were farming it. Maybe not. I would like to even move it farther to, say, business. Agricultural businesses even. We talked about the ethanol plant. Farmland Foods. What are they making per acre? Should they maybe pay more in than if they were farming it? Again, just something to look at. [LB688]

SENATOR JANSSEN: Or grape growers [LB688]

SENATOR KARPISEK: Grape growers, yes. They're making--what did they say--about 5,000 bushels off an acre. [LB688]

SENATOR JANSSEN: I don't know. Quite a bit. [LB688]

SENATOR KARPISEK: And it's about \$1,000 a bushel. [LB688]

SENATOR JANSSEN: They go by the pound, but that's fine. [LB688]

SENATOR KARPISEK: Yeah. [LB688]

SENATOR JANSSEN: I don't see any other questions. Thank you, Senator. [LB688]

SENATOR KARPISEK: Thank you. I will stay to close. [LB688]

SENATOR JANSSEN: You going to stick around to close are you? [LB688]

SENATOR KARPISEK: Yes, sir. Thank you. [LB688]

SENATOR JANSSEN: Okay. We'll take proponents first. [LB688]

PETE MCCLYMONT: Senator Janssen, members of the committee, I'm Pete McClymont, P-e-t-e M-c-c-l-y-m-o-n-t. I'm vice president of legislative affairs for Nebraska Cattlemen, and we are in support of Senator Karpisek's bill. I think going about it in terms of a study is a good way. It starts a process and gives further clarification to it. And there's two reasons for this that we're supportive. Number one, it's fair. Just like he said it's based on the ability to earn income off land. So for instance, I was down in Senator Karpisek's district in November and visiting a member, and he had a piece of ground right across the road from his operation and it was bought by a dentist out of Omaha who wanted to hunt on it. So this dentist paid three times the value of what this ranch land was worth. So how that would affect the other neighbors with

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pasture is obviously something that raises the value even though this gentleman obviously used it for recreational purposes. So I think from a fairness perspective, as Senator Karpisek talked about, that's something worthy of consideration. And then obviously just the whole fairness part of it. But until he started talking about livestock I was completely in favor of it, (laughter) but in reality I think it's a good way. It's a start. It's a study. So that way people can get a better handle on it. So with that, I would conclude my testimony and be happy to answer any questions. [LB688]

SENATOR JANSSEN: Any questions? Ron. [LB688]

SENATOR RAIKES: Pete, I think the last time a study was done on this it came out that grazing land values ended up much higher under the income approach than they were the current approach. Is that a acceptable result? [LB688]

PETE MCCLYMONT: As Senator Karpisek alluded to, obviously if you're a feedlot, as you would well know, you're a margin operator. So as a fixed cost operator, being a rancher, land is the key component to that operation from a purchase and an operating standpoint. So yeah that would be a huge concern to our largest sector of our membership, which is ranchers. [LB688]

SENATOR RAIKES: Okay, thank you. [LB688]

SENATOR JANSSEN: Any other questions? Pete, don't...well, Cathy is here. She may help us with that, but don't they throw out the highs and the lows when you assess? I believe they do. [LB688]

PETE MCCLYMONT: I don't know. [LB688]

SENATOR JANSSEN: So I mean if this dentist comes out there and pays \$10,000 an acre for 80 acres of lands (inaudible), I think the assessor does throw that out, and also the low to come up with an average. But maybe Ms. Lang will be up and help us with that. Any other questions? Seeing none, thank you, Pete. [LB688]

PETE MCCLYMONT: Thank you. [LB688]

SENATOR JANSSEN: Next proponent. Welcome. [LB688]

DAVID GRIMES: (Exhibit 2) Thank you. My name is David Grimes. I'm a farmer from northern Lancaster County and a member of the Lancaster County Farm Bureau. I also serve on the Nebraska Farm Bureau state legislative policy committee and I appear before you today on behalf of the members of the Nebraska Farm Bureau in support of LB688. Farmers and ranchers continue to be frustrated with the valuations of agricultural land. Year after year valuations continue to increase, and year after year we

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hear a litany of frustrations from farmers and ranchers across the state about the increases. The action taken last year by the Legislature and this committee to reduce the level of value for agricultural land from 80 percent to 75 percent helps a lot, but farmers continue to have concerns. In general, farmers are concerned with the growing influence of non-agricultural factors in the market. Section 1031 tax exchanges, non-agricultural investors, and persons purchasing property for recreational purposes are all significant influences in the agricultural land market. The non-agricultural influences are so pervasive that the June 2006 UNL report of the Nebraska farm real estate market reported that respondents believed 1031 tax exchanges and non-farmer investors were the two strongest factors contributing to higher land values. The report also noted purchases by active farmers or ranchers accounted for 61 percent of all purchases, considerably less than the 80 percent of purchases farmers and ranchers accounted for in the early 1990s. The report also noted that non-local and out-of-state buyers accounted for 20 percent of the purchases, the highest percentage recorded in the history of the series. Most farmers believe that valuing agricultural land based on income capability would remove the non-agricultural influences in the valuation of agricultural land. Nebraska farmers look at other states with significant agricultural sectors that value land based on productivity--including all of our bordering states except Minnesota--and question why such an approach can't be used in Nebraska. It is our understanding that the Department of Property Assessment and Taxation has been investigating and utilizing an income-based methodology for the purposes of assessing and equalizing land subject to greenbelt. We understand the department has had the methodology peer reviewed and it has been approved by the Tax Equalization and Review Commission. We support LB688 because we believe it makes sense to have the Property Tax Administrator examine whether such a methodology could be utilized on all agricultural land statewide, and report to the Legislature the feasibility of such an approach. The department can examine questions regarding whether such an approach can result in values that are uniform and proportionate. It can examine whether new mapping technologies or other technologies might help implement such an approach. The department can also examine whether the appropriate information and data are available for an income approach. Based on that report, the Legislature could then decide whether it would want to pursue an income-based approach. In closing, I want to thank you for the opportunity to present our views in support of LB688 and I'd be happy to answer any questions you might have to the best of my amateur ability. [LB688]

SENATOR JANSSEN: Tom? [LB688]

SENATOR WHITE: Do you raise corn, sir? [LB688]

DAVID GRIMES: Yes. [LB688]

SENATOR WHITE: Corn in the last year has moved from roughly \$2.00 to roughly \$4.00 a bushel. Isn't that correct? [LB688]

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DAVID GRIMES: About \$3.80 today. [LB688]

SENATOR WHITE: Give or take. How do you get a stable predictable land value when you've got a volatile commodity like corn, which dominates a big part of the property tax base? I mean, if we set it when it's at \$4.00 and then the market falls out and you're paying taxes on that property based on \$4.00 corn and now it's \$1.90 corn, aren't you going to get killed? And doesn't it require us to constantly reassess the value of the property? I'm just on a conceptual level? [LB688]

DAVID GRIMES: That, I would assume, would be part of the study to try to figure out how to do that so we don't have erratic ups and downs. In my county, Lancaster County, we're greenbelted now and the way they do it is they capitalize backwards off of the cash rent value of the land and they send surveys out. And the rents don't...you know, corn prices going up and down isn't anything new. This isn't the first time. It happens... [LB688]

SENATOR WHITE: No, no, but tying the value of the property to it would be. [LB688]

DAVID GRIMES: And since they do go up and down, over time the cash rents will vary but not nearly as dramatic as the commodity prices. [LB688]

SENATOR WHITE: So you would say then you'd tie the valuation of the land based on its cash rent value rather than its capacity to produce a marketable commodity. [LB688]

DAVID GRIMES: That could be a possibility. That would be part of the study to determine, I'm sure. Yeah. [LB688]

SENATOR WHITE: Thank you. [LB688]

SENATOR JANSSEN: Ron. [LB688]

SENATOR RAIKES: David, right now you have the choice of either using greenbelt or not. [LB688]

DAVID GRIMES: I do. Not everywhere in Nebraska. I'm not sure. I can't answer that. [LB688]

SENATOR RAIKES: Well, I think anybody can apply. So why would you want to be forced out of that choice? And I think this suggests that we want the income approach and there are places where the income approach may lead a higher valuation than what the current market-based... [LB688]

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DAVID GRIMES: Well, I think there's always that risk. I think we believe, as an organization, that in most cases it would be a more fair approach. It would be a way to better equalize the values between different counties. And again, looking at the influence that investment outside of agriculture has on the market value of the agricultural land. You might say, in my way of putting it in my own words is that we have some kind of false economies in our economy where some people--a few people at least or a big minority--would buy agriculture and horticultural land for a use that's not agricultural and then that influences the market value of all the land. [LB688]

SENATOR RAIKES: But it wouldn't influence the greenbelt value. [LB688]

DAVID GRIMES: I'm not sure. I can't answer that. Maybe indirectly it does. [LB688]

SENATOR RAIKES: Okay. [LB688]

DAVID GRIMES: Indirectly it could. Maybe not directly. [LB688]

SENATOR RAIKES: Okay, thanks. [LB688]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, David, for being here. [LB688]

DAVID GRIMES: Thank you. [LB688]

SENATOR JANSSEN: Next proponent. Anymore proponents? Any opponents? [LB688]

BETH BAYZN FERRELL: Good afternoon, Chairman Janssen, members of the committee. For the record my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. The NACO board took a position in opposition to this bill because of the language that says an income approach shall be implemented. Typically we have opposed the income approach simply because when it comes down to it it's the same pot of money that needs to be generated, whether that's through an income approach or through a market approach the same taxpayers typically have to come up with the same amount of money in counties that are primarily ag. Whether the taxpayer has some residential property, there's not a lot of commercial property typically in those counties that it could be shifted to. So when it comes down to it there's got to be money to pave the roads, to plow the roads, to run the schools, to run the courthouses, and have elections and so on and so forth. It comes down to money. Now having said that, if the committee chooses to advance some kind of income approach, we think this is a good way to do it. To look at it first, to study it thoroughly, to get everyone involved that is a stakeholder, and to go from there rather than jumping into something that may not be very workable. Try to answer any questions. [LB688]

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SENATOR JANSSEN: Any questions? Senator Langemeier. [LB688]

SENATOR LANGEMEIER: Thank you, Chairman Janssen and thank you for your testimony. We see you a lot. That's good. Kind of philosophical question. As these county boards and your group sits and spends a lot of time taking positions on a lot of bills in this committee, do you think they spend an equivalent amount of time meeting the desires of the people and work on cutting their budgets? [LB688]

BETH BAYZN FERRELL: I think they try. But I think there are a lot of things that are somewhat out of their control. As you see here in the Legislature, there are things that have to be funded whether those are programs that have been created elsewhere by the federal government and passed down. There are some things that just have to be done and once those have been dealt with then sometimes there's not much flexibility left. [LB688]

SENATOR LANGEMEIER: Okay, thank you. [LB688]

SENATOR JANSSEN: Any other questions? Thank you. Any other opponents? Seeing none, how about neutral? [LB688]

CATHERINE LANG: Chairman Janssen and members of the Revenue Committee, my name is Catherine Lang, Catherine with a C, Lang, L-a-n-g. I'm the Property Tax Administrator for the state of Nebraska. I appear today on LB688 in a neutral capacity. As I look at this bill I see that its purpose is to authorize a committee to study the valuation of agricultural land. Currently in statute there are three recognized approaches to value: the cost approach, which is not applicable to vacant land; the sales comparison approach; and the income approach. Under current market conditions the assessment of agricultural land is heavily dependent on the sales comparison approach to value. My interest in this bill relates to providing an opportunity to study the formulation of an income approach to value that could be used by county assessors in support of the analysis that they do in using the sales comparison approach to value. You may ask if an assessor could now use an income approach to valuing agricultural land, and the answer is yes they could. In fact, the Department of Property Assessment and Taxation has been using a modification of an income approach to determine the level of value of land that is subject to special valuation. We believe that this technique that we have developed is sound. It has been reviewed and approved by the International Association of Assessing Officers and has been relied on upon by the Tax Equalization and Review Commission in determining the level of value in applicable counties, those counties that have special value countywide. We anticipate that our methodology could be one concept that could be part of this study. I do view this study as an opportunity to explore alternative methods to help move away from our predominant reliance on the sales comparison approach to value. I'd be happy to

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answer any questions. [LB688]

SENATOR JANSSEN: Ron. [LB688]

SENATOR RAIKES: But one way or another you're going to have to use a market, aren't you? I mean, you might use the market for cash rent instead of the market for ag land, in case there aren't any sales. That's what I hear you saying is that you've got places in the state where land just doesn't exchange hands that much? [LB688]

CATHERINE LANG: That is correct. And that's what our concern is. And in a sense I view this as an opportunity to be on the forward edge of an issue rather than on the lagging edge or the reactive edge of an issue in that right now the market sales are there, but we know that there are counties who are experiencing difficulty finding market indicators for agricultural land. The incorporation of the addition of a reasoned income approach to value would be helpful to them in establishing their value and in supporting their value. From the appraisal standpoint, an income approach and a market approach may come close to the same valuation. The factors that are used in both approaches are coming out of the market and what I see this is an opportunity to do is to look at the income approach, to analyze it and to use it as a supporting tool for what we're doing in the assessment area. [LB688]

SENATOR RAIKES: One other question. So when you say income approach are you thinking, okay, here's 80 acres. We're going to have 35 acres of wheat and so many acres of corn and so many acres of soybeans, and this is how much the seeds are going to cost, and this is how much the fertilizer is going to cost, and this is how much the machines are going to cost. [LB688]

CATHERINE LANG: Well, some of our staff members have lived through that experience. Our current recommendation would be to not go in that direction. We believe that the analysis of cash rent information which is or could be available out there, we think, would be perhaps a more reliable tool in terms of defining what the income is. We still have to come up with a capitalization rate to then turn that income into a value. But that would be what we would do in the study committee. It would be a great educational opportunity and I also think it would be potentially helpful to the assessment practices across the state. [LB688]

SENATOR RAIKES: Okay, thank you. [LB688]

SENATOR JANSSEN: Tom. [LB688]

SENATOR WHITE: Cash rent also has its own variables that won't go across the state. For example, number of young farmers in an area who want to farm can dramatically affect cash rent values from county to county. Isn't that true? [LB688]

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CATHERINE LANG: That could be correct, yes. [LB688]

SENATOR WHITE: So if you have, which we're looking at a dearth of farmers willing to get into the industry or in a given area, you may have the same kind of market disruption with regard to cash rent that you're facing now, because farms aren't selling. [LB688]

CATHERINE LANG: That is quite possible. I agree. But the opportunity to be able to study it to see what there is out there, what is available to us, I think could be helpful. [LB688]

SENATOR WHITE: Then if we look at the commodity-based. For example, how would you value the property on a commodity-based? I mean, this here. I mean, corn. If you have wetland corn the input costs are fundamentally the same across the board. Your gross return on that is doubled and your profit may have gone up 5,000 percent given the economics of farming this year. Do you then value that going forward for what the cash rents are next here? I mean, ultimately the cash rents have to, if the markets are at all efficient, be as volatile as commodity prices that support them. [LB688]

CATHERINE LANG: And we don't see that in the market. We watch the market move more deliberately rather than reactively. Are there going to be times in our state where we are going to experience dramatic changes because of unique situations? That's quite possible. States have faced that as well whether they're doing a sales comparison approach or an income approach in states that rely on an income approach and may not do it necessarily on cash rent, but may do it more on a formula approach using commodity prices and what have you. They'll use three to five years as an average. There's been arguments in other states whether or not you can even go beyond five years. Right now even in the sales comparison approach we're using three years worth of sales. [LB688]

SENATOR WHITE: But I mean the variables are infinite. I mean, cost of capital on whether or not you have a county with lands turned over recently or whether the land has been held a long time will have a dramatic impact coupled with availability on farmers on what cash rents in that area will be. Doesn't the market price incorporate all those different factors if we're talking on basic economic terms anyway? [LB688]

CATHERINE LANG: Yes, it does. And so our current reliance, our heavy reliance, on the sales comparison approach I don't think is problematic. What I'm concerned about is developing tools that will support the sales comparison approach or where we don't have sales information to help support a value using a different alternative. [LB688]

SENATOR WHITE: Then would you be more comfortable with removing the shall use,

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the language from this... [LB688]

CATHERINE LANG: I would... [LB688]

SENATOR WHITE: ...instead of study? [LB688]

CATHERINE LANG: I would not be opposed to doing that, but I would obviously defer to Senator Karpisek on that. [LB688]

SENATOR WHITE: Thank you. [LB688]

CATHERINE LANG: Yeah. [LB688]

SENATOR JANSSEN: Chris. [LB688]

SENATOR LANGEMEIER: Chairman Janssen, thank you. We finally hit a subject I deal with everyday... [LB688]

CATHERINE LANG: Um-hum. [LB688]

SENATOR LANGEMEIER: ...as an appraiser. My concern is...and we do ag land appraisals. It's all I do out of my office. And my biggest concern is how you get the data. You know, I beg, plead, and borrow and through confidentiality we almost have to sign a letter to these people to guarantee that their data is not going anywhere. I would question you can't get cash rents, reasonable numbers out there. I would say in our farm management this year you're seeing all our leases this year we kept them the same, but we put a variable on them. So if corn stays at \$4 at the end of the year there's going to be a premium paid. We've also told everybody that's come in our office and said what should we do to our landlord, and I've told them if they don't pay him a premium from what their cash rent was for '06, if they don't pay him a premium at the end of the year they won't be farming it, because they're going to come to my office and hire us to do it and those farmers aren't going to be farming. So I don't know how you can keep up with the data to make that work, because if you mandate that I turn in my information I have some confidentiality reality there as a farm manager as well as providing you the highs and the lows. I may just provide you the lows. So I think that getting the proper data is problematic. [LB688]

CATHERINE LANG: And while that may be the reality that we would face, Senator Langemeier, I think it would be important to have that information on the table as we study this so that everybody is aware of the reality that we face when we're trying to value agricultural land. [LB688]

SENATOR LANGEMEIER: All right. Thank you. [LB688]

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CATHERINE LANG: Um-hum. [LB688]

SENATOR JANSSEN: Tom. [LB688]

SENATOR WHITE: And following up on that, I know counties where the vast majority of the land that is cash rented is done among family members and good luck prying out accurate statistics on that. Does that concern you at all going forward into that area? [LB688]

CATHERINE LANG: Yes, it would, but I think that's the importance of providing an opportunity to have that information on the table. [LB688]

SENATOR WHITE: Thank you. [LB688]

SENATOR JANSSEN: Chris. [LB688]

SENATOR LANGEMEIER: One more comment for the record more so than a question. The reason they give me accurate data when we're doing appraisals is because they want a loan, and if I don't have the data I don't complete my report, they don't get their financing. And so that's how we get the data. But I don't know how that would carry over to the assessor. Thank you. [LB688]

SENATOR JANSSEN: Don. [LB688]

SENATOR PREISTER: Catherine, I have appreciated the questions and the answers in response. The bill calls for the study to be done and for your office to participate in doing that and your staff to be involved. And you're coming up in a neutral capacity saying that could be valuable. You could get some good information out of that. Is that accurate? [LB688]

CATHERINE LANG: Yes, I think that's accurate, Senator Preister. [LB688]

SENATOR PREISTER: I don't see anything on here for a actual fiscal note cost. So I'm wondering why don't you just do it. I mean, why do we even need the legislation? If you see value to it and you want the information why don't you just do it on your own? [LB688]

CATHERINE LANG: Certainly that could be done. I think the import of the legislation is that it heightens it. It creates the framework for a committee that we would be working with that would assist us and I guess I think that's important. [LB688]

SENATOR PREISTER: Better for the Legislature to give you direction rather than you

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take the initiative and do it on your own? [LB688]

CATHERINE LANG: With regard to an issue such as this, I would appreciate the direction, yes. [LB688]

SENATOR PREISTER: Okay. Thank you. [LB688]

CATHERINE LANG: You bet. [LB688]

SENATOR JANSSEN: Any other questions? Thanks a lot, Cathy. [LB688]

CATHERINE LANG: Thank you. [LB688]

SENATOR JANSSEN: Anyone else in a neutral capacity? No more neutral. Senator Karpisek to close. [LB688]

SENATOR KARPISEK: Thank you, Senators, for listening and as was brought up there are some difficulties to think about on this bill. Senator Preister, I think Cathy had been thinking about this for awhile and when I brought it up I think that got the wheels turning again is one reason. I think the legislative asking does help out a lot. Senator Langemeier ran off. I don't know. I haven't been in the farming industry for about 20-some years, but I guess I would just ask FSA office type of records, those sort of records, if those could be used anyway. University studies, that sort of thing. Senator White, we talked about the average. Averaging three years, five years. I asked about seven years. They said no, that's too far. Whatever. Again, the study would be, I think, the way to look at that and find out how you could keep it more constant. And then there are other factors in the valuation also, like the 1031 and the recreational. And then just buying it. They may not try to get the special use rate. They just buy it so they have it. They don't care so much about getting a special use. You pay \$10,000 an acre, you probably don't care. A lot of the farmers that I've talked to aren't so opposed to paying taxes. None of us like it, but I think all of us would say if we feel they're fair we can live with that. And that's what this bill is, is to try to make people feel that things are more fair and do make them more fair. The other thing, Senator White, you asked about wouldn't it have to change all the time. They already do change a lot. I don't know. I should've asked Cathy before, but when I bought my house they found three houses that were close to mine to get a valuation. They didn't go off of what I paid for it. They picked some out that were in comparison. I would assume they do that on ag land also. So when they look at my 80 acres and your's, although your's is much better, they're going to charge us the same amount. And I'm sure your's would be much better, Senator Janssen, where you live. I did talk to Senator Janssen about making this my priority bill. I do feel very strongly about it. Senator Janssen said don't waste your priority bill (laughter) so I definitely respect that and appreciate that. [LB688]

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SENATOR WHITE: I have a handkerchief he told me to use too. (Laughter) [LB688]

SENATOR KARPISEK: I am going to turn in, though, for the Speaker to make it a Speaker priority if you would in any way pass this out of committee. I'm just saying that just so you know. If you don't want to pass it out, an interim study I would be very happy with too, if we could just look into this a little bit. So anything that you would feel like that you could do to look into this I'd appreciate it. [LB688]

SENATOR JANSSEN: I don't want to tell you what we could do. (Laughter) [LB688]

SENATOR KARPISEK: And I know what you're going to do. That's why I'm begging and trying to be nice. There is an awful lot of people that do think that it would be at least to look at. I talked to a few people across the hall about the irrigation. Just said what I was doing today. And then that's how it should be. Well, once you look at it you might not think so, but again that's why I have not proposed that we would go to this without a study. So thank you for your time. If you have any other questions I'd be glad to try. [LB688]

SENATOR JANSSEN: You know, I think we're all questioned out. Thank you, Russ. [LB688]

SENATOR KARPISEK: Thank you, committee, very much. [LB688]

SENATOR JANSSEN: Um-hum. That ends the hearing on LB688. Is Senator Friend here? Is Senator Friend coming? Yeah. He can introduce it. You go ahead. [LB688 LB703]

ROD KROGH: Good afternoon, Chairman Janssen, members of the Revenue Committee. For the record my name is Rodney Krogh, that's R-o-d-n-e-y last name is K-r-o-g-h. I serve as the legislative aide for State Senator Friend who represents the 10th Legislative District in northwest Omaha. Senator Friend regrets that he is unable to be here today. Senator Friend introduced LB703 on behalf of an Omaha attorney who represents several property owners providing housing for low income families in Lancaster, Sarpy, and Douglas Counties. LB703 clarifies the procedures for valuation of Low Income Housing Tax Credit, or LIHTC, properties. In 2006, Nebraska revised statute Section 77-1333 and the Nebraska Property Assessment and Taxation Department's corresponding revised regulations for valuation of LIHTC properties, in some cases, were interpreted in a variety of ways by local county assessors which resulted in LIHTC properties being valued higher than actual market value and creating significant equalization issues among similar properties. LB703 would clarify the appraisal process for county assessors so these properties would be fairly and equitably valued, in all counties, on a consistent basis. The bill would require the assessor to use the actual income and expenses of the property being assessed, allowing the use of

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other assessment methods only when actual figures are not made available. Since the introduction of LB703, the Property Assessment and Taxation Department has moved forward with revisions to the LIHTC valuation regulations to further clarify the proper method of valuing these properties. The LIHTC property owners believe that the final language of these proposed regulations will resolve the problems and allay concerns that led to this bill's introduction. If the committee agrees, Senator Friend believes it would be appropriate for LB703 to remain in committee while we await the finalization of the revised LIHTC regulations from the Property Assessment and Taxation Department. Senator Friend thanks the committee for its consideration of LB703. [LB703]

SENATOR JANSSEN: Any questions? You're getting off the hook real good here. [LB703]

RODNEY KROGH: I would let you know, Senator Dierks, that Ewing defeated Clay Central 46-40. [LB703]

SENATOR DIERKS: Thank you. [LB703]

SENATOR JANSSEN: All right. Thank you. Are you going to stick around and close (inaudible)? Oh, all right. He waives closing. Proponents to LB703. Welcome. [LB703]

BEVERLY FLEMING: Thank you, Chairman Janssen and committee members. My name is Beverly Fleming and that's spelled F-l-e-m-i-n-g, and I'm here today to represent the Interfaith Housing Coalition. We're a nonprofit organization and with me are two of our other board members--Julie Post (phonetic) and Julie Hendricks (phonetic). And we're addressing you today because we are the owners and operators of a low-income housing tax credit project called the Ambassador and President Apartments. They're located right across from the State Capitol on Lincoln Mall and South 14th Street. So you may be familiar with them. And our properties provide housing for 84 households and they were renovated in the early 1990's under the Low Income Housing Tax Credit Program and they have rent restrictions on them until the year 2022. And those rent restrictions require us to establish rents that are affordable to households that are at 50 percent of median income here in Lincoln, which today that income level is \$23,150. As a result, our rents range from \$295-\$355, which is a bargain and we pay all utilities. And as a result, our monthly income, the maximum amount of our monthly income if we have all units leased for a full month is only \$26,260. And I can tell you that we have expenses that often equal that amount or come very close to surpassing it. It's not unusual for us to have a cash flow at the end of the month of a few hundred dollars. And our property tax situation is that every year our property is assessed at over a million dollars at its full market value. And so what we are required to do is go and file a tax protest to get the taxes reduced to a reasonable amount. For us, a valuation that's over a million dollars results in taxes...this year it would be \$20,356 if we do not win our appeal. And we are just asking...we thought this issue was resolved

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a few years ago with the legislation that was passed requiring assessors to use the income approach to value tax credit projects, but that has not been the case. Our property continues to be valued at its full market value and so we're just asking that either this legislation or something similar is passed so that assessors are required to use the income approach when the project has rent restrictions on it. And I'd be glad to answer any questions. [LB703]

SENATOR JANSSEN: Any questions? Beverly, do you think that the valuation would be the same if it was say 15 blocks away from the Capitol? [LB703]

BEVERLY FLEMING: Oh, it's no doubt that the land that our buildings sit on is very valuable. [LB703]

SENATOR JANSSEN: Um-hum. All right. I hope there's someone here that can explain that to us today. All right. Don. [LB703]

SENATOR PREISTER: I can't explain it, but I do have a question so thank you. The problem of having to pay higher taxes, and apparently you have the income to generate, has caused you to do what to offset, or if you don't win the appeal where do you come up with that money to pay? [LB703]

BEVERLY FLEMING: We have been able to win our appeal every year. It's just that we shouldn't have to be filing an appeal every year. You know, that takes legal expenses that we really can't afford to pay or it takes volunteer time. We don't have a staff. We're a volunteer board and so someone has to put that appeal together. [LB703]

SENATOR PREISTER: Sure. [LB703]

BEVERLY FLEMING: So you know it would just be...you know, we feel like we should pay taxes. We're not asking to have our taxes eliminated totally, but we just need to have a recognition that we don't have the kind of income because of the rent restrictions that we can pay full market value. [LB703]

SENATOR PREISTER: Sure. And you're having to do an appeal every year? [LB703]

BEVERLY FLEMING: Yes. [LB703]

SENATOR PREISTER: I would assume the assessment would stay the same until they revalued it, but apparently they're revaluing it every single year? [LB703]

BEVERLY FLEMING: Since I have been on our board of directors, which has been four years, we've had to file an appeal each year. I'm not sure why that is, but that has been the... [LB703]

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SENATOR PREISTER: Okay. And my final question. [LB703]

BEVERLY FLEMING: Yes. [LB703]

SENATOR PREISTER: Would \$12,000 a year annual income qualify to live there and do you have any openings? (Laughter) [LB703]

BEVERLY FLEMING: Yes, I believe we do have some vacancies. [LB703]

SENATOR PREISTER: Thank you. [LB703]

BEVERLY FLEMING: You're welcome. [LB703]

SENATOR JANSSEN: All right. Any other questions? I don't think we're going to top that question. Thank you. Any other proponents? [LB703]

FRED HOPPE: My name is Fred Hoppe. I live at 1600 Stonyhill Road, Lincoln, Nebraska. I'm here representing the Nebraska Homebuilders Association and the Nebraska Realtors Association. I personally am an attorney. I also have a construction company and a real estate company. I develop affordable housing and affordable housing only. That is low-income tax credit and entry level housing through my construction company and my real estate company. I am manager or in the position of management through a general partnership and limited partnership for 10 tax credit projects. I participated with another attorney and the tax department in working on the changes in the regulations to look at trying to get low income tax credit projects and other restricted income projects valued by income and actual income and actual expenses. Essentially what this bill proposes, LB703. I am also a member of the tax credit steering group of the National Association of Homebuilders. What that is is a group of homebuilders across the country that have tax credit properties. In that group, the problem of real estate taxation for low-income tax credit projects has surfaced over the last 6-8 years because of the problems we're facing now. The market value of properties far exceeds the value of properties that are income-restricted in the marketplace by low-income tax credits or other programs that restrict incomes. The situation that was called by the last presenter is very true. In my case, I filed approximately 60 tax appeals because the Lancaster County Tax Assessor was not certain how to apply the prior law, which essentially said that the assessor was required to look at an income approach valuation, but wasn't necessarily compelled to follow an income approach valuation. The result we had in the last round of appraisals was a market rate appraisals for, in my case I had 60 properties that I took to appeal, and the differences approximately in one case, single family house, four bedroom house, valued at approximately \$140,000, when you do an income approach on it based on our actual income and actual expenses, brought the valuation down to about \$40,000. And that's

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applying about a 40 percent expense ratio on the incomes. So you can see what this does to low-income tax credit projects if there isn't some relief such as LB703. I'm an advocate for it. I would certainly answer any questions you may have in regard to it or in regard to the low-income tax credit programs or restricted housing programs. [LB703]

SENATOR JANSSEN: Questions? Tom. [LB703]

SENATOR WHITE: Fred, when you have a tax credit structure that's built with federal low-income tax credits does the obligation to continue to use that structure for low-income run to the property itself or just to the people that made the deal? In other words... [LB703]

FRED HOPPE: There's a, what they call, a land use restriction agreement that's placed on the property when the low-income tax credits are awarded. Normally, that provides that..well, first of all, the low-income tax credit provisions under Section 42 of the code give you a tax credit for 10 years if you commit the property into low-income rental for 15 years. So the first 15 years is locked no matter what unless its broken somehow by a foreclosure or something like that, but it's 15 years restricted incomes. Most, to get your tax credits, you have to commit to an additional period of low-income use; however, if the project is tendered to the marketplace after the fourteenth year then it could be released from low-income use. [LB703]

SENATOR WHITE: So for the first, let's say 14 years, 15 years... [LB703]

FRED HOPPE: Fifteen [LB703]

SENATOR WHITE: ...those restrictions are of record, correct? [LB703]

FRED HOPPE: They are of record by a land use restriction agreement, which is like covenants on the property. [LB703]

SENATOR WHITE: And does the market price of that property then reflect those restrictions of record during those first 15 years? [LB703]

FRED HOPPE: The market price does not reflect the restrictions. Well, excuse me. What market price are you talking about? First of all, there's no market for the properties. It's extremely difficult to sell low-income tax credit properties during the 15 year holding period because you have to put up bonds to get the properties transferred and there are a number of complications to actually transfer the properties in that period of time. There's virtually no market so there's no market data for what is the tax credit price for a property. What the appraisers have been doing is taking, for instance, in my projects are several of them. We have single family units in the project. They would compare four bedroom similar planned projects in similar areas to nonrestricted

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properties in similar areas at their sales prices. [LB703]

SENATOR WHITE: Let me get this right. You're saying the assessors are ignoring what you and I both know are incredibly burdensome restrictions on the transferability and the intrinsic value of that property, and they're ignoring those and just valuing them in comparison to unrestricted property of a similar character. [LB703]

FRED HOPPE: I believe that to be the case in some counties. [LB703]

SENATOR WHITE: Thank you. [LB703]

SENATOR JANSSEN: Any other questions? Seeing none, thank you. Next proponent. Anymore proponents? Any opponents? [LB703]

BETH BAZYN FERRELL: Good afternoon, Chairman Janssen, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. Our opposition today is based on the language of the bill as it's written. There was concern that some assessors might not be in compliance with IAAO standards, but we're looking into that. We might reserve, I guess, further comments if we could until we've looked at the regs and that may change our position on the bill. [LB703]

SENATOR JANSSEN: Okay. Any questions? Thank you. Any other opponents? No more opponents. Anyone in a neutral capacity? [LB703]

TRENT SIDDEERS: Chairman Janssen, members of the committee, my name is Trent Sidders. I'm an attorney here in Lincoln. I'm appearing on my own behalf today, however. For the last approximately seven years, we've been involved every year on protesting the valuations of these types of projects. Quite frankly, it's a type of business we would like to get out of. I'm here on a neutral capacity because of some of the language in the bill that does cause us some concern, but really to emphasize the problem that does exist. As Mr. Hoppe indicated previously, there is a problem across the state with the valuation of these types of projects. It's not a Lancaster County. It's not a Douglas County. It's across the state. Last year during the property tax season, as we call it in the summer, our office filed close to 200 property tax appeals throughout the state on these types of projects. Primarily because the projects themselves don't have the income to make the payments on the taxes when they're getting their valuations each year. In most cases, these properties are being valued by the assessors on a cost approach. That cost approach, if there's no consideration for the restrictions from the programs generally results in a value that these projects can't pay on a year to year basis. We have been working with the Department of Property Assessment and Taxation on revisions to the regulations implementing Section 77-1333. We believe those regulations will provide much better guidance for the county assessors and how

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these should be valued and believe that is going to be a good approach for us and hopefully we won't be in the situation every year. Be welcome to answer any questions you might have. [LB703]

SENATOR JANSSEN: Questions? Tom. Chris. Whichever. [LB703]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. In your experience in protesting these, you said you experienced the majority of them using the cost approach. And we've heard from the previous testimony that there's been no sales where their problematic to make sales. What's your experience? What are they using for depreciation? [LB703]

TRENT SIDDEERS: The problem we have with depreciation on these is a lot of these are very new projects and so the depreciation varies from county to county, but generally it is a very small depreciation figure. Part of the problem we have on the cost approach is that most of the county assessors are not doing anything on what I would call an economic obsolescence factor to take into account the restrictions that are filed of record against the property. In most cases, the county assessor is not aware of the restrictions until somebody protests to bring those restrictions in and then has to go through the process of explaining. But even at that level, most of the county assessors, to be fair to them, up until the last few years have not had any real guidance on this. And in a lot of cases, at the protest process in front of the county boards, the county assessors are very frank about asking for some type of guidance they can follow on these projects. But it is true on a year to year basis it seems like you're back with the same properties year after year. And in some cases you are dealing with flatly hostile boards and potentially assessors on some of these value questions, but I've never seen any kind of depreciation or obsolescence factor at the assessor level for these projects and that's part of the argument we've been making. If you're going to do a cost approach we need that factor. [LB703]

SENATOR LANGEMEIER: I would agree. Your last year's tax season you said you had filed how many? 200? [LB703]

TRENT SIDDEERS: Around 200, yes. [LB703]

SENATOR LANGEMEIER: All right. What was your success rate on those 200? [LB703]

TRENT SIDDEERS: You're going to... [LB703]

SENATOR LANGEMEIER: Okay. I'll withdraw that question. Strike that question. Learned that from you. [LB703]

SENATOR WHITE: That was good. [LB703]

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SENATOR LANGEMEIER: Strike that question. New question. How many of those have you taken further on to TERC? [LB703]

TRENT SIDDEERS: Almost all of them have been taken up to TERC. [LB703]

SENATOR LANGEMEIER: And what is the response at TERC? If the assessors are looking for guidance, what is TERC doing? [LB703]

TRENT SIDDEERS: Our approach has been for these projects, most of them cannot afford that. So our standard approach has been to work with the county boards after it gets out of the county assessor's office and to work with the county attorneys to try and reach a reasonable resolution short of having to go through the hearing process with the Tax Equalization and Review Commission. As we've been working through the regulations with the Department of Property Assessment and Taxation for the last year, TERC has been good about not scheduling these for hearings to this point. So we've been hopeful that the regulations and that additional guidance can help us in working with the counties to come to a reasonable resolution on all of the values. And that is something that Lancaster County has been working on as well. They have been helping us, the assessors office, in the process of working through new regulations, and their office is working now on revised recommendations for the value based on what these new regulations are going to provide. [LB703]

SENATOR LANGEMEIER: So in your almost all number of that 200 have gone forward, they're all held in this limbo stage? [LB703]

TRENT SIDDEERS: Right now they are, yes. [LB703]

SENATOR LANGEMEIER: And do you have any idea what is going to take that out of limbo? I mean, is this bill supposed to take them out of limbo? Or... [LB703]

TRENT SIDDEERS: We have not worked on the bill. [LB703]

SENATOR LANGEMEIER: Okay. [LB703]

TRENT SIDDEERS: The regulations are going to take a lot of them out of limbo. One of the clients that our firm represents is the Housing Authority of Lincoln. That accounts for the majority of those protests that we file on a number of projects. The county assessor has indicated once they have good guidance from the Department of Property Assessment and Taxation that this is the way they should be valuing these under 77-1333, they and the county attorney have indicated they're willing to work with us on confessions of judgment to resolve those Lancaster County protests. And hopefully that would be a going forward issue that would then allow us not to have to protest every

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year. [LB703]

SENATOR LANGEMEIER: Okay, thank you. [LB703]

SENATOR JANSSEN: Trent, when your clients built these apartments or whatever they are, are they mostly apartment dwellings or are they like duplexes or quadruplexes or what kind of structures are they? [LB703]

TRENT SIDDEES: I think in your question you've hit every type that they are. They vary across the board. [LB703]

SENATOR JANSSEN: Batting a thousand on this. [LB703]

TRENT SIDDEES: Some are single families, some are townhomes, some are duplexes, some are apartment buildings. And that can be part of the problem for the assessors is when you look at...and as Mr. Hoppe talked about some of these can be single families and you don't traditionally think of a single family residence when you look at it from the outside as potentially being affected by these regs. [LB703]

SENATOR JANSSEN: Now when they were built, they were built for the specific rental to low-income? [LB703]

TRENT SIDDEES: Yes. [LB703]

SENATOR JANSSEN: Or moderate low-income. [LB703]

TRENT SIDDEES: Or it might have been converted at some point, yes. [LB703]

SENATOR JANSSEN: All right. Now were the owners, your clients, aware that there would be restrictions on what you could charge for rent? Correct? [LB703]

TRENT SIDDEES: Yes, that's part of the program, yes. [LB703]

SENATOR JANSSEN: When they were built or taken over it was something new for the assessor at the time. I mean, this was a new structure and they knew that apparently that this was going to be for low housing? Correct? [LB703]

TRENT SIDDEES: In terms of what they know, part of that would come from what has been filed of record. It's not like the county assessor would have had a form that they would know that this is a low-income housing structure. It's part of the record with the land use restriction agreements that get filed against each of those properties each year. [LB703]

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SENATOR JANSSEN: Okay. [LB703]

TRENT SIDDEERS: And in terms of the structure that those documents come from, NIFA. [LB703]

SENATOR JANSSEN: Maybe this question has been asked, but have you ever lost an appeal? [LB703]

TRENT SIDDEERS: Yes. [LB703]

SENATOR JANSSEN: What is your batting average then? [LB703]

TRENT SIDDEERS: The batting average on the appeals? [LB703]

SENATOR JANSSEN: If it isn't 1,000, what is it? [LB703]

TRENT SIDDEERS: Well, in most cases...we've never lost one at TERC because when it's gotten to the stage where we haven't been able to work it out... [LB703]

SENATOR JANSSEN: It's at the local level then where you're losing. [LB703]

TRENT SIDDEERS: Yes, yes. [LB703]

SENATOR JANSSEN: At the county. [LB703]

TRENT SIDDEERS: Yes. And we've taken some to TERC with the expressed purpose that we try and work it out again with the county with an extended time frame, not caught up in the summer rush. If we're not able to work it out, in most cases it's better for the projects to dismiss the appeal and not incur the additional legal fees if they don't think they've got a good case to win, because the projects simply don't have the cash to make the payments for an appeal and the legal fees as well. [LB703]

SENATOR JANSSEN: Okay. Tom. [LB703]

SENATOR WHITE: Some of these projects remain restricted of record, correct? [LB703]

TRENT SIDDEERS: Yes. [LB703]

SENATOR WHITE: And then others that are older are free of such restrictions and they're dedicated to low-income housing only because of the will of the owner. Is that correct? [LB703]

TRENT SIDDEERS: Some of these that might have been at the beginning of the program

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could have come out of the restrictions. All of the ones that we are dealing with in the recent past, in order to qualify for the credits, you are not only restricting them for the 15 years of the program, but in most cases as was indicated, you are having to restrict them for up to 30 years beyond that. [LB703]

SENATOR WHITE: Are you dealing with structures at all that, for example, are dedicated Section 8, but are not restricted of record? They could be in or out of the program. [LB703]

TRENT SIDDEERS: We aren't dealing with any of those in these types of protests that we're dealing with. [LB703]

SENATOR WHITE: Okay. So this bill doesn't apply to the ones that do not have restrictions of record. Is that fair enough? You don't have a problem with an apartment complex held by the Sisters of Charity that is dedicated because they will it towards low-income housing even though there's no legal restriction. That's not giving rise to problems? [LB703]

TRENT SIDDEERS: We haven't been involved with any of that, no. [LB703]

SENATOR WHITE: Thank you. [LB703]

TRENT SIDDEERS: I can't say that it's not a problem. [LB703]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Trent, for being here. [LB703]

TRENT SIDDEERS: Thank you. [LB703]

SENATOR JANSSEN: Anyone else in a neutral capacity? Seeing none, that will end the hearing on LB703 and counsel did waive closing, didn't you? Okay, that ends the hearings for the day. [LB703]

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Disposition of Bills:

LB355 - Indefinitely postponed.
LB627 - Advanced to General File.
LB688 - Indefinitely postponed.
LB703 - Indefinitely postponed.

Chairperson

Committee Clerk