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Revenue Committee
February 26, 2009

[LB212 LB213 LB553 LB580]

The Committee on Revenue met at 1:30 p.m. on Thursday, February 26, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB553, LB213, LB212, and LB580. Senators present: Abbie Cornett, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Greg Adams; Mike Friend; Galen Hadley; LeRoy Louden; Dennis Utter; and Tom White. Senators absent: None. [LB553]

SENATOR ADAMS: We're going to open this hearing of the Revenue Committee. I'd first of all ask you if you have cell phones on that you turn them off or silence them, at least, so that you don't interrupt testimony and make it possible for everyone to hear. I'm going to skip all the introductions if you don't mind, because I don't have all the names in front of me--how about that? So we'll skip over that. The one thing I would ask you to do is as you come up to testify, we ask that you fill out the form. If you're going to testify on more than one bill then you're going to have to fill out the form more than once. And be sure that you hand it to the clerk over here, and be sure that when you go to the microphone you state your name and spell it for the record so that we can all...we can get that recorded and hear what you have to say. To begin with, we're going to be hearing LB553. Senator White, you're up. [LB553]

SENATOR WHITE: Thank you, sir. Thank you, Senator Adams, members of the committee. LB553 is a bill that was introduced to begin a process, hopefully, to address what is becoming an increasingly complex failure of the state and the legal system to address appeals from property tax. At this point in time, Douglas County has many thousands of appeals from property tax--usually reassessments--that have not had a hearing. They've not been resolved; they've not been addressed. It is pretty clear from a review of cases from the Supreme Court that there is a due process right of a taxpayer to have a property tax dispute at least reviewed. Douglas County has particular problems and seems to be creating the most number of appeals and disproportionate to the number, even though it's the largest county, disproportionate to its size. One of the other problems that LB553 was intended to start a conversation on was arguments between counties that share a tax basis for various projects as to whether or not there has been uniformity in assessment practices across county lines. The constitution statutes require equalization, require this to occur, but yet disputes arise, for example, between Sarpy and Douglas County on how often properties are reassessed, whether or not they're assessed at the full value or within the range of values permitted by the statute. What LB553 does, or proposes to do, is to tell a homeowner--and it is limited to homeowners--that they may have an option to take the equivalent of a fast track appeal--a small claims appeal, if you would--that would say they could appeal once the county assessor makes the assessment. They would go to the county assessor's office where a person would assist them into articulating the basis for their dispute with the property assessors's decision on their own property: could be mismeasurement; it could be that they didn't use truly comparative properties to compare; it could be that their

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property was valued unfairly highly compared to that of a couple of properties that they must select and identify. At that point in time, the assessor would have the option of agreeing with the taxpayer and adjusting their assessment or negotiating a resolution of the dispute. If that did not occur, what would occur next is that the property tax assessor would introduce into the electronic record--this would be on a computer--the comparables that they rely on and the statement of why the property owner was in error on the assessment. That would then be sent directly to an employee of the state--it could be a contract employee, doesn't have to be a full-time employee--who, in Lincoln, would simply review the electronic record. And this, by the way, would be paperless. There will be no paper, ever, at any point in this appeal. That person would be a certified property appraiser or someone who's otherwise qualified. The committee, of course, can articulate how they would want to do that. And they would make a decision based solely on the electronic record. There would be no oral argument, no personal appearances, nothing other than what was in front...in the computer screens that appeared in front of them. If, after that decision was issued, either the appraiser or the homeowner was aggrieved by the decision, either could appeal but it would not be cheap. The first level would be free, but the next level we proposed \$100 for a hearing in front of TERC. They could assign a hearing officer. And at that point in time, the property owner should, probably, be represented by counsel, but they would have a choice. But they'd have to pay a filing fee to have that opportunity. That appeal would be based solely on the information contained in the electronic record. One of the great problems we have with TERC, and one of the great problems we face as a state, we have not clearly identified a pathway for appealing; we've not clearly identified what is called the record--the evidence that the appeal courts look at; we've not clearly identified when the record's closed, in other words, at what point do you stop getting to add information to it; we've not clearly identified what is the standard of review that TERC or the appellate finders must apply to the decisions leveled below. As a result, we have what I think can only be fairly described as a very chaotic situation both at the state level and, at least in Douglas County, at the Douglas County level. We have many thousands of homeowners who are frustrated, who believe the system is deeply broken, who resent property taxes in the first instance, and then when they protest do not even get the time of day of a human being to talk to them about it. This is a recipe for a taxpayer's revolt. I will tell you this: the fiscal note gives me great concern--the million dollars. That's something we're going to have to talk about. I will also tell you that I think there is a reasonable case that could be made at this point in time to throw out the entire property tax system for a lack of any kind of meaningful review--at least insofar as Douglas County is concerned. And that is both in value and number of people--a huge proportion of the state's system. We cannot fix, and I tell you this as a person who's spent his entire adult life trying cases and doing appeals at levels of courts all across the country--state and federal. We cannot possibly fix what TERC is facing unless we streamline a system for rapid appeals. There is not enough money in the treasury to appoint all the judges you would need to have evidentiary hearings and meaningful arguments. What this, however, would do is very much streamlined, and I believe would

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be consistent, then, with the constitutional requirements of a meaningful hearing streamlining an appellate process for the homeowners, it also has an additional advantage of it takes local politics out of the system. And the argument often is that local...the county officials favor some supporters over others. This would immediately take that decision with regard to homeowners out. I am concerned--it was initially drafted for Lancaster County, Sarpy, and Douglas County. I understand Lancaster County, which system seems to work much better than Douglas County certainly, would like to opt out. I don't mind at all if that's where we go with this. I would prefer, ultimately, a system, however, that would be statewide. I believe that if we're really going to fulfill our obligations under the constitution to equalize the tax burdens across county lines and across the state, that means that we need to have a uniform tax court at a very early level--on the first level of appeal--to do this. The number of appeals you're dealing with, it has to be something similar to this or you will never give anyone a meaningful hearing. So there's a lot of challenges in this area, and I appreciate the committee's opportunity to try to explain some of them, and at least that LB553 is a start towards moving the conversation forward. With that, Senator Adams, I will answer questions should any members of the committee have any. [LB553]

SENATOR ADAMS: Senator Cornett. [LB553]

SENATOR CORNETT: Senator Hadley. [LB553]

SENATOR HADLEY: Thank you, Senator Cornett. Senator White, why would this be a state obligation to fund the million dollars versus the counties paying for this appeal process? [LB553]

SENATOR WHITE: I'm not sure it is a state obligation, Senator Hadley, but I know that the state is obligated to provide due process to all of its residents, so the...I mean, in terms of paying for it, should the state want to charge the county back we can talk about that. But in terms of the obligation to provide every homeowner, every property owner in the state a due process hearing to protest taxes, the constitution places that on the state. And traditionally, just so you know, before TERC and before this, it was done through the district courts and it was a mess... [LB553]

SENATOR HADLEY: Oh, I can imagine that. [LB553]

SENATOR WHITE: ...then, and of course the state pays for the district judges and the court support. [LB553]

SENATOR CORNETT: Seeing no further questions, thank you, Senator White. [LB553]

SENATOR WHITE: Thank you, Senator. [LB553]

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BILL PETERS: Madam Chairman, members of the Revenue Committee, my name is Bill Peters, P-e-t-e-r-s. I'm appearing here in my individual capacity--one who has been involved with property tax since Frank Morrison told me I was going to go to work in the Tax Commissioner's office. And it turned out that that's the guy that did property taxes. And I've been involved ever since then, particularly in my legal practice. I'm here in support of doing something. I think LB553 gives us an excellent start. Our system has sort of worked in the past. It hasn't changed, but what has changed has been the volume. And I think to a certain extent, some change in attitude on the part of everybody involved: taxpayers and officials. And of course the tax rates haven't helped us any, either. But I'm concerned that we need to address the problem that Senator White has addressed or we will someday have a petition. And the results of those petitions, when the taxpayers get so frustrated, are usually somewhat unworkable with inflexible systems. The bills that you're going to hear today address only part of the issues. It's been the subject matter of interim studies over recent years, and I would suggest that those should continue. An overload at a County Board of Equalization or at the Tax Equalization and Review Commission is a symptom as much as it is a problem. It's getting the values set correctly and that the taxpayers understand how that value was arrived at, and that it was arrived at correctly. It's not that the counties haven't been trying. We have several different approaches, positive approaches underway. Lancaster County has tried the informal process of notifying taxpayers. Which, by the way, is how we reappraised this state in the 1960s, where every county had a detailed mass appraisal and part of that mass appraisal was the informal, where the appraisal company went out to the taxpayer with a notice. The taxpayer's got a chance to come in, and then once that was done the Tax Commissioner had to go out there and hold a public hearing, and at times I had to have escorts because there were some riled-up folks. The informal process is designed to get the description problems out of the road, which is addressed in the bill here. If you don't have a property properly identified by measurements and by grade, you're going to get a bad result no matter how good you are. And so a lot of this can be handled and reduce the number of appeals. I understand that Sarpy County has a little different type of informal. I think we have some labs going on that might help improve that situation there. I think one of the decisions this committee is faced with making in the next year or so, is the taxpayer entitled to a hearing? Right now, the taxpayer is not entitled to a hearing in front of the County Board of Equalization. All the taxpayer's entitled to is a notice from the assessor and a right to file a written protest and the right to go to TERC, the Tax Equalization and Review Commission, where they get a hearing. I think that system--the whole system needs a look to expedite and to make things technically available. And one of the problems we have is the counties do not have sufficient funds, in the assessor's offices at least, to make a computerized system even start to work. I'm working on a case now where I want to know how they arrived at the value of a property. It's not available. I get the tax statement. You have to go to the county office. This county office had the equipment, at least, they could scan it in and e-mail it to me. But for a statewide system, we're going to have to make more progress in getting more technology available. And with that I would

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conclude my testimony and reserve the rest of my comments for the rest of the day.
[LB553]

SENATOR CORNETT: Thank you very much. Any questions from the committee?
Seeing none, thank you. [LB553]

BILL PETERS: Okay, thank you. [LB553]

WILLIAM J. MUELLER: Senator Cornett, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska Association of Commercial Property Owners. The association I represent is a statewide association of people who manage or own commercial real estate. I appear here today to support LB553. Even though the bill as introduced would not apply to the members of the association I represent, we do believe that it would be a positive change to our current system. As Mr. Peters told you, depending on which county you happen to live in, you may or may not get an opportunity to actually sit down with someone face to face and talk about the value of your property. The first juncture at which you have that opportunity in many counties would be when you file your appeal to the TERC; you come to Lincoln and you sit down in a very formal process. We believe that the concept contained in LB553 is a good one. We just need a better system. We have another bill that we're also supporting today and we'll be back on that one, but I did want to register our support for some kind of a streamlined process for residential real estate, and that's what LB553 provides. I'd be happy to answer any questions you may have. Thank you.
[LB553]

SENATOR CORNETT: Seeing none, thank you. Next proponent. Opponents? [LB553]

JON EDWARDS: Good afternoon Senator Cornett, members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I am assistant legal counsel with Nebraska Association of County Officials. We are here today to go on the record in opposition to LB553. And I think Senator White hit on a couple of points, and I think his intent here is to really just start another discussion about this process and where should we go, and what might it look like in the future. And certainly, we can understand that in his district. I know they have some issues there that are different than to the rest of the state at large, but what I will say is that, traditionally, NACO has supported the concept of a Board of Equalization process that is essentially uniform across the state. We essentially believe that taxpayers are better served by such a system and the bill as it's proposed would essentially create two different systems, and depending on how it would be amended or not amended, you would end up with a system for one county or two counties and then a system for all the other counties--91 counties or whatever the case might be. And as it is proposed, you would have a situation where you would have both a local BOE process run at the local level, managed at the local level, supported at the local level, and essentially you'd have a state BOE process, then, for the other county that would

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include, one would presume, some state funding issues there. So in the end I think you end up, you could end up in a situation where you have 92 BOE processes that are locally managed and locally controlled, locally funded through local property taxes and then you could end up with one county, one process that could have a state-run process that is funded at the state level and therefore that reflects back on all state taxpayers and you end up with a bit of a discrepancy there. But I do appreciate Senator White's comments, and certainly we're willing to participate in that discussion, if the Legislature wants to go there, in terms of what might we do about our current process and the Board of Equalization process and TERC and so forth, and do we need to fully examine that again? I know we started down that road a couple of years ago and kind of ended up in a piecemeal spot again, but we're certainly willing to participate in that conversation. So with that I think I'll end my testimony. [LB553]

SENATOR CORNETT: Thank you. [LB553]

JON EDWARDS: Thanks. [LB553]

SENATOR CORNETT: Next opponent. Anyone in a neutral capacity? [LB553]

WILLIAM C. WARNES: (Exhibit 1) Madam Chairperson, members of the Revenue Committee, my name is Bill Warnes and I have been the chairman of TERC for one year. I have been a commissioner for three years, so I'm halfway through my term. I want to address just this bill in my comments so they'll be relatively short. But when additional legislation is discussed this afternoon, LB212, single commissioner hearing, and LB580... [LB553]

SENATOR CORNETT: And LB213. [LB553]

WILLIAM C. WARNES: Pardon me? [LB553]

SENATOR CORNETT: And LB213. [LB553]

WILLIAM C. WARNES: And LB213, but I'm not going to do as much with LB213. You're going to think that I'm blind and I'm touching an animal, and at one point I feel a trunk, and at another point I feel a tail, and that's what I feel like happens when the discussion occurs about TERC. TERC is not broken; TERC is operating very efficiently. But Senator White is certainly right that the large number of cases, that have basically doubled beginning in 2006, has created a real dilemma. And so with respect to this bill, I just want to point out two things. One, if this bill were implemented, you would have a different basis on which you were...I'm talking about the commission--when a case reached us, oh, excuse me, when the protest was heard, for the appeals would be handled one way for residential property and they'd be handled differently with respect to ag and commercial. And that's in the same county. Now that's one major issue. A

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second issue is that the appeals would be handled differently with three counties--perhaps there won't be three counties, but whatever number of counties there are--and the rest of the state is being handled differently. Now those are two important issues. It's not my intention to elaborate on any of the other concerns that I have with statements that have been made to this point in the hearing. But on LB212, when LB212 comes up, and LB580, I hope to be able to offer a little more positiveness to this whole ad valorem tax process than what I've heard to this moment. Now are there any questions? And I do have a handout; I don't know how that handout gets to all of you. If you already got it, great; I just summarized on paper what I just said. Any questions? [LB553]

SENATOR CORNETT: Questions? Seeing none, thank you. [LB553]

WILLIAM C. WARNES: All right, thank you. [LB553]

SENATOR CORNETT: Senator White waives closing. That will open up the hearings on LB213. Before I open on the next three bills, if...I'm going to open on each one individually, but if testifiers only wish to come up and testify to one bill and then include in the record that they support the other bills that's fine also--to keep you from coming up three and four times on the same issue. [LB553]

SENATOR ADAMS: Senator Cornett, you're recognized to open. [LB553]

SENATOR CORNETT: Thank you, Senator Adams, members of the Revenue Committee. My name is Abbie Cornett and I represent the 45th Legislative District. Today we've brought a number of bills regarding TERC to the committee and for public hearing. Over the past five years in the Legislature we have had multiple bills, multiple hearings, and interim studies in regards to TERC. And as Mr. Warnes said, we keep hearing TERC is broken. Whether it is, in fact, broken or not is the question we are here to look at today. The public perception is that there is a problem. And Senator White's bill addresses another issue in regards to do we have hearings for everyone that has a...does everyone have the right to an appeal? I will open first on LB213 and explain what that is and then move on to the other bills. LB213 is an annual bill brought to the Revenue Committee by the Tax Equalization and Review Commission to clarify and improve the property valuation appeal process. The major provisions of the bill are: one, setting a time frame for applications for a rehearing of matters heard before the panel of commissioners; increases the filing fees for each appeal or petition filed with the commission from \$25 to \$50; harmonizes provisions relating to exempt property deemed to be taxable with provisions relating to the admitted property; and sets forth a notice requirement pertaining to county petitions to adjust the value of a class or subclass. It creates language to allow interested persons to become parties to matters before the commission, and removes references to outdated or obsolete language. This bill was brought to us by the TERC commission and I would be happy to answer any

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questions on this or we can do questions at the end, whatever is your preference.
[LB213]

SENATOR ADAMS: Senators, do you have questions right now for Senator Cornett? All right. We'll now move to...oh, you're going to go ahead, aren't you? [LB213]

SENATOR CORNETT: I'm going to go ahead and let everyone speak to that one. It's easier for Erma, if I'm not mistaken. [LB213]

SENATOR ADAMS: Okay. We'll now move to proponent testimony. [LB213]

BOB WICKERSHAM: Senator Adams, members of the committee, my name is Bob Wickersham; that's W-i-c-k-e-r-s-h-a-m. I'm a commissioner on the Tax Equalization and Review Commission. I appreciate Senator Cornett's efforts in introducing the bill and her, I think, rather complete description of the bill. Primarily, I think I would be happy to respond to questions, but maybe there are a couple of things that we should address. There is an amendment that I believe committee counsel might have; I don't know if that was prepared or not, but we submitted information to counsel about an amendment. There are some technical aspects of the bill that I think need to be clarified, and if counsel or anybody else thought I needed to go into those I would. But I assure you they are largely technical and I doubt that we need to address those. One of the items that might be of interest to you is the section of the bill, as noted by Senator Cornett, that would allow persons to...the technical term is intervene...in a proceeding before the commission. Intervention is something that is provided for in statute in the courts of the state, and the commission is not a court nor does it consider itself to be a court. But we have some of the same processes. There was a decision that was rendered in 2005 by the courts and indicated that the right to intervene or participate in a lawsuit if you thought there was something that was going to be important decided and it might you, that's provided for in statute by the regular courts. A lot of people have always thought that that was kind of a matter of right. There was a decision in the year 2005 that indicated that maybe it isn't a matter of right, that maybe it has to be provided for by statute. But again, because the commission is not a court and does not consider itself to be a court, our authorizations are separate and so we're asking that you place in statute a specific right for persons who think the commission might make a decision that would affect them--allowing them the opportunity to intervene in that proceeding and have their say during the course of that hearing. It's a rare aspect of the commission proceedings, but still, we think it's an important one to give people that opportunity in case they should want to do that. With that I think, really, I could, perhaps, just try to respond to questions if you had any. Senator Adams? [LB213]

SENATOR ADAMS: All right. Are there questions for this testifier? Senator White.
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SENATOR WHITE: Thank you, Mr. Wickersham. Appreciate you coming here today. Can you tell the members of the committee how many appeals are currently pending, roughly, and before TERC? [LB213]

BOB WICKERSHAM: Currently pending? It would be between 1,900 and 2,000. [LB213]

SENATOR WHITE: And how old are the oldest of those? [LB213]

BOB WICKERSHAM: The oldest appeals relate to the year 2005, but now Senator, if I might elaborate on that: there are a very few number of appeals from the year 2005. They are a specific...and Senator, I'm going to try to be careful here--I don't want to make any comments that might reflect on the merits of those appeals when they're finally heard. They address matters that have been before the commission before and will be before the commission again. They have been held up due to district court proceedings in the county in which they originated. That proceeding was recently decided by the Supreme Court. There'll be a district court mandate, and then we will be able to hear those appeals. There are a few appeals from the year 2006; they largely are in the same category. We have some...we have appeals from the year 2005 and 2006. In 2007, which the parties believe they will be able to resolve so we've not set those for hearing; we're waiting for the parties, literally. We have appeals from the year 2007 that related to the issue of special valuation and how that was done in Lancaster County. There are about 200 of those. There are about 200 of those in the year 2007 and about 200 of those in the year 2008. The procedure for deciding the special value cases that arose in the year 2007 was to hear a small number of them, primarily the ones that...where the third parties were represented by counsel. Those decisions of the commission were then appealed. There were four of those; they were appealed to the Supreme Court and the Supreme Court upheld the decision of the commission and literally set the standards by which we could evaluate the rest of the appeals. We did not want to hear 400 appeals and have, then, 400 appeals to the appellate courts. We wanted to set back and wait and have the appellate courts tell us what the standards were. They've now told us, and we're now scheduling those appeals. We have...there are a number of commercial appeals from Douglas County--these are all from Douglas County that relate to the year 2007. Some of those, while there are a number of appeals--there are over 100 of those--they would not involve, necessarily, 100 hearings. They are taxpayers that may have multiple parcels. So for example, out of that over 100 appeals, we might have to schedule something like 70 or 75 hearings, Senator: I can't give you an exact number. With regard to the residential appeals from Douglas County for the year 2007, we have scheduled all of those for hearing. They will all of been heard, it's my belief, by the end of June, except for a couple of those special circumstances where we're literally waiting for the parties to tell us whether they want to have a hearing. We have another group, Senator White...and if this isn't the kind of detail you want, I apologize, but we have another set of special cases that arose out of Sarpy County that deal with a very distinct issue with regard to the valuation and

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taxation of mineral interest. There are about 40 of those appeals, and they have not been heard, but they're scheduled for hearing and those will be heard, I believe, next month. So while it may...now, the balance of the appeals--what I've described to you is what we have as carryover appeals from your 2005, 2006, and 2007. The balance of the appeals in that, maybe, 2000 number are the 2008 appeals. Even under normal circumstances, we would not have begun hearing those appeals until sometime in January, typically, of 2009, simply because of the process for receiving the appeals, notifying people that an appeal has been filed, giving a notice for hearing so that they have an opportunity to prepare. We just simply would not have started hearing those until January 2009 under any circumstances. [LB213]

SENATOR WHITE: And Mr. Wickersham, the bill provides for increasing the fee, filing fee, from \$25 to \$50. Where does the money go and what's the justification for the increase? [LB213]

BOB WICKERSHAM: The money goes into a cash fund. It is subject to appropriation by the Legislature. There is, annually, some portion of the commission's budget that is funded by the cash fund. The justification or the rationale, if you will, for the increase in the fee is simply that the fee has been \$25 since the commission began in 1996. [LB213]

SENATOR WHITE: And then the bill also provides that hearings can be held before just one commissioner? [LB213]

BOB WICKERSHAM: That's the next bill, Senator. [LB213]

SENATOR WHITE: Oh, okay; thank you. Of the Douglas County appeals, I was informed--and I'd love to be corrected--that on the '07 reassessment, in excess of 6,000 appeals were lodged. Is that, was that an accurate... [LB213]

BOB WICKERSHAM: Not with the commission, sir. [LB213]

SENATOR WHITE: Okay. [LB213]

BOB WICKERSHAM: I think there were over 6,000 protests at the county board. I think... [LB213]

SENATOR WHITE: Which they did not hear. [LB213]

BOB WICKERSHAM: I...sir, we have not heard any of the appeals from the...okay, from what we understand of the process in Douglas County, sir, for the year 2007 it's our understanding--and the year 2008, for that matter--that the taxpayers did not make presentations to the county board, that they made presentations to persons that were

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called referees that were hired by the county board to make a review on behalf of the county board. [LB213]

SENATOR WHITE: When you have an appeal from that system, do you have a new record open... [LB213]

BOB WICKERSHAM: Yes, sir. [LB213]

SENATOR WHITE: ...that they then create in front of TERC? [LB213]

BOB WICKERSHAM: Yes, sir. You can bring anything to us that you want. It is a completely new proceeding. [LB213]

SENATOR WHITE: And does TERC require that a homeowner bring in a licensed appraiser's valuation if, for example, they want to challenge the valuation of their home? At that hearing? What level of evidence do you require? [LB213]

BOB WICKERSHAM: The evidentiary standard is set out in statute and in decisions of the Nebraska Supreme Court. My belief is that it requires us to have a finding that the taxpayer has shown, by clear and convincing evidence, that the decision of the county board was unreasonable or arbitrary. Now, I have said publicly before that if you prove value, by clear and convincing evidence, you have shown us that the county board's decision was unreasonable or arbitrary. [LB213]

SENATOR WHITE: Does TERC require that in the form of a live testimony from a licensed real estate appraiser? [LB213]

BOB WICKERSHAM: No, sir. [LB213]

SENATOR WHITE: Will it accept just entries from the county's valuation of similar properties? Is that sufficient? [LB213]

BOB WICKERSHAM: It may be. Now, sir, I want to be careful because there are differing kinds of information that you might glean from the county's records. For example, you might be able to find in the county's records a sale of a home, if you're talking about residential property, that was highly identical to yours: in the same neighborhood, it's the same size--these are some of the criteria. I think I need to be a little bit careful here, we're not...if you find properties that are identical or highly identical and they've sold recently, they'll indicate the value of your property. Now... [LB213]

SENATOR WHITE: And that's sufficient if they're in the county's records and they are introduced? [LB213]

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BOB WICKERSHAM: That can be. [LB213]

SENATOR WHITE: Do the rules of evidence apply at this hearing as you understand it? [LB213]

BOB WICKERSHAM: No, sir. The only...what you might consider to be the rules of evidence that apply, and it's the same standard, frankly, as applicable in the workers' comp court. Perhaps with one exception, that there is an additional provision in the law for the commission that says that any witness...that a party has a right to question any witness. We've held that that prohibits the use of hearsay evidence because the proponent, the witness who's making a statement is not present for cross-examination. The very basic...the most basic ideas, as I recall from law school, of hearsay. The Nebraska Supreme Court in a recent case, the Brenner case, said that yes, that's right; that's what that section of statute means is that the commission should not, or can exclude, hearsay evidence. And, of course, as you know there are exceptions to the hearsay rule and we will apply those. The statute also requires us to meet the...to recognize the rules of privilege that are specified, and it also allows us to exclude information or testimony that is not material, is not probative of...there's things that just wouldn't assist us in making a decision. So there are some basic rules of evidence. I think common sense would tell anybody that if you're going to present evidence to the commission, or to any fact-finder, for that matter--even to the members of the Legislature if you get right down to it. You all want to know if somebody's giving you testimony, is there any reason that you should believe them. Do you know who they are? Do you know what their background is? Do you know on what basis they're presenting information to you? If they present photographs to you, do they represent what they claim it does on the day that's relevant to what you're considering? There are just basic things where you should present what is generally termed foundation so that there's some reason that we should believe you or you should believe us, in that different kind of a context. [LB213]

SENATOR WHITE: What percentage of the homeowner appeals fail because they don't introduce what the commission considers confident, admissible evidence? [LB213]

BOB WICKERSHAM: Fail? [LB213]

SENATOR WHITE: Yes. [LB213]

BOB WICKERSHAM: I think that, if I remember the numbers correctly, of the number where we actually hold a hearing--and these numbers can be slightly misleading, but you've asked for a specific number and I'll try to give it to you. Out of the appeals that we actually hear, in other words, somebody appears in front of us and gives evidence, I think about 16 percent of those are successful. [LB213]

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SENATOR WHITE: Okay, so 84 percent the county wins, 16 percent of the ones you set for hearing the homeowner wins, because they've carried their burden. [LB213]

BOB WICKERSHAM: That's correct. [LB213]

SENATOR WHITE: How many do you summarily resolve without a hearing? What percentage of your homeowner appeals, not your commercial? [LB213]

BOB WICKERSHAM: I'm sorry, sir, I don't remember that number. Senator, Commissioner Warnes has that analysis and I don't remember that number. [LB213]

SENATOR WHITE: We'll get it later, and I appreciate your courtesy. [LB213]

BOB WICKERSHAM: It's a relatively high number. And sir, if I might comment, just make one other comment with regard to this issue about whether somebody prevails at a full hearing in front of the commission. And I think Commissioner Warnes would make the same comment. You need...if the committee would think about the process that occurs before you get to the commission, think about the process before you get to the commission: if you lived in Lancaster County there would have been four reviews, there would have been four reviews of your value before you got to the commission. Four reviews by competent, dedicated officials. If you lived... [LB213]

SENATOR WHITE: And if you live in Douglas County, how many? [LB213]

BOB WICKERSHAM: Three. [LB213]

SENATOR WHITE: One, the assessor. [LB213]

BOB WICKERSHAM: One, the initial set; one is the county board; and the third, well... [LB213]

SENATOR WHITE: The county board no longer, and has not for several years... [LB213]

BOB WICKERSHAM: No. [LB213]

SENATOR WHITE: ...had anything to do with Douglas County with these. [LB213]

BOB WICKERSHAM: Well, they do because they hire referees. Those are independent people; they make a review, and there are large number of the protests that are disposed of at the protest level. So there's a review--the initial value that's set by the county assessor; there's a review by the county board through an independent referee; and now, for this last year or so, Douglas County has been engaging in a process that is

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also used in Lancaster County. In that once an appeal is filed with the commission, we send them a list. They know which appeals they have. They contact everybody on that list. They ask to review the property. They ask to discuss the valuation with the property owner, and there's an attempt to resolve any differences that they might have. So that's a third review. [LB213]

SENATOR WHITE: So you've got an assessor, referee, assessor. [LB213]

BOB WICKERSHAM: Yes, sir. Well, the county board, because it's an appeal from the county board decision, now I don't know exactly what review the county board makes of the recommendation of the assessor, but the assessor will make a recommendation after they have...it's my understanding they make a recommendation after they have gone out and reviewed the property. [LB213]

SENATOR WHITE: Thank you. [LB213]

BOB WICKERSHAM: So there are at least three reviews of that property before it ever gets to us, and an attempt to settle in many of them. [LB213]

SENATOR ADAMS: Senator White, oh, Friend, excuse me. [LB213]

SENATOR FRIEND: Oh, thank you, Senator Adams; you scared me for a second. (Laughter) [LB213]

SENATOR WHITE: Me too. [LB213]

SENATOR FRIEND: We're both equally scared over that identification. [LB213]

BOB WICKERSHAM: Can White have a friend? [LB213]

SENATOR FRIEND: Sometimes he does. [LB213]

BOB WICKERSHAM: Senator, excuse me for that. [LB213]

SENATOR FRIEND: Commissioner, I...we...you were...before I get to the...two quick questions before I get to the...you two and your dialogue talking about the appraiser, referee, appraiser. A referee can be defined in Douglas County as a contracted appraiser, I would assume. [LB213]

BOB WICKERSHAM: Sir, I don't know what qualifications they set for the people they hire; that's not... [LB213]

SENATOR FRIEND: Okay; just curious. We were using that terminology and I'm

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thinking...a referee...I wouldn't be a referee in appraising so I'm wondering what their criteria is and if we can find that out. Can a county board or a BOE in a county set its filing fees at any rate that it chooses, or is it statutorily limited? [LB213]

BOB WICKERSHAM: So far as I know, sir, there's no fee for filing a protest with the county board. [LB213]

SENATOR FRIEND: Okay. But some counties can set fees? I mean are they statutorily... [LB213]

BOB WICKERSHAM: Not to my knowledge, sir. [LB213]

SENATOR FRIEND: Hmm. Okay. [LB213]

BOB WICKERSHAM: No; to my knowledge, no. [LB213]

SENATOR FRIEND: So...okay. So the first time they're going to see a fee, whether...in some, in a lot of situations, is after they've been through four hearings or observations, I guess, by a county. [LB213]

BOB WICKERSHAM: No sir, there would have been at least two. There'd been the initial value that was set by the assessor, then there would have been a protest before the county board: all that's free. But if there's going to be another review, then they've got to pay the filing fee to the commission. And then, the process in Lancaster and Douglas Counties, and I don't want to speak for other counties, but we know Lancaster and Douglas County contact anybody who's filed an appeal. At that point they have paid the \$25, and they'll go out and carefully review that property. [LB213]

SENATOR FRIEND: Okay, thanks. [LB213]

SENATOR ADAMS: Senator Hadley. [LB213]

SENATOR HADLEY: Thank you, Commissioner. Senator White asked the question that I was going to ask about the percentages, and you said it's 84, 16--is that right? [LB213]

BOB WICKERSHAM: I think that's...now, Senator, I... [LB213]

SENATOR HADLEY: I mean, that's close enough. [LB213]

BOB WICKERSHAM: Commissioner Warnes has the real numbers, and if...am I correct Senator, or Commissioner? [LB213]

SENATOR HADLEY: I guess I would just have a couple of questions. [LB213]

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BOB WICKERSHAM I think it was 16. [LB213]

SENATOR HADLEY: Just campaigning, I had not really ever heard of TERC, but I certainly did hear about TERC from a number of people and the comment was made it's working smoothly. That certainly wasn't the feedback I got, you know, course these are probably the 84 percent or whatever it is that lost. A question that I have is, does a person need to be represented by counsel to appear before TERC, and if they don't, are they at a distinct disadvantage? [LB213]

BOB WICKERSHAM: The commission has made an effort to produce materials that would assist people in preparing for an appeal. I don't want to be disrespectful about what people do, but Senator, if they read the material carefully we'd see much better presentations. You do have to come in front of us and try to prove something. We aren't...I don't want to sound too harsh about it--we're not there to do people favors. I mean, that's not the business. We think our business is to receive evidence and to determine whether that evidence shows what the value of property was on the date in question. But that requires evidence. It requires something more than just somebody saying, I think my property was worth \$50,000 or, I thought my property was worth \$100,000. It requires more than that. And frankly, most...many people come to the commission and they're all eager to show that the county board was wrong. Or maybe the county board was wrong. But if the county board was wrong, what's right? You can't have a blank; you've got to be able to fill in a number. And that's where most of the people that appear in front of us fail. They don't show what the number ought to be. [LB213]

SENATOR HADLEY: Do most people come with counsel or without? [LB213]

BOB WICKERSHAM: No, they don't. If the property has a high enough value we tend to see counsel, but it was never intended that people would actually have to show up with counsel. And...but if you have a high-dollar property, you're certainly advised to have counsel. Because for the high-value properties, typically the valuation issues are much more complex than just trying to go out and find a house that looks like yours, find out if it's sold, or find out how it's valued. And there are typically two different issues. One is actual value: what could it be sold for? Or might have been sold for on the applicable date. And the other one is equalization. If you have two houses, for example, that are exactly alike. They sit, maybe side by side. They have the same size lot; they were built in the same year; they have the same builder; they look the same. But one has a value that's twice the other one. Then they probably aren't equalized. So you can find that kind of evidence as well. But you do have to have evidence, and that's the problem. And I think part of the problem is that the commission doesn't believe its job is to find evidence for people. You're...if our job was to go out and find evidence for people, then we wouldn't be impartial to the county board. We think we're supposed to be impartial.

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[LB213]

SENATOR ADAMS: Are there other questions for this testifier? Senator White. [LB213]

SENATOR WHITE: I just want to clarify something because, Mr. Wickersham, maybe Senator Hadley didn't understand. [LB213]

BOB WICKERSHAM: All right, sir. [LB213]

SENATOR WHITE: And I think I heard you say the counties win 84 percent of the time, of those cases that actually get a hearing. [LB213]

BOB WICKERSHAM: Yes, sir. [LB213]

SENATOR WHITE: But the vast majority or substantial portion of your case load never gets a hearing, and in those cases the county uniformly wins, correct? [LB213]

BOB WICKERSHAM: No sir. The ones that are not heard are typically the ones...well, there are two different kinds of circumstances. One, we have a number of cases where the taxpayer dismisses the appeal. [LB213]

SENATOR WHITE: Okay, meaning they accepted that the county wins. [LB213]

BOB WICKERSHAM: Yeah, they just dismiss them. [LB213]

SENATOR WHITE: Okay. [LB213]

BOB WICKERSHAM: There are a large number of them that are settled by confessions of judgment, and we don't hear those. [LB213]

SENATOR WHITE: Okay, and that's... [LB213]

BOB WICKERSHAM: That's the county review. They've gone to the taxpayer and said, we've looked at the property. We agree that our value wasn't correct. [LB213]

SENATOR WHITE: They settle them. [LB213]

BOB WICKERSHAM: They settle. Now, there's another category where they're set for hearing and they don't show up. [LB213]

SENATOR WHITE: Defaulted. [LB213]

BOB WICKERSHAM: Default. And we're getting... [LB213]

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SENATOR WHITE: And those the county value stays. [LB213]

BOB WICKERSHAM: Sure. [LB213]

SENATOR WHITE: Okay. [LB213]

BOB WICKERSHAM: And we're getting a fairly...the numbers of those kinds of hearings, if you will, because we do have to have a hearing to show that there's a default. The number of those hearings is increasing. And that makes our numbers look a little bit funny, I mean, yeah...that's in the 84 percent that didn't the relief that we had a hearing. [LB213]

SENATOR WHITE: Thank you. [LB213]

BOB WICKERSHAM: I think it's in that number. I ought to be a little careful about that Senator; I didn't prepare those statistics. If that's inaccurate... [LB213]

SENATOR WHITE: No, just roughly is what I had... [LB213]

SENATOR ADAMS: Are there other questions for this testifier? Commissioner, I don't know if this is in the form of a question, but certainly you can respond to it. As I listened to Senator Hadley's question, it led me to think back a few moments ago as you and Senator White were dialoguing, as two attorneys might dialogue, and maybe it was the jargon that you're both accustomed to, but I heard about rules of evidence. And certainly you couldn't do what you do without some kind of procedure. But then I sat here saying, and if I had to go in there, do I know about the exceptions to hearsay, and all of a sudden I'm a bit overwhelmed. If you want to respond, you may. [LB213]

BOB WICKERSHAM: Okay. The typical circumstance in which hearsay comes into play before the commission has to do...and Senator White mentioned it and maybe I was remiss in not discussing it then...is in the context of an appraisal. If the other party objects, and the appraiser isn't there to discuss their appraisal, then we'll almost uniformly uphold that objection because the appraiser isn't there to talk about their appraisal. [LB213]

SENATOR ADAMS: Okay. [LB213]

BOB WICKERSHAM: That's the context in which it most often arises. [LB213]

SENATOR ADAMS: Okay, thank you. Senator White. [LB213]

SENATOR WHITE: And that's an important question because if, for example, you have

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to bring an appraiser in from Dawes County, or an appraiser from Omaha to go to Dawes County and then to Lincoln, that can be prohibitively expensive to carry that burden if the county objects, correct? [LB213]

BOB WICKERSHAM: Well, sir, I think the distances that you've described would be very rare because the commission holds hearings on a regional basis and typically people will be able to find local appraisers for local property. But it's theoretically possible, sir, yes. [LB213]

SENATOR WHITE: Well... [LB213]

BOB WICKERSHAM: Yes, sir. [LB213]

SENATOR WHITE: ...even if you had a hearing in Scottsbluff and your nearest appraiser had to travel 80, 90 miles for an appeal on a home, the difference in valuation might be \$5,000 or \$10,000--requiring the physical presence and the expense of an expert to testify can make it absolutely economically unfeasible for the homeowner to press the case and carry his or her burden. [LB213]

BOB WICKERSHAM: We see very few appraisals of residential properties. Usually they are appraisals that were prepared for another purpose, such as a mortgage. [LB213]

SENATOR WHITE: Well, we're not even talking about that, I'm talking about the appraiser being there in person to testify. [LB213]

BOB WICKERSHAM: Well, there...for residential properties they're quite rare, or reasonably rare, and most of the time you're able to have a local appraiser that does appear. [LB213]

SENATOR WHITE: All right, so if...what you're telling me is in most of your property homeowner cases, you actually have an appraiser who appears in front of the commission? [LB213]

BOB WICKERSHAM: No. Appraisals are relatively rare for residential properties--for residential properties. [LB213]

SENATOR WHITE: Right, and that's different than commercial, I understand... [LB213]

BOB WICKERSHAM: Yes, sir. [LB213]

SENATOR WHITE: ...the valuation issues become different. Thank you. [LB213]

SENATOR ADAMS: Are there other questions? Seeing none, thank you,

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Commissioner. [LB213]

BOB WICKERSHAM: All right, thank you. [LB213]

SENATOR ADAMS: Is there other proponent testimony? [LB213]

JON EDWARDS: Good afternoon, Senators. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm assistant legal counsel with Nebraska Association of County Officials. We are here simply to go on the record in support of LB213. I think you've heard all the technical stuff about it, so I'll just register our support, and with that... [LB213]

SENATOR ADAMS: Are there questions for Jon? Senator White. [LB213]

SENATOR WHITE: Can you justify--as an attorney, and I know you are--that an appraiser is given the same deference on appeal that a jury and a judge are given? [LB213]

JON EDWARDS: Can I justify that? [LB213]

SENATOR WHITE: Yes. [LB213]

JON EDWARDS: As an attorney. [LB213]

SENATOR WHITE: Yeah. I mean, the clear and convincing standard of review is reserved, really, only for judges making finding of facts or juries making findings of fact. It's the highest level of review known; it's very rare in appellate practice. Can you justify giving that level of deference to an assessor? [LB213]

JON EDWARDS: Personally, I don't know that I can. But what I would say is that I think that the system that's created, the TERC system, falls outside of that typical court system that you refer to, and those standards. While I understand it is a very high standard, I think that those rules are put in place for TERC and so I would defer to that, I guess. And I understand, though, it is seeming high standard of... [LB213]

SENATOR WHITE: Well, I also was troubled by the last exchange, because on a trial in front of a district court judge, which is the basic trial level, the highest trial level we have in this state, a homeowner can stand up, take the stand, testify as to the value of their own home, and that is confident, evidence standing alone of the value. And that is specifically permitted both by statute and by case law. And yet, if I'm hearing what I'm hearing from the TERC folks, a homeowner going into the appeal, standing up and saying my home's worth this--or a ranch owner, for that matter, or a farm owner on their own land--that that is not sufficient evidence to be considered sufficient to overturn an assessor's testimony, just on the raw facts. [LB213]

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JON EDWARDS: Right. And I understand what you're saying and I can't speak for TERC in terms of how they would rule in a situation like that, but it does, by the language, it seems you are correct--that that would be the standard. [LB213]

SENATOR WHITE: A homeowner would be far better off, and probably less expensive, filing a pro se lawsuit in district court and going in and testifying as to his own value, rather than trying to schlepp an expert to wherever TERC's sitting. [LB213]

JON EDWARDS: Sure, you can make that argument, that's correct. [LB213]

SENATOR ADAMS: Senator Hadley. [LB213]

SENATOR HADLEY: Thank you. Mr. Edwards, obviously appraisals and property taxation are not unique to Nebraska. Has NACO ever looked at other states as to their system of handling of valuation concerns and such as that? And are there any other examples that you can come up with that seem to work more efficiently, or... [LB213]

JON EDWARDS: Yeah, Senator Hadley, what I can tell you about that is I've been with NACO for almost--I think it's four or five years now--and a couple of years ago--three years ago, maybe, now--there was a legislative resolution put forward to study our current system here in Nebraska. And at that time, it's my understanding--I wasn't involved in that, but this committee went out, and...legal counsel for this committee at that time went out, looked at states around us, what other states are doing, what their system looks like. Some of them...as I recall, I think Nebraska is kind of unique in the system that's currently in place, and states around us might have a completely run state system that does the equalization process. But as to what works better, I don't know that we ever really got to that determination. What I can tell you is our current system is still in place. That was in place at the time we did that study. And there might be other members of this committee that can speak more directly to the findings of that study, and... [LB213]

SENATOR HADLEY: It just seems to me that we have a property tax system...you know, being a long time in the Legislature now--32 days (laughter)... [LB213]

SENATOR WHITE: Seems like a long time (inaudible). [LB213]

SENATOR HADLEY: Seems like years, but (laughter) you know, we constantly hear that property taxes are bad... [LB213]

JON EDWARDS: Sure. [LB213]

SENATOR HADLEY: ...the amount is bad, and the way they're assessed is bad, and the

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way we can appeal the assessment is bad...you know, property taxes are really getting a black eye... [LB213]

JON EDWARDS: Sure. [LB213]

SENATOR HADLEY: ...in the 31 days we've been hearing here. [LB213]

JON EDWARDS: And I'm not so sure that's not the case all across the country. [LB213]

SENATOR HADLEY: That could be very well... [LB213]

JON EDWARDS: And at the same time, you're right: we do hear, we hear a lot about that and it is problematic at times. But I will also say, if there's a perfect system out there, nobody's told us about it, you know, and it doesn't seem to be in place anywhere yet, so. [LB213]

SENATOR HADLEY: Well, we hear...most people come and tell us South Dakota's great. (laughter) [LB213]

SENATOR ADAMS: Other questions? Seeing none, thank you, sir. [LB213]

JON EDWARDS: Thank you. [LB213]

SENATOR ADAMS: Next proponent. Is there opposition testimony? [LB213]

BILL PETERS: Senator Adams, members of the committee, my name is Bill Peters, P-e-t-e-r-s, appearing representing myself in opposition to LB213. My first point of opposition is I don't think this is the time to be raising the filing fee to take your grievance to TERC from \$25 to \$50. In today's market, with the feeling of the citizens...bad timing. I can make the argument, you know, that the cost of living indexes in the last ten years something should be done. I would suggest if something should be done that it should be done another year. I think the other thing, though, that's good about the present discussion of the committee is you're addressing the only part of our property tax system that's the same, and that's TERC. Every county, in my opinion and my experience, is different. It's different on how they approach things; it's different on what records they have. And I, quite honestly, enjoy that because I expect it so it takes my competition out. It doesn't surprise me when the record card's entirely different in a county, or when the state-prescribed appeal form is only used in those state-administered counties--the rest of the counties have their own form. Some give you the courtesy of having it available, but back to the point of LB213: I wander. I'm also opposed to the, quote, intervention. A tax case is between the tax official and the taxpayer. I'm bothered by who has an interest in. We all have an interest in, not only as individuals, but as I've represented businesses since we have some value, I've always

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been concerned that that school district's going to stick their nose in. Because they've really got the interest because it's their funds. Particularly if they're up against a levy limit. Whether it's an exemption, or whether it's the decision of whether this goes under a TIF bond or it doesn't--that can make a lot of difference. If anybody that has an interest has the right to intervene, this will be a free for all. And I'll no longer tell the small client that well, from here to get me through TERC, if nothing happens, I'll have to bill you three or five hours, since the county board's already turned you down. And in the larger clients, I don't even give them a guess now. I think it won't add anything to the situation. If there is a real problem because you can't intervene, I've yet to see it. And if some issue has developed that could have been avoided, there's the Revenue Committee to introduce legislation in a subsequent year to take care of the problem. I don't believe that the changes on what happens when a decision is made I have no problems with. My two big issues with this is the 50 bucks and the Section 8. [LB213]

SENATOR ADAMS: All right, thank you sir. Are there questions for this testifier? Guess not, thank you. [LB213]

BILL PETERS: Thank you. [LB213]

SENATOR ADAMS: Next opponent. [LB213]

JIM CUNNINGHAM: Senator Adams, and members of the committee, good afternoon. My name is Jim Cunningham, that's spelled C-u-n-n-i-n-g-h-a-m. I'm appearing in my capacity as executive director of the Nebraska Catholic Bishops Conference, representing the mutual concerns and interests of the archdiocese of Omaha and the dioceses of Lincoln and Grand Island, testifying in opposition to LB213. The concerns for which this opposition is raised focus almost exclusively on Section 8 of the bill on page 10. This has been referred to by Mr. Peters and others as the intervention section. Let me just give you a little bit of background first. I have, for many years, as part of my duties, monitored public policy as it relates to tax exemptions. As you might imagine, that is an interest for a religious organization. And under Section 77-5007, subsection 2, TERC has authority and a duty to review or to take appeal of county board decisions granting or denying tax exemptions. Now over the years, most all of the attention regarding TERC has been given to issues involved with valuation and equalization, and that's understandable. But there also is a context to this that does involve tax exemption. And that is the sole context from which I speak; that's my sole frame of reference. Section 8 of the bill, in essence, says that any person who claims an interest may become a party to an action between the other persons--the other persons would be the county and the exempt party or the party that was denied exemption and is seeking exemption on appeal. I agree with Mr. Peters. I think that that portends of an appellate free-for-all. This is an appeals proceeding. It follows after there has been an open, well-publicized process at the county level, under which parties who have concerns about either the granting or denying of an exemption may present their case

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to the County Board of Equalization before it renders its decision. So there is an open process by which any interested person is allowed to make a case and make their argument on either side of the question of exemption. This is an appellate process, and it seems that this particular section would allow for any individual or any grouping of individual to become a party to an appellate process under TERC for any reason motivated...under any motivation, whether a political purpose or an axe to grind or some type of a grudge to express. I think that Mr. Peters is right on when he says that this has the potential to be a free-for-all. Most certainly, it would...it certainly has the potential to make the process much more cumbersome, much more time-consuming. It will elongate the process because every individual that would come into a case as a party would have to be part of the scheduling of all the proceedings, would have the right to participate in the process of discovery, would have the right to cross-examine witnesses, would be entitled to all notices, would have to agree to all stipulations, and I think that in terms of effectiveness and being able to handle these appeals...and I agree with Senator White--this is the first level of appeal for an exemption case as it is for a valuation case. But certainly it would be more cumbersome and time-consuming to allow this process, and would just extend the period of time before a ruling could be given by TERC on this type of appeal. So for those reasons, we would like to be on record in opposition to this bill. I also have a concern about some wording that is proposed to be stricken on page 8 of the bill, lines 20-23, but it is my understanding that that is addressed by the amendment that you've been provided, and that it would reinstate that wording which has to do with appeal of a valuation assigned to property that was initially exempted and then ruled to be taxable. So with that I'll stop; thank you very much. [LB213]

SENATOR ADAMS: Thank you. Questions for Mr. Cunningham? Senator White. [LB213]

SENATOR WHITE: Are we basically...you're basically concerned about the intercessors of the land situation up in Ponca Hills, for example? [LB213]

JIM CUNNINGHAM: That's an example of an appeal on a tax exemption case that could go before TERC. I want to address it in the much more general context, though, of any type of appeal of a granting of a tax exemption. [LB213]

SENATOR WHITE: In that case, are we...and I don't want...are you representing those interests? [LB213]

JIM CUNNINGHAM: I am not. I have no involvement with the case, Senator. [LB213]

SENATOR WHITE: Okay. Then I'll ask you generally about the questions if you're not. The Ponca Hills neighborhood association filed suit in court, did they not? Because they're unhappy with the intercessors land acquisition and use of property, also the

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granting of tax free status, undermining what they perceive to be the tax base for the rural fire department, the school, other things like that, correct? [LB213]

JIM CUNNINGHAM: I'm not very familiar with the case, Senator. I'm not involved in it in any respect. I only know as much about it as I read about it, but I believe that is true, based on my knowledge. [LB213]

SENATOR WHITE: Thank you. [LB213]

JIM CUNNINGHAM: Um-hum. [LB213]

SENATOR ADAMS: Other questions for this testifier? Seeing none, thank you, Mr. Cunningham. [LB213]

JIM CUNNINGHAM: Thank you, Senator. [LB213]

SENATOR ADAMS: Next opponent. [LB213]

GREGORY BARTON: Good afternoon, folks. My name is Gregory Barton. I'm a partner in the Harding & Shultz law firm. That's B-a-r-t-o-n. I'm appearing on behalf of Laura Krebsbach, doing business as WPF Consulting. Laura wishes she could be here to speak with you personally today, but she had a family emergency which she had to deal with out of state, so you get me sort of as a last minute pinch hitter. Our concern--and I'm listed as an opponent because it's the only category I could fit into of the three...we're not necessarily opposed to LB213, nor the idea of streamlining TERC procedures to assist TERC and the taxpayers and the counties. Our concern on LB213 is, again, with Section 8 which Commissioner Wickersham identified as an intervention statute. Frankly, you're talking about an intervention on appeal which, while recognized in case law, in civil litigation is very rare. You're talking about allowing, apparently, an unlimited number of third parties to intervene in taxpayer appeals. I have a hard time envisioning a situation where someone other than the landowner, taxpayer, and the county has any legal standing to pursue an appeal to TERC. And I think the legal standing point is important. In layperson's terms that means you have a dog in the fight. And if you're going to consider allowing an intervention procedure for TERC appeals, we would respectfully submit that that language in Section 8 really needs to be tightened up to deal with...because any intervention should only be allowed under the circumstances where a proposed intervener in a TERC appeal can demonstrate, not just allege, can demonstrate that they have the requisite legal standing. And that means they have to show they have a legally, cognizable interest in the outcome of the litigation. And that's at a minimum. And so if you're going to consider something like Section 8, we would submit you need to also import the legal standards which have been developed by the courts which govern interventions, either discretionarily or as of right. And to have legal standing, you have to show you have a personal stake in the outcome of the litigation.

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You have to show that the outcome of the litigation will actually benefit you personally. You have to show you have a concrete stake, and not some ideological stake, in what's going on in somebody else's lawsuit. And I also submit there's a possible further downside with Section 8, because as soon as you start having to try to address the issue of does this proposed intervenor have any business i.e. legal standing interjecting themselves into this TERC appeal, then what you're really setting yourself up for is spotting a whole layer of satellite litigation over intervention issues. I've only had very limited experiences in handling appeals with TERC. My experiences, although I don't always agree with their decisions, I've found them to be fair; I found them to be efficient, professional--from the commissioners to their staff. And I've never seen a situation, in my limited experience, where the case couldn't get resolved if it was between the taxpayer and the county. Intervention is just going to add another layer of headaches that, frankly, TERC doesn't need. And that concludes my comments on LB213. [LB213]

SENATOR ADAMS: Are there questions for this gentleman? Senator White. [LB213]

SENATOR WHITE: The witness who just preceded you said there's an open process where people who have an interest can participate in that. Is it your experience, then, I can go in front of the county board, whatever, raise Cain about my neighbor's valuation or whether or not they deserve an exemption, but then I can't participate in an appeal? Or don't I have the right in the first instance to even go in and object? [LB213]

GREGORY BARTON: In my experience which, again, Senator, is quite limited in property valuation protests, the protest at the county level is between the landowner and the county. [LB213]

SENATOR WHITE: All right. So if, for example, I have a very large ranch in the county--the biggest taxpayer in the county, suddenly the owner decides it's going to be dedicated to the church of the great outdoors and should receive an exemption. And my taxes, functionally, will double if that exemption's granted. Do I have standing, under your position, to object to that? [LB213]

GREGORY BARTON: No. [LB213]

SENATOR WHITE: So even if my taxes double, under your understanding I can't step up and say, this is wrong, don't give him this exemption, or don't revalue him, or whatever it is. [LB213]

GREGORY BARTON: Well, sir, all I can do is fall back on the constitutional law I learned many, many, many years ago which would be that the due process you've got as a taxpayer was when you voted and elected your county board. They're supposed to be the ones to get that right for you in their disputes with this huge taxpayer or the dispute with the taxpayer with the cheapest property in town. [LB213]

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SENATOR WHITE: Did you vote for a TERC member? [LB213]

GREGORY BARTON: I don't... [LB213]

SENATOR WHITE: Did you vote for a TERC member? I mean, that TERC does not stand for election, does it? [LB213]

GREGORY BARTON: No, it doesn't. [LB213]

SENATOR WHITE: Okay. Judges do, for retention. [LB213]

GREGORY BARTON: Sure. [LB213]

SENATOR WHITE: So the question I have really is, especially as tax bases narrow in some of our rural counties, despite the language you said which was a personal, mediate, actual injury to me, if I'm looking at my taxes doubling you're still saying that's not standing under your interpretation, correct? [LB213]

GREGORY BARTON: That's not legal standing under my understanding of how the United States Supreme Court, the Nebraska Supreme Court, and every other federal court I've ever seen defines standing. [LB213]

SENATOR WHITE: Hence the statutes proposal, don't you think? [LB213]

GREGORY BARTON: Right, and I think, with all due respect, Senator, the way that language is phrased is you're going down a very slippery slope. [LB213]

SENATOR WHITE: I didn't draft it. I just want what sounds... [LB213]

GREGORY BARTON: And I wasn't referring to you personally, sir; I meant the committee. [LB213]

SENATOR WHITE: What sounds like a great principal to stand against--let's keep it clean, make it simple--can actually cause enormous hardship to remaining taxpayers who lose their base and have no chance to challenge the legal process is what you propose, correct? [LB213]

GREGORY BARTON: Well, if they have a basis to file a lawsuit in the district court, they can try to do that. What I'm saying is they don't have legal standing in the course of the valuation process itself. Now if they think something's out of whack that their board didn't do for them or something like that and therefore they can file a lawsuit, that's a whole different can of worms that doesn't even factor in to LB213. [LB213]

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SENATOR WHITE: And I'm thinking more directly of an exemption being granted and a taxpayer saying, this isn't really a church; this exemption shouldn't be granted. Under your position and the position of your firm, a taxpayer would not have the right to object to that in this process, correct? [LB213]

GREGORY BARTON: Not in the TERC process, but at the same time, because they are not a party to the TERC proceeding they would not be bound by any sort of issue or claim preclusion doctrines should they choose to try to file a lawsuit to challenge that determination on a collateral attack sort of basis. [LB213]

SENATOR WHITE: And as you've testified, they'd face the same standing problem. [LB213]

GREGORY BARTON: Well, I didn't testify that they would face that same standing problem there. I haven't even purported to try to analyze the standing problem in that context. [LB213]

SENATOR WHITE: Thank you. [LB213]

SENATOR ADAMS: Any questions? If not, thank you. [LB213]

GREGORY BARTON: Thank you. [LB213]

SENATOR ADAMS: Next opponent. Any other opponents to the bill? We'll take neutral testimony, then. Is there any neutral testimony? Seeing none, Senator Cornett. [LB213]

SENATOR CORNETT: Thank you. I will close on all the bills at one time since we're just kind of lumping the TERC bills together. [LB212]

SENATOR DIERKS: So we are on LB212? [LB212]

SENATOR CORNETT: LB212, yes, sir. [LB212]

SENATOR DIERKS: Senator Cornett, go right ahead. [LB212]

SENATOR CORNETT: Thank you, Senator Dierks and members of the Revenue Committee. My name is Senator Abbie Cornett from the 45th Legislative District. I'm here today to introduce LB212, again, at the request of TERC. The purpose of LB212 is to authorize the Tax Equalization and Review Commission to hear certain real property valuation appeals with a single commissioner. The single commissioner hearing process would be an alternative procedure that the commission could use to process more appeals in a shorter amount of time. This bill limits the appeals which may be

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heard by the single commissioner to certain residential properties valued under \$1 million; limits the records made of the hearing; and would allow parties to an appeal designated for this process to opt out. Decisions made by a single commissioner are final unless a request for hearing is made within 30 days of the decision. The bill also allows the County Board of Equalization to designate the county assessor as an ex officio member of the County Board of Equalization to appear at the single commissioner hearings, and allows the county assessor to designate someone to appear in his or her place. There are members of the TERC commission that are going to be following me that can answer this in a little bit more in detail. Again, this bill was brought to me as part of looking at...and I agreed to introduce it as looking at TERC as a whole. Thank you. [LB212]

SENATOR DIERKS: Thank you, Senator Cornett. Are there questions for Senator Cornett? Guess not, thank you very much. First proponent of LB212. Go right ahead, sir. [LB212]

WILLIAM C. WARNES: (Exhibit 2) Thank you, Senator, and members of the Revenue Committee. I have a handout that I am asking to be passed around that does two things. One, updates you on TERC, and if you will look on the second page no one needs to question how many cases TERC has or has had since the year 2000, what the nature of the cases were or are, and you can actually see the exact number of the different land classifications that have been appealed. [LB212]

SENATOR DIERKS: I think you better give us your name and spell it again for this bill. [LB212]

WILLIAM C. WARNES: Sorry (laugh). Bill Warnes, chairman of TERC, W-a-r-n-e-s. [LB212]

SENATOR DIERKS: Go ahead, sir. [LB212]

WILLIAM C. WARNES: All right. [LB212]

SENATOR DIERKS: Thank you. [LB212]

WILLIAM C. WARNES: So getting cross-purposed here on myself, if this chart were looked at and you were to analyze it, you would see that there are a couple things of note. One, things at TERC were pretty much stable until the year 2006. We averaged approximately 950 appeals per year. Beginning in 2006 through this last year, 2008, the appeals doubled. Not exactly, but in round numbers they doubled. The cases we are having filed in appeal, about 48 percent--half of them--are residential. And of the residential appeals, 90 percent of them come from Douglas County. It's with that backdrop that I, as the chairman of TERC and on behalf of TERC, propose LB212. I

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want you to be aware that TERC has been following law that has been in effect for the last 50 years. So when we refer to TERC and its law, you have to realize that the law has been in place for 50 years. In 1995, when the constitutional amendment occurred, there was a decision that TERC would take over the district court on the hearings for property value appeals plus 12 other issues: homestead exemptions, exemptions of all kinds, other matters. And we also took over a very important duty which is the statewide Board of Equalization. So approximately one month out of the year, we review the valuations in all 93 counties. And that's a process that I've been through twice, and we will start it here in not too long. Now when you hear that TERC is broke--and I appreciate hearing your honest opinion or your honest reflection of what you heard because my ears...I can hear also (laugh). I want you to be aware that it is a very difficult task to listen to and be part of processing approximately 1,800 appeals a year, and those people who do not prevail, they're not going to be happy. And so I don't know who you heard from, but I will tell you that I have statistics that show that people do a lot better at TERC than you're going to, perhaps, be told. And when LB580 is heard, I have all the statistics for how many cases have been heard and what the result is. But just so I don't be coy with you and have a figure that you don't know, if cases are heard before TERC in residential property, approximately 13.5 percent of them are successful. The balance, though, do not necessarily, that have filed, result in them not getting relief. We have a substantial number of cases that are what are termed...there's agreements reached, and when you put those cases together with the cases that we hear and rule on, of the...and we have a new method here of keeping track of cases: 63 percent of the property owners that have filed an appeal result in their evaluations being reduced. Now we don't take credit for that because, like I said, when we finally hear them we only have approximately 13.5 percent that we grant. But I would ask you to remember what Commissioner Wickersham reviewed with you. By the time a case gets to TERC, it has been reviewed. And unless we make the assumption that all of the review processes is faulty--and I do not believe that at all--cases that we hear are the last of the cases that need to be reviewed. Now, I have gone to the other jurisdictions in the local area, Kansas and Iowa in particular. And I have watched their process, so when the senator asked is this...what's going on here, we have what is called, generally, the ad valorem tax process. We have \$131 billion of assessed value property in this state from which we then apply mill levy, which we have nothing to do with. Please don't...you can blame TERC for a lot of things but don't blame us for the actual taxes because we have nothing to do with the mill levy. But from that, the taxes are raised and those taxes that are raised, that's what funds local government and schools--the school districts. So it's a very, very important process. Now, having heard cases to this point, three years of cases, and having practiced law for 30 years prior to coming to this appointment, I am not satisfied with watching the small taxpayer--I call them mom-and-pop--come before TERC and have difficulty with the formalities and the technicalities. And to work within the current rules and regulations that we have for full TERC hearings, it would be very difficult for me to suggest how that can be changed. And so I want you to realize that I am jumping; I'm literally jumping from that process and saying there's something better.

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For the uncomplicated residential properties, 90 percent of the residential properties from Douglas County, principally, why not have a single commissioner hearing? It's a level 2 in Kansas. And at the hearing there are no rules of evidence, none. So if Senator White were here and he asked me the question could a person bring an appraisal without the appraiser? In a single commissioner hearing the answer would be yes, because there's no rules of evidence. There's no record being made. Now, there will be a ruling by the commissioner, say myself, after I hear the case. That ruling can either stand or either the county or the property owner can say I don't like it, and they can ask for a full hearing. If they don't do that within 30 days, though, we're not going to have wasted all our time: that case is going to get dismissed. But if they ask for hearing before the full commission, the panel of commissioners, that's fine. TERC has been very successful in handling the appeals. Over the last three years, we've had 56 cases appealed to the Court of Appeals or the Supreme Court. Of those cases, only six were re-reversed either in part or totally. Now I think that's a very good record. Some of our cases require 10-20 pages to analyze and write so if they are appealed, the Court of Appeals or the Supreme Court can see what we did. Now the reason that I am proposing, on behalf of TERC today, the single commissioner hearing is not just because of numbers. But numbers are a big factor in this suggestion. Because if we do not come up with another method of handling this large number of appeals--especially in these troubled economic times, which I'm not going to predict what's going to happen for 2009, but we will fall behind. It is unsatisfactory that an appeal filed with TERC cannot be heard within one year. And right now we're averaging a year and a half for many of the appeals. Almost going on two years. That's unsatisfactory. With a single commissioner hearing, we can handle all of the residential appeals--let's say there are a thousand--in a matter of 10 weeks. Now we wouldn't do that, because not only do we have to hear them, we have to write up the orders on them. But I'm just telling you, that's how much time we could do it. Because we do four commissioners, six cases a day, that's 24 cases times five days, that's 120 cases we can handle in a week. Really, my bill doesn't put a feather in my cap or in TERC's cap, because all we're doing is proposing how we can work harder and get more done. Now, there's another reason that I proposed this bill, and it's not just because of numbers. It's because we are not currently matching the resources to the need. You don't need three commissioners to listen to a case--a residential property case. You just don't need that. These cases all come to us, have a certain pattern. Now there are some residential cases that have complications. And so there might be some exceptions. But overall, we...I believe that any one of the commissioners can hear, easily, any of these residential cases we're now hearing. And by the way, I reduced the number of hearing officers from three to two. We have panels of three which were authorized under the rules and regulations and one is missing by my permission, so we're hearing them with two, and we've been doing this for quite some time. It allows us to hear ten a day. But we still can't catch up, and we aren't going to be able to unless we go to something like this. So I would suggest to you that, while this...if this isn't considered to be the best alternative, it certainly is an alternative--something to consider. I had other ideas. I would love to see

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mediation; I would love to see other ADR, Alternate Dispute Resolutions, be involved. But in three years this is what I find I might be able to get done. So with having presented that, I would stand for any questions, please. [LB212]

SENATOR DIERKS: Thanks, Mr. Warnes. Senator Hadley. [LB212]

SENATOR HADLEY: Thank you, Mr. Warnes. You answered a number of my questions that I had or they had earlier. Why is there such a problem in Douglas County? You said 90 percent--does that number stick in my mind? [LB212]

WILLIAM C. WARNES: 90 percent. Here's what you have to understand about Douglas County. They have 200,000 parcels that they're monitoring and assessing. I don't give them any credit, or do I take anything away from them; it's a tough, tough job. We have counties in this state that don't have ten residential sales in a year. Douglas County has 200,000 parcels, and Douglas County needs to be addressed. However, the single commissioner hearing will affect everybody across the state because we do have...if we go to Scottsbluff we'll hear single commissioner hearings if we're allowed to, you know, if the bill passes. We'll hear them out there on a regional basis. But Douglas County just has the business. That's where it's at. [LB212]

SENATOR HADLEY: Just an absolute number of... [LB212]

WILLIAM C. WARNES: That's right. That's where it's at. [LB212]

SENATOR DIERKS: Other questions? Senator...senator...you're just stretching, huh? [LB212]

WILLIAM C. WARNES: Now when I testify on LB580, the burden of proof coming up, I have some other statistics that will be helpful to you in analyzing. You'll never have to say you don't know how many of what and what happened. Now we would love to have had these statistics before, but we didn't have the computer program that we now have. So we're able to provide a little more information which you are justified in asking for, and we should be able to provide it. [LB212]

SENATOR DIERKS: Okay. [LB212]

WILLIAM C. WARNES: Okay? [LB212]

SENATOR DIERKS: Thank you very much, Mr. Warnes. [LB212]

WILLIAM C. WARNES: All right. [LB212]

SENATOR DIERKS: Other proponents of LB212? Go right ahead, sir. [LB212]

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BILL WHITE: My name is Bill White, B-i-l-l W-h-i-t-e. I'm from Milford, Nebraska. I'm in the Real Estate Farm Management business. I'm a certified Nebraska appraiser and a Nebraska real estate broker. I think I definitely favor LB212, and again, as Senator Adams stated, you go in and you start hearing this legalistic term. Many of the clients that we represent, which we represent about 125 Nebraska landowners--many of these are 85 years old or older. Many of these live in California, Florida, Ohio, which basically, the way it's set up right now, I can't go to TERC and represent them, they have to be here in person or they have to have an attorney here. Which, if they've got one parcel of land--160 acres--it's not feasible to bring an attorney in to do it, nor is it feasible to come back from Florida or wherever you're at. The other thing is...most of these owners are removed from agriculture. If you have an agricultural appeal to the board, it's pretty difficult for an 85-year-old woman who's lived in New York City most of her life to come back here and start discussing comparable sales around the farm, land classes, production capabilities of that farm. So this, again, is where I'm encouraging the passage of this bill and also, I would like to encourage one slight change in it. For the county assessor, and I think that Mr. (inaudible) read that off, the county assessor can appoint someone to represent her. If two or three lines which would read: the appellate may designate one or more persons to act on his or her behalf for purpose of a hearing pursuant to this section. In other words, if one of you had a farm and I managed your farm--there probably should be some relationship--I could come to TERC and represent you or present your case on that farm. I think his question was before, can I go to the county board and appeal the valuation of that farm? Yes, I can; I've done that many times. And as far as the review at county board level, you can get reviews from here clear up to here. I've been to several county boards. I was chairman of the Seward County Board of Equalization for 14 years. We heard valuation cases each year and every year I would say that I probably viewed, personally, 80 percent of these. I think that probably is high. And at the other end of it, I presented my case which I thought was a good case, one fellow sat there and got a 20-minute nap while I was presenting it, only to wake up in time: I move we retain the value. And apparently he heard something, but the county board level is not always that way, and sometimes it's easier to retain the (inaudible) and keep the assessor happy than to make an exception. So I think this is where I'd like to see it go. Of allowing a person, and it could be specifically only in the one commissioner hearing. If it goes to the full TERC board, then have the person there or have an attorney there. But with the one person hearing, the one commissioner hearing, allow someone to be dedicated to come into that hearing and represent that person. If I represented to the county board, then I should be able to go on and represent in this low-level hearing. So I guess that's what I would request of you, and I do support that bill and I support the others that were presented here today. [LB212]

SENATOR DIERKS: Thank you, Mr. White. [LB212]

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BILL WHITE: Yes. [LB212]

SENATOR DIERKS: W-i-t-t-e? [LB212]

BILL WHITE: W-h-i-t-e. [LB212]

SENATOR DIERKS: Oh (inaudible); oh, that's tough. [LB212]

BILL WHITE: (Inaudible) [LB212]

SENATOR DIERKS: Senator Utter. [LB212]

SENATOR UTTER: It's my understanding that LB212 just applies to residential properties? Or am I reading that wrong? [LB212]

BILL WHITE: Unless I misread somewhere. [LB212]

SENATOR UTTER: Residential properties valued under \$1 million. [LB212]

BILL WHITE: Okay, I would then recommend that you also put any property valued under \$1 million. Basically what we've got here is it's probably more common for the landowner to be away than it is the homeowner. And I think essentially what we're saying if something doesn't get changed that that landowner essentially doesn't get represented before TERC. Or can't be represented in a feasible way. [LB212]

SENATOR DIERKS: Other questions? And what's your position with...how do represent people as an attorney? [LB212]

BILL WHITE: We're in the Farm Management Real Estate business. [LB212]

SENATOR DIERKS: I see. [LB212]

BILL WHITE: And we do farm management--the person who lives outstate we work with the tenant. And basically, we're allowed to do about anything else. We can represent them at the county board with the valuation cases; we can sign leases for that person; but we can't go to TERC and represent the person. [LB212]

SENATOR DIERKS: Okay, then if you were to encourage us to allow this to happen on rural property, real estate, rather than residential, or as well as residential... [LB212]

BILL WHITE: Yes. [LB212]

SENATOR DIERKS: A million dollars wouldn't be, today, wouldn't be all that big a ranch

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then, would it? [LB212]

BILL WHITE: It wouldn't be, and I think if it gets over that, maybe the stakes are getting high enough that the full board needs to hear it--the full commission. [LB212]

SENATOR DIERKS: Okay, thank you. Other questions? I guess that does it. Thanks, Mr. White. [LB212]

BILL WHITE: Thank you. [LB212]

SENATOR DIERKS: Other proponents, please. Go right ahead, Bill. [LB212]

BILL PETERS: Mr. Vice Chairman, members of the committee, my name is Bill Peters, P-e-t-e-r-s, appearing this time in support of LB212. I would just mainly like to start out by amplifying the testimony of Mr. White. I think this bill doesn't go far enough. I think there should be statutory authority for TERC to have one commissioner hearings, period. Under their proposal, if you're dissatisfied you have the right to appeal to the full commission. This sort of takes place of a pre-trial conference where issues are often resolved, which is another approach that could be used to streamline some...to speed up some cases. In previous years I've suggested to this committee I'm not sure statutes are needed. What a lot of taxpayers want is to talk to somebody other than that local courthouse crowd. They've got a bad taste for some reason, you know, of the locals. You want to talk to somebody that's not beholden to their county government. You know, a referee's hired by the county so you might as well talk to the assessor, talk to that courthouse crowd. What a lot of people will be satisfied with is if they talk to somebody that's independent but knowledgeable on taxation. And that will solve, in my opinion, many of the issues. And this is certainly more than a step towards that because of the knowledge of the TERC commissioners. I think even a qualified employee would be helpful. There is some wordsmithing, though, that I would like to suggest. It says that rehearing may be granted by...for a full panel. Our court in recently and other issues which I'll discuss in another bill, when they see that word may they say TERC can do whatever they wish. I think there should be an absolute right for the taxpayer to go to the full panel. The only other wordsmithing I would do is on Section 3 (6). This is an appeal from the county. Who represents the county, I think, is better a decision to the county attorney rather than the assessor naming somebody. It's the county attorney. If the county attorney wants to go down and sit down with the one commissioner hearing, he's got a lot of time on his hands. And the county attorney can decide if he wants the assessor to go down. But it...I think the county attorney should be the one making the decision as opposed to getting into the disagreement between the Board of Equalization and the county assessor. Because at times, the county assessor may be the appellant, and the Board of Equalization is the appellee. With that little wordsmithing, I think this would be a step in the right direction. [LB212]

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SENATOR DIERKS: Thanks, Bill. There's a question from Senator Hadley. [LB212]

SENATOR HADLEY: Senator Dierks, thank you. Would there ever be a case where the...if you had the single person, judge or whatever you would call it--commissioner...that the county would appeal the decision? [LB212]

BILL PETERS: Oh, yes. [LB212]

SENATOR HADLEY: I just...you know, I guess I'm just asking primarily for my own information. Can the county, if the commissioner were to find for the... [LB212]

BILL PETERS: Taxpayer. [LB212]

SENATOR HADLEY: ...taxpayer the county could say wait a minute, we don't think that's right? [LB212]

BILL PETERS: If the guy really screwed up, I mean, the decision, I think yeah, the county could. But I don't think, as a general rule, the counties would. [LB212]

SENATOR HADLEY: As a general rule they would. [LB212]

BILL PETERS: Nor do I think taxpayers would, because I think the single commissioner in this hearing process would have a chance to educate everybody in this informal setting. I would anticipate that an appeal that went to a single commissioner--that's probably the last time we're going to see of that. I would also anticipate that the larger cases, the big commercial cases, will bypass the single commissioner and go directly to the full group. [LB212]

SENATOR DIERKS: Thank you, Bill. Senator Utter. [LB212]

SENATOR UTTER: Thank you, Senator Dierks. Mr. Peters, how do you feel about allowing Mr. White to represent his elderly client in New York City? [LB212]

BILL PETERS: Thank you for asking me. That's one of my long-time disputes with TERC. The Tax Equalization and Review Commission has a rule that the taxpayer must be present at the hearing. Which I missed their hearing because it was during the legislation; it's the first time that I haven't been there to suggest a change. I think that's up to the taxpayer, whether or not they should be there. You know, I represent some, at times, large retailers. Well, the guy from Dallas calls and says Bill, I missed the plane. And they go out and grab the local store manager and say come in and give them rank, serial number, then shut up. And that meets the requirement. I think that it probably needs more exploration. The single commissioner clearly works. I have no problem, even if it's a full panel if we are not getting crosswise through the bars, the court, on

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practicing law. That's the only place I think there could be an issue. [LB212]

SENATOR UTTER: That...the taxpayer may, for example, giving an experienced person like Mr. White a power of attorney to act in her stead or something of that effect, or just appoint that person as her agent to appear before the commission. [LB212]

BILL PETERS: I think a power of attorney would be much better. That's what Mr. White has when he has to go in and hassle the Department of Revenue on something on behalf of his clients. He has a power of attorney. The department provides a form...that gives some assurance the guy's not out freelancing on his own. [LB212]

SENATOR UTTER: Well, it seems to me as I'm reading this that the bill gives the county board to authorize somebody to appear on their behalf, and you suggested it should be the county attorney and that the county attorney can appoint the assessor, but I don't see anything in here that allows anybody but the taxpayer to appear... [LB212]

BILL PETERS: I think that's a good point and I would agree with Mr. White's suggestion that there should be some authority for the taxpayer--I would suggest by power of attorney--to designate a representative. [LB212]

SENATOR UTTER: Thank you. [LB212]

SENATOR DIERKS: Other questions? Senator White. [LB212]

SENATOR WHITE: Senator Friend actually noticed, and it's an odd provision, it's on page 4, line 2: Proceeding held before a single commissioner shall be informal. The usual common law and statutory rules of evidence shall not apply and the commissioner may consider and utilize all matter presented at the proceeding in making his or her determination. And then, of course, the appeal from this then becomes de novo. How the heck does that work, especially in light of LB580 to follow, Bill, which would change the standard of review again? [LB212]

BILL PETERS: Well, the appeal is de novo but not de novo on the record. [LB212]

SENATOR WHITE: So then in the appeal it would be subject to the rules of evidence and this one wouldn't be? [LB212]

BILL PETERS: They could sit and talk about the problem without. If you go from the...my understanding is if, when you go from the single commissioner, then you're into the big game. [LB212]

SENATOR WHITE: What you're really talking about then, basically, is a mediation in front of one commissioner and a right to trial, subsequently, to the full board (inaudible),

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functionally? [LB212]

BILL PETERS: I think you're correct except I have a problem with the term mediation, mediator; a knowledgeable person. [LB212]

SENATOR WHITE: Informal arbitration? [LB212]

BILL PETERS: No, a knowledgeable person--knowledgeable in taxation. [LB212]

SENATOR WHITE: Well, I'll tell you what, this is getting to be curiouser and curiouser in terms of what laws apply when and what standards of evidentiary rules. [LB212]

BILL PETERS: Yes. [LB212]

SENATOR WHITE: Don't you think a single, consistent, articulated standard and method of appeal would serve the public and commission better? [LB212]

BILL PETERS: I think so. Well, I'm not sure. I suppose what I was going to say is that at times when I used to be running the whole thing I'd have to scream at people, make the damn system work. And I think by giving people the opportunity to come into this setting, as proposed by the commission, helps make the system work. [LB212]

SENATOR WHITE: I don't know that I have a problem with that, I just have a problem with the three-commissioner having one standard, one-commissioner having another standard, not articulating the method of appeal, not articulating, really, I'm not sure what the deference is from the three-commissioner to the other one--is it no deference? It's de novo new trial so it means nothing if you appeal. [LB212]

BILL PETERS: I think as a practical matter there will be deference, but that's the risk you take by going to the one commissioner. [LB212]

SENATOR WHITE: I agree. [LB212]

BILL PETERS: But quite honestly, with a major client I would say let's pass the one commissioner, let's go directly. [LB212]

SENATOR WHITE: Yeah, because the rules are a little more set out, you know what's going to happen... [LB212]

BILL PETERS: Right. [LB212]

SENATOR WHITE: ...you know what the evidence is going to be. [LB212]

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BILL PETERS: But for the people that call me now and I have to say, you know, you can't afford me. You've got to be able to save \$75,000-\$100,000 in value. This is great for that. [LB212]

SENATOR WHITE: I like that because again, I think, that's what we really need to talk about is finding an affordable method for citizens to get their matter heard quickly. [LB212]

BILL PETERS: And this is definitely a step in the right direction. [LB212]

SENATOR WHITE: And relaxing the rules of evidence certainly can play a major role in that, I agree. [LB212]

SENATOR DIERKS: Senator Hadley. [LB212]

SENATOR HADLEY: Senators, Mr. White, thank you. A quick question: the appeal right now is from the Board of Equalization to TERC, is that correct? [LB212]

BILL PETERS: That's correct. [LB212]

SENATOR HADLEY: Are the rules of evidence in the Board of Equalization the same as the rules of evidence in TERC? [LB212]

BILL PETERS: No. No, in fact there's no rules of evidence in the Board of Equalization and I'd argue that that's good. If we have rules, make them a sort of an agency of record or a court of record, then we're going to run the cost of county government out of sight. [LB212]

SENATOR HADLEY: That's what makes me think this process of the one hearing officer is more consistent with what the person has been through at the Board of Equalization. [LB212]

BILL PETERS: Oh, yes. [LB212]

SENATOR HADLEY: They would be more comfortable because that's what they sat through the first time. [LB212]

BILL PETERS: They want somebody that knows the game to answer their question. [LB212]

SENATOR DIERKS: Senator White. [LB212]

SENATOR WHITE: One of the problems though, Bill, you have is you have no rules at

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the Board of Equalization on evidence, and yet the deference given to the Board of Equalization is clear and convincing, which is the same held to a jury and a trained judge at the highest level. So on the one hand we don't have any rules about what comes in or how you consider it, and...but my next door neighbor says my house is too high having the same weight as a licensed appraiser coming in and saying, you know your house is too low, and those rules don't apply. And yet we give it complete and total deference like it was a jury verdict in front of a judge who strictly controls the evidence, strictly instructs the jury how to consider it...I mean, we've got a shotgun marriage of a standard of review for a evidentiary system that they were never meant to go together. [LB212]

BILL PETERS: I think your question will be favorably answered by the advancement of LB580 which we'll talk about next. [LB212]

SENATOR DIERKS: Other questions? Senator Louden. [LB212]

SENATOR LOUDEN: Yes, thank you Senator Dierks. Mr. Peters, when the Board of Equalization meets and they make a decision, is that reviewable by the TERC committee? I mean, can they make a decision and it'll be final or can the TERC committee overrule that decision they make? [LB212]

BILL PETERS: TERC can only overrule the board if the taxpayer or the assessor appeals. [LB212]

SENATOR LOUDEN: Then how come some of these county boards can't go ahead and adjust some of those valuations to suit themselves. I've always been under the understanding that they're afraid that most of that will be appealed or it'll go to the TERC committee has final say on it so whatever they do doesn't make that much difference. They've got to pretty much go with what the valuation has been set who will...my understanding is that TERC committee is the one that more or less sets that valuation to start with. [LB212]

BILL PETERS: On individual's valuations it's the assessor--there are guidelines from the state. It's supposed to be actual value. If we're talking about say, the value of a class of land, that's a decision that Commissioner Warnes described as a month they spend on reviewing the values of the county. That becomes the equalization function. But as far as individual protest on real estate, that's up to the county board to make their decision. [LB212]

SENATOR LOUDEN: Okay, thank you. [LB212]

SENATOR DIERKS: Other questions? It just occurred to me, Bill, we're talking about single commissioner hearings. Is there anything that says that these hearings have to

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all be in Lincoln? [LB212]

BILL PETERS: No, and I believe Commissioner Warnes suggested they don't hold their big hearings all in Lincoln. [LB212]

SENATOR DIERKS: They don't. [LB212]

BILL PETERS: They travel around the state which makes me travel along with them, so. [LB212]

SENATOR DIERKS: So that one commissioner could be having a hearing in Norfolk, another one in Kearney, and the other one in Scottsbluff at the same day. [LB212]

BILL PETERS: If that would be their schedule. Because I know they've held panel hearings in Valentine, Scottsbluff. I seem to go on North Platte or Kearney if I'm not in Lincoln. [LB212]

SENATOR DIERKS: Thank you. [LB212]

BILL PETERS: So I...they do circulate--spend a lot of time out-state. [LB212]

SENATOR DIERKS: Good, thank you. Any more questions, folks? Guess that does it, Bill, thank you very much. [LB212]

BILL PETERS: Thank you. [LB212]

SENATOR DIERKS: Further proponents? [LB212]

JON EDWARDS: Good afternoon, again. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm assistant legal counsel with Nebraska Association of County Officials. We are here today in support of LB212. You've heard all the reasons laid out and basically we agree with what TERC's trying to do here to try to alleviate some of the issues that have been brought up. And there's been a lot of questions about what TERC could or couldn't do under this new scheme and I would have to defer to TERC, but if you look at the green copy in Section 3 and you look at subpart C, there is language there referring to rules and regulations. So my understanding would be you could read it that TERC will come up with a set of rules and regs that might apply to a single commissioner hearing under this very informal process. So that might answer some of those questions into the process. With that I'll conclude my testimony. [LB212]

SENATOR DIERKS: Thank you, Jon. Are there questions for Jon? I believe not, thank you very much. Other proponents? Go right ahead, sir. [LB212]

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RICK KUBAT: Hello. My name is Rick Kubat, R-i-c-k K-u-b-a-t. Sorry if my voice is a little shaky but senators make me nervous. (Laughter) I'm here representing the Douglas County Board of Commissioners. I'm the coordinator for the Douglas County Board of Equalization. We're here in support of LB212. My commissioners like LB212 with some conditions. They would like the hearing to be on the record and they would like it to be made open to the public. They do like the idea that TERC is going to, hopefully, in single commissioner form more timely hear TERC appeals. We had a substantial number of BOE filings in 2008 because the 2007 TERC cases were still pending. I'd put it at right around 8 percent of our business last summer were people that had to file again and I heard a lot of frustration; I got a lot of calls. You know, why should I have to protest again when I have a pending TERC case? And we believe that this bill would allow TERC to more timely hear cases. That's the main reason why we're in support of LB212. [LB212]

SENATOR DIERKS: Thank you, John. [LB212]

RICK KUBAT: Thank you. [LB212]

SENATOR DIERKS: Rick, I'm sorry. Questions? Wait a minute, Rick. You have a question, Senator White? [LB212]

SENATOR WHITE: Yes, I do. How many appeals did you have to the Board of Equalization, roughly, in '06, '07, and '08? [LB212]

RICK KUBAT: We...in '06, I believe, we had a little less than 5,000; in 2007, we might have the state record--we heard 10,600 appeals; and last year we heard approximately 6,800. [LB212]

SENATOR WHITE: Do you know how many appealed from the Board of Equalization to TERC? From Douglas County for last year or the year before? [LB212]

RICK KUBAT: I believe that we had...two years ago I believe that number was right around 1,300 and I believe last year it was around 1,200. [LB212]

SENATOR WHITE: Thank you. [LB212]

SENATOR DIERKS: Other questions for Rick? I guess that does it. Thank you, then. [LB212]

RICK KUBAT: Thank you. [LB212]

SENATOR DIERKS: Other proponents of LB212? Other proponents of LB212? Is there opposition to LB212? Go right ahead, sir. [LB212]

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GREGORY BARTON: Thank you, Senator. Again, my name is Gregory Barton. I'm a partner in Harding & Shultz law firm and I'm appearing on behalf of Laura Krebsbach, doing business as WPF Consulting. Again with the caveat that I don't really know that I fit in any of those three categories so I was down as the opposition, basically just to address a couple of concerns that we saw in going through the language of LB212. We understand the idea is to try to streamline TERC appeals and its processes and to reduce TERC's caseload, which we believe are laudable goals. However, we have some concerns about the provisions allowing for appeals to be heard by a single commissioner. No rules of evidence and no record made of the hearing. Now I understand that example given by the Commissioner during his initial testimony that that would address a concern expressed earlier by Senator White that a property owner could come in and bring their own appraisal but not be paying a couple hundred bucks an hour or whatever to have the appraiser come in and testify. I've been trying lawsuits for over 20 years; I know experts are pricey. But at the same time that cuts both ways, because then, at the same time, whoever the county representative is, they can come in with their appraisals too that you can't cross examine an appraisal. So that's a trade off you need to understand that you'll be dealing with in that situation. Like the witness who just testified, we have a concern about their being no record of the hearing. When you reach the point where you're saying no rules of evidence, no record made of the hearing, you're really talking about something that is similar in substance to a small claims court proceeding. There's no record there either. And in a small claims court case, if that gets appealed, it makes it like the small claims proceeding never occurred--you're starting over from scratch. And if I understood the earlier testimony, that is essentially what the commission is saying here. So there could be an extra level of work as part of the trade off for the streamlining and maybe disposing of some of the appeals. The problem with having no record, and maybe it's just the trial lawyer in me, but if you have no record there's nothing to review on appeal under Section 4. Under Section 4, that's called a request for rehearing, so it's basically a second appeal. And what are you going to rehear if you have no record to look at in the first place? And I want to echo Mr. Peters' statement earlier about fine-tuning that language. Because right now under Section 4 it says the commission may grant a rehearing. And that says, to me, that it's discretionary with the commission. And that should be made an appeal as of right, from the single commissioner hearing to the full commission, and that may grant language should be shall grant. But so long as you're going to call it a rehearing, you need to have a record from which to be reheard. Now, you can either deal with that one of two possible ways that I can see. Either one, you change the statute to say there shall be a record made of the one commissioner hearing; or two, the language needs to be fine-tuned from just saying simply de novo to make it crystal clear that any person who appeals from a single commissioner ruling to the full commission, it's start over from scratch and you will be entitled to make your full record, just as if you had not gone through the single commissioner proceeding. One final comment: we really didn't understand the purpose for the provision providing for the ex officio appointments by the

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assessor and for the assessor. Laura asked me about that and I had to just 'fess up to her, I said Laura, I don't know what ex officio means--I've forgotten every ounce of Latin that the nuns required me to learn at Hastings St. Cecilia 30-some years ago. We would kind of appreciate an explanation on that, and it is one-sided: it allows the county to have that convenience of being able to appoint somebody to go in their stead, but it doesn't allow the taxpayer to do that. And we would submit that that needs to be a little bit more balanced. One final note: I would also note that the ex officio language that's included in LB212 also landed, somehow, in LB166 which my understanding is that was some sort of cleanup bill. We don't see any purpose for that language to be in LB166. We think it can be dealt with here in LB212. Thank you. [LB212]

SENATOR DIERKS: Thank you, Greg. Any further questions? Senator White, please. [LB212]

SENATOR WHITE: I have several questions. One, as a trial attorney, as you know, the federal court system now can require mediation and can require a party with authority to be present at the mediation. If this is really to function as some kind of informal settlement hearing/mediation, do you think we should require a party to be present with authority to settle? Because I agree with you--if that's not the purpose, you ought to just be able to have an attorney show up for you. But if it is that purpose, do you think that's an appropriate power for the commission to have? [LB212]

GREGORY BARTON: Well, if you have the attorney show up for you he better have authority. [LB212]

SENATOR WHITE: It doesn't require it though. [LB212]

GREGORY BARTON: And I agree with you, Senator. As I was reviewing this it reminded me of an informal arbitration--what they're talking about. And an informal arbitration--except the only difference is in an arbitration you get to pick your decision maker between the parties. But same deal, you can have people raise their hand and be sworn but there's no record. And you're going to be bound by whatever the arbitrator decides at the end of the day. Can you appeal that to district court? Yes. Is the standard of review ungodly high? Yes. And now that I have shot my mouth off, I realized I did want to make a comment on standard of review. I share your concern about various, differing standards of review, and I have never seen a good reason why the clear and convincing standard was being applied on these appeals. To the extent you're going to go forward with the single commissioner idea, which we think is a good one subject to some fine tuning, I think you ought to have a uniform standard of review. And it should be by a preponderance standard. That's the standard that's applicable in all civil actions. [LB212]

SENATOR WHITE: Let me do some housekeeping because one of the problems we've

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had, and it's difficult for a lawyer, but the language is execrable in this. We have confused, regularly, in the language throughout these statutes what are the standard for judgment, which is preponderance of the evidence, which is, if you're the finder of fact, the jury--the one commissioner--that's okay, 51 percent or not, who has to persuade. There's a burden of persuasion issue which we've confused with the standard that we look at, preponderance--which is then confused with what's an appeal and what's a trial de novo. And then we've also thrown in confusing language as to what the standard of review is which is different than the burden of proof standard which is for the finder of fact. And we've thrown it against the wall like a plate of spaghetti. I mean, don't you agree? [LB212]

GREGORY BARTON: (Laugh) I do agree, and... [LB212]

SENATOR WHITE: And we've mismatched review standards with evidentiary standards that were never intended to go together. [LB212]

GREGORY BARTON: And I couldn't agree with that more. Clear and convincing is, is a standard of proof that lies somewhere between the ones we're all familiar with--proof beyond a reasonable doubt and preponderance--that's different than a quote, unquote standard of review where there's already been a decision and then the reviewing tribunal, court, officer is looking at that and, depending on what the issue is or whether there's a statutory standard, it could be a very deferential standard or a standard that is de novo which is supposed to be no deference. And the standard will vary whether it's a question of law or whether it's a question of fact. [LB212]

SENATOR WHITE: And then in the next bill we throw in a new standard of review called arbitrary and capricious, although they call it arbitrary, but then they put in preponderance of evidence which is a trial evidentiary weight instruction. Arbitrary and capricious standard traditionally is is there any competent evidence to support the judgment, not preponderance. And yet we confuse that language in the next bill. [LB212]

GREGORY BARTON: Well, I think the new language is it's unlawful, arbitrary, or unreasonable. And you know, I was talking with Laura about that and I go, well, you know, it occurs to me that if it's unlawful it's probably arbitrary and it's probably unreasonable. And if it's unreasonable, it's probably arbitrary and unlawful. I think we're getting some fairly interchangeable language in there. [LB212]

SENATOR DIERKS: Senator Utter, please. [LB212]

SENATOR UTTER: Is it not true that there are four commissioners in the TERC? Is that what there are? And then it's my understanding that two of them are lay people--that they're not lawyers. Two of the four, so that's...and the thing that's beginning to bother

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me and Senator White, by the way, if you utterly reject my question here we'll have to get it in black and white. [LB212]

SENATOR WHITE: All right; you've got it. [LB212]

SENATOR UTTER: The thing that's beginning to bother me that you two fellows are talking using some really big words that I don't understand, and I'm just wondering what the capability's going to be of TERC commissioners to handle this thing in the manner that you lawyers would like to have it handled? [LB212]

GREGORY BARTON: Well, I can tell you this just in my brief experience, Senator, that the TERC commissioners know how to write a thorough, reasoned, understandable opinion and in my experience, they understand what the standard of review is. The cases I've been involved in...and the commissioner's right--they can be 10 pages, 20 pages, whatever's involved depending on the issues. [LB212]

SENATOR UTTER: That comforts me, thank you. [LB212]

GREGORY BARTON: They do. They quote the statutes; they quote the Supreme Court, the Court of Appeals; they quote the appropriate standard of review as indicated by the courts; and they do what quasi-judicial decision makers--which is what they are when they're doing these individual reviews--they apply a lot of the facts. Now, because I'm a trial lawyer do I always agree with them? Of course not. But I know that they have that capability; I've seen them do it. And I have the utmost respect for the job they try to do. [LB212]

SENATOR DIERKS: Senator White. [LB212]

SENATOR WHITE: Senator, just so you're clear and not utterly confused here, (laughter) let me explain though what we have drafted as a Legislature doesn't make any sense to a trained lawyer. [LB212]

SENATOR UTTER: I can tell that. [LB212]

SENATOR WHITE: I mean, it doesn't fit together. Do you, sir, accept that it's a good idea that we might have a Board of Equalization that decides to listen to a third party opinion? In other words, my aunt's boyfriend is really knowledgeable about ranchland and he says my land isn't worth anywhere near what you want and I testify to that. And there's no rules of evidence, so it comes in. And then the county brings in a competent, qualified appraiser and says no, it's quite fair--it's really quite accurate. But the Board of Equalization likes me. Therefore, they find for me based on my aunt's boyfriend's testimony, and he's not in the courtroom. And now, on an appeal to TERC, okay, it's only if it's clear and convincing that it's an error and the county's got to bring people up

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and put them on in front of TERC to reverse it, okay? Do you think those two things go together--no evidence below and a clear and convincing standard on appeal above? [LB212]

GREGORY BARTON: I think clear and convincing is an evidentiary standard. It's a standard of how a quantum of proof versus a standard of a reviewing tribunal. What is their standard? Are they going to give deference to a finding, or is the standard going to be that...if the standard is for a review, say, the review language that is part of, I think, LB580: unlawful, arbitrary, unreasonable. [LB212]

SENATOR WHITE: That's the new one, but the existing language is clear and convincing evidence that the Board of Equalization (inaudible). [LB212]

GREGORY BARTON: Right, right. That's a quantum of proof standard versus a standard of review by an appellate tribunal. [LB212]

SENATOR WHITE: Right. [LB212]

GREGORY BARTON: I agree with that. I think LB580 kind of mixes those two concepts, because it also refers to preponderance which is a quantum of proof standard. At the same time, it's using the standard of review of unlawful, arbitrary, and unreasonable. [LB212]

SENATOR WHITE: Now I'm going to try to actually propose some things that might help people solve it. Seems to me we can't talk about what is a good evidentiary standard or what evidence rules should apply, nor can we talk about what evidentiary standard should be used by the finder of fact, or what's an appeal or not until we decide when the trial occurs. None of this will make any sense until we first decide what is the trial in which evidence must be introduced and that locks out the evidence. Until we do that, none of this will make sense, will it? [LB212]

GREGORY BARTON: I think that's right. I think my understanding the way it works now in TERC, and especially if I understood Commissioner Wickersham earlier today, you really wouldn't have a trial at the county level because you're allowed to put on any evidence that you want when you get up in front of TERC. So I think TERC is looking at it from an evidentiary, quantum of proof standpoint that says, have you here, at the trial--your appeal trial basically--with us, in front of TERC, have you presented enough evidence for us to determine that the board was wrong. Have you presented clear and convincing evidence? I think you can clean all that up simply by saying the standard is showing by a preponderance of the evidence that the board was wrong. [LB212]

SENATOR WHITE: Do you agree there should only be one evidentiary hearing if we really want to promote efficiency? And everything else after that should be appellate on

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the record? [LB212]

GREGORY BARTON: Well, I agree with the caveat that I don't know that you're going to be able to put in all of the evidence you might otherwise in front of a two-member or a three-member tribunal as you would in the streamlined one commissioner process. [LB212]

SENATOR WHITE: And let's not worry about that, just do you agree that there should just be one evidentiary hearing? No de novo rehearings. I mean, one meaningful hearing, and everything after that's on the record. [LB212]

GREGORY BARTON: You know, in my experience that's how it works in a lot of...I've done a ton of administrative procedure act appeals from...and mostly defending agency decisions, and they're all de novo on the record. But there was a real hearing with real evidence and real rulings on the evidence and a final order entered, and I don't...my understanding is that's not going to happen at the county level. [LB212]

SENATOR WHITE: And we'll worry about that, I'm just...first, the concept. [LB212]

GREGORY BARTON: I like the concept, because you've got to close the record at some point. [LB212]

SENATOR WHITE: All right, now second thing: do you accept that we might have something less than a regular full evidentiary set of rules governing the evidence that's put in? For example, summary judgment relaxes the hearsay rule to allow affidavits and in work comp we allow reports from experts. So do you think some type of relaxed evidentiary standards should apply to that trial so we could have summaries of expert testimony and formal reports and/or affidavits be used as a basis for the evidence? Or do you think we need full confrontation rights, and full technical rights? [LB212]

GREGORY BARTON: Remember, you're asking a trial lawyer this question, right? (Laugh) [LB212]

SENATOR WHITE: I am one too; I'm just asking. [LB212]

GREGORY BARTON: I can see where that would make sense in the single commissioner situation. I get more concerned about that if you're going to the formal hearing where it's basically your first shot at a true trial situation which would be in front of TERC. My concern always goes back to you can't cross examine an appraisal. [LB212]

SENATOR WHITE: What if we did the summary judgment rule which is you can take the deposition of the appraisal? You have to... [LB212]

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GREGORY BARTON: Sure. [LB212]

SENATOR WHITE: ...you have to provide your appraisal, you have to provide your expert reports, your affidavits in advance, and then a person if they wish can exercise the right to take depositions. Depositions, affidavits, can come into evidence. Like a summary judgment. [LB212]

GREGORY BARTON: Depositions I would not have a problem with. You've already had your confrontation issue at that point. Affidavits are a different problem for me because I know by statute in Nebraska while you can use affidavits for a lot of things, you can't use them to prove an ultimate fact in a contested trial situation. [LB212]

SENATOR WHITE: You can use them in a summary judgment trial. [LB212]

GREGORY BARTON: You can so long as you're meeting all the other standards of showing this admissible evidence. [LB212]

SENATOR WHITE: Well, and I guess what I'm asking you is, in this situation, if we're going to make it affordable for people would you agree to some type of...you have to disclose your evidence and then there's a right, if you really want to confront. I don't believe your expert--I have a right to depose them and enter into evidence, if I want, the deposition with my cross examination and rebuttal, or I can just enter into evidence my own expert's affidavit and it can be submitted like that. [LB212]

GREGORY BARTON: I don't have a problem with the concept of saying if you have your shot at taking a deposition and you chose to forego it--that's your problem. I think if you allow a litigant to have the opportunity to go depose the expert and then...that happens all the time in civil litigation. You just go take a trial deposition and throw it in, especially with doctors and stuff because they can never make court dates--that happens all the time. [LB212]

SENATOR WHITE: That's a lot cheaper than bringing the expert to trial, if the depositions can be used. Don't you agree? [LB212]

GREGORY BARTON: Sure. [LB212]

SENATOR WHITE: Okay. [LB212]

SENATOR DIERKS: Gentlemen, could we proceed a little bit... [LB212]

SENATOR WHITE: Sorry, Cap. [LB212]

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SENATOR DIERKS: I appreciate that, you know. I was just going to throw in a few things like asking you to define *Taeniarynchus saginatus* (laughter) and that happens to be the tapeworm of an animal, and the other thing I was going to ask you if you can't do that, how about *Mephitis mephitis*, and that's the scientific name for a skunk. And I believe everybody'd just better quit right there. If you don't mind, I appreciate your coming, Greg; you've provided us with a lot of good information. Senator White, you too. [LB212]

GREGORY BARTON: It's my pleasure, Senator. [LB212]

SENATOR DIERKS: Does anybody else have a question for Greg before he leaves? Thank you very much. [LB212]

GREGORY BARTON: Thank you all. [LB212]

SENATOR DIERKS: Other proponents? Any opponents? Opponents to LB212? Neutral testimony? I think you can close. You're going to wait and close later, aren't you, Abbie? So you can open the hearing on LB580. [LB212]

SENATOR CORNETT: Actually, Senator Dierks, I'm going to close on those first two bills. I wasn't going to originally, but...like the gentleman earlier, my voice is shaky but it's not because you guys scare me, I seem to be losing it. You got to the heart of the matter, Senator Dierks. This is what I've heard for five years. TERC was set up to be taxpayer friendly. It was set up for your 70-year-old woman or man that has a \$35,000 house, gets a valuation that they don't agree with. They may not have the education, and they sure as heck don't have the money to hire an attorney, and they go to TERC. There's probably more education in this room than in a lot of neighborhoods that are involved or need this. And I watched your eyes glaze over, quite literally. We have terms of review, or standards of review--we have set TERC up where the average taxpayer cannot go without an attorney. Bill Warnes has responded to all of our concerns over the last few years. He has been very, very cooperative and he has brought us these bills. I'm not saying they're in final draft form. I'm not saying this is what we should move forward with in the exact form. He has brought us with a single commissioner hearing. Something informal that the taxpayer can go to, that they don't feel threatened at, that has the same standard of review that they've had in front of their Board of Equalization, and it addresses the problem of Douglas County, which is...there are too many reviews for everyone to handle. People are protesting their second...doing their second protest before their first one is even heard. How do we streamline the system? How do we make it taxpayer friendly? That is the goal of all of these bills. That was the goal of scheduling a whole TERC day, so the people that one, haven't been here over the last five years could get a taste of what TERC is and how complicated of an issue it is. That brings us on to the last bill which addresses, maybe not the way it should be, but brings forth the idea that we need to look at a standard of review. LB580 would change the

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standard of review by the Tax Equalization and Review Commission and provide that an order, decision, determination, or action determining taxable value is unreasonable or arbitrary if a different taxable value is proven by preponderance of the evidence. Currently, the county board decision is to be affirmed unless there is evidence adduced that the decision was unreasonable or arbitrary. Case law has established that unreasonable or arbitrary means without basis. With that, I am...there will be testifiers following that will explain why they feel that changing the standard is important, and Senator White, you brought up very, very good points. TERC is very much a...I liked your analogy of throwing spaghetti at the wall. It is a complicated and not necessarily seamless process. And what the goal here is, is to try and simplify and make it more taxpayer friendly and reduce the time frame for the appeals. Thank you. [LB212 LB213 LB580]

SENATOR DIERKS: Questions for Senator Cornett? [LB580]

SENATOR CORNETT: And I'm going to waive closing. [LB580]

SENATOR DIERKS: Okay. First proponent, please. [LB580]

BILL PETERS: (Exhibit 3) Mr. Chairman, members of the committee, I'm still Bill Peters, P-e-t-e-r-s, representing myself. I'd like to make a few comments before I get specifically into the bill to hopefully answer some that might be asked. I think in property tax the court of record should be TERC. And what we have here, proposed in LB580, is the burden of proof going from clear and convincing to preponderance. What I am passing around, though, has it drafted as the greater weight of the evidence. The reason that we change that is that that conforms--it was pointed out to us--that the Nebraska jury instructions use greater weight of evidence, but they say it means the same thing, but the lawyers like it better, apparently. The other thing that, in my handout, I've made a change to subsection 7 in that when there's an appeal to TERC there's two issues. One, the value, absolute value of the property. But two, equalization. And quite honestly, I had thought through amendments that we'd worked on over the last four or five years that once you were at TERC, you could raise the equalization argument without having documented at the local level, which is not a record that you raised equalization. And so we had that statute that said the commission may consider all questions necessary to determine the issue of taxable value. In August of '08, the Supreme Court said that word may was discretionary, and that the Tax Equalization and Review Commission did not have to consider equalization issue when they were discussing value. So my intent here is to really try to make it clear that when you get to TERC you can raise any issue that relates to value--taxable value, that is. And there's basically two big categories: actual value and equalized value. Now the U.S. Supreme Court has said that in Nebraska for sure, because it was the Sioux City bridge case, that if there's a conflict between actual value and equalized value that equalized value trumps the issue. Now that August case, the burden that we're facing when we're

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advising clients and representing taxpayers is clear and convincing. In August, our court said that the taxpayer must establish by clear and convincing evidence that the valuation placed upon his property when compared with valuations placed on similar property is grossly excessive and is the result of a systematic exercise of an intentional will or failure of plain duty and not a mere error of judgment. The history of this is that was the old standard when appeals went to district court. And in a series of cases since then, our court has said that even though the Legislature's made some change, they haven't made it clear, that they haven't firmly said that the standard needed to be changed. And so this is the standard until it will be changed. And there's a good history in this Brennan case out of last August that I'm going to provide you with copies or I will discuss with committee counsel. So basically, I'm here to support that the burden of proof be shifted from clear and convincing--a hybrid to that of the greater weight of evidence. The taxpayer still has to establish initial case. It's not up to the county. The taxpayer, under this language, is an attenuation, basically, of what we have, must come in and first show that there's some evidence that the county was wrong. Then they have to show, by the greater weight of evidence, that the value established by the county was incorrect. We're replacing the terms unreasonable and arbitrary. And in doing so, it's my position that to accomplish that the taxpayer has to establish a value. And the thing that's always intrigued me about the word arbitrary--I don't really care whether the assessor was arbitrary or not in setting the value if they got it right. You know, a broken clock is right twice a day. And I'm only concerned that the value's right; I don't care how they got there. The issue is value, not methodology. And with that, and since we have spent most of the day talking about the burden of proof, I think I will conclude my testimony. [LB580]

SENATOR DIERKS: Thanks, Bill. Questions? Senator Hadley. [LB580]

SENATOR HADLEY: I think my eyes glazed over in the one business law class I took, so in layman's terms, would you kind of define preponderance, greater weight of evidence, and clear and convincing evidence--in layman's terms. [LB580]

BILL PETERS: I can easily define greater weight of evidence: 51, 49. Clear and convincing is somewhere higher, but not to the level of beyond a reasonable doubt. But that's the best I can...I know it's a higher standard. [LB580]

SENATOR HADLEY: And preponderance is the same as clear and convincing... [LB580]

BILL PETERS: Is the same as greater weight. [LB580]

SENATOR HADLEY: Oh, greater weight. Okay. [LB580]

SENATOR DIERKS: Other questions? Senator White. [LB580]

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SENATOR WHITE: If we're going to try to fix this, would you accept the concept of the relaxed evidentiary standard, an initial trial before one commissioner, and then an appeal based on traditional thoughts of what is the record in traditional deference to the one commissioner to TERC. [LB580]

BILL PETERS: Yes. [LB580]

SENATOR WHITE: And if we articulated that standard, to should we err on the side of making the evidentiary rules easy to understand and easily accessible so that a taxpayer like a homeowner can use them, or should we keep them at a higher standard where lawyers are going to be involved, or should we distinguish between residences for the easy level and traditional rules of evidence for commercial property? [LB580]

BILL PETERS: I hesitate to make a distinction between commercial and residential, because there are some individual commercial property owners out there who are the same as residential--some real sharp and others a little bit not. [LB580]

SENATOR WHITE: Do you agree that there's no way a 75-year-old homeowner is going to be able to come into TERC if the traditional rules of evidence apply and have even an outside chance of prevailing if they're not represented by an attorney? [LB580]

BILL PETERS: Not if the county puts up any kind of opposition. [LB580]

SENATOR WHITE: Yeah, they're just in a shooting gallery. [LB580]

BILL PETERS: Yeah. [LB580]

SENATOR WHITE: Okay. Would you agree to some kind of diversion program that the homeowner could elect into where it would be very inexpensive for them and very relaxed standards and an average person could work it? [LB580]

BILL PETERS: Oh yes, I think the only thing that I would be concerned about that everybody has the ultimate right to go to the big dance. [LB580]

SENATOR WHITE: Yeah, but does that mean anything if you can't afford the lawyer? [LB580]

BILL PETERS: No. [LB580]

SENATOR WHITE: Thank you. [LB580]

SENATOR DIERKS: Other questions for Bill? I think that does it. Thanks so much, Bill.

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[LB580]

BILL PETERS: Thank you. [LB580]

SENATOR DIERKS: Further proponents? Go right ahead, sir. [LB580]

JEFFREY SILVER: Senator Dierks, Chairperson, my name is Jeffrey, J-e-f-f-r-e-y, Silver, just like the color, S-i-l-v-e-r. I am an attorney from Omaha, Nebraska, and have the privilege of appearing before you on behalf of the Nebraska Association of Commercial Property Owners in support of LB580, changing the burden of proof from clear and convincing to a preponderance of the evidence. For the last five years, I've had an average of 10-15 commercial property appeals filed with TERC, mainly from Douglas, Lancaster, and Sarpy Counties. I now have approximately 12 commercial property appeals pending with TERC. Parenthetically, I would tell you that my experience with TERC has been excellent. They have rendered decisions timely and in a professional manner, and I have had the benefit of being on both the 14 percent winning side and, more often than not, the 86 percent losing side. But nonetheless, the experience before TERC has always been professional; they have followed their rules. The question, I guess, for us to decide today or to examine is whether the rules under which they operate should be changed. Equalization is a process ensuring that all taxable property is placed on the assessor roles at a uniform percentage of its actual value. The taxpayer's property's assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. That process starts with an appeal to the respective county board sitting as the County Board of Equalization. This process, while filled with good intentions, usually does not result in the commercial real estate taxpayer being provided with an extensive opportunity to present their case. This is because of the sheer volume of appeals, the time frame in which appeals must be heard, and the complexity associated with evaluating commercial real estate, including rent rolls, replacement costs, vacancy rates, and depreciation. More often, the commercial property taxpayer submits the information and a referee reviews it and makes a recommendation to the County Board of Equalization, which in almost all cases is accepted by the County Board of Equalization. The next step is an appeal to TERC. I provide you this background because it is important to understand the posture of the case when it gets to TERC. For all practical purposes, TERC is the first real opportunity for the taxpayer to present his or her case to a neutral panel. Unfortunately, under the current structure, the County Board of Equalization's decision comes with a presumption that the County Board of Equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. To rebut that presumption, that the Board of Equalization properly performed its official duties, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion. Unless it is established by clear and convincing evidence that the valuation placed upon the complaining taxpayer's property, when compared to other similar property, is grossly excessive and is the result of a

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systematic exercise of intentional will or failure of plain duty. This becomes more compelling upon appellate review of a decision from TERC. Appellate review is limited to errors appearing on the record. The appellate court's inquiry is whether TERC's decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. The appellate court cannot and will not reweigh the evidence or make independent findings of fact. Based on this, the TERC hearing takes on even greater significance because the scope of review on appeal is limited. The TERC hearing is really where the complaining taxpayer must make his or her case, and is hamstrung by the existing clear and convincing standard. That is why the clear and convincing standard must be reduced to a preponderance of the evidence, to give the complaining taxpayer a bona fide opportunity to prove his or her case. Clear and convincing evidence is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved. Under the current statutory scheme, the TERC hearing is the first and only real opportunity for the complaining taxpayer to have the equalization complaint heard. Because the County Board of Equalization is not really a viable avenue of protest, and appellate review of TERC decisions is so limited, it is important that the burden placed on the complaining taxpayer be reasonable so complaints about equalization can be fully and fairly adjudicated. LB580 accomplishes this in a measured and fair sense, and I urge its favorable consideration. Thank you. [LB580]

SENATOR DIERKS: Thank you, Mr. Silver. Are there questions? Senator White. [LB580]

SENATOR WHITE: May I have a copy of your comments, Mr. Silver? [LB580]

JEFFREY SILVER: Sure. [LB580]

SENATOR WHITE: They were trenchant, well thought out, accurate use of the appropriate terms. [LB580]

JEFFREY SILVER: Thank you. [LB580]

SENATOR WHITE: I appreciate it. Now can I ask your advice? How do we make a system that functions for lawyers and really does, on a high level case, deliver a predictable result according to law and yet make one that is affordable and accessible for the 78-year-old widow in a small home in north Omaha? [LB580]

JEFFREY SILVER: I've had the privilege of listening to testimony today about the other two bills before the committee, and I think that setting up a one-commissioner hearing is a very viable alternative to be able to handle non-complex cases for those people like you just identified. [LB580]

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SENATOR WHITE: Would we need a relaxed evidentiary standard for that hearing so that people could represent themselves? [LB580]

JEFFREY SILVER: I think that would be consistent with the concept of making it fair, equitable, and available at an inexpensive cost to the taxpayer. [LB580]

SENATOR WHITE: How would you decide which is eligible for...let's call it the small claims version of property tax appeal--not that the stakes aren't high but generally the amounts will be lower--and a full blown trial on the merits with counsel. [LB580]

JEFFREY SILVER: Well, I must confess I haven't given that specific item a lot of thought, but I think a valuation or a dollar value on the property involved, such as a million dollars as was discussed, and not, perhaps, limited only to homes but to make it...if the property involved, whether it be ag, commercial, or homeowners, be under a million dollars or whatever that number is--it would qualify for what I would call maybe an expedited review by one commissioner. [LB580]

SENATOR WHITE: Under relaxed standards. [LB580]

JEFFREY SILVER: Under relaxed standards, with a right to appeal in the event that either the county or the taxpayer was not satisfied with the result. [LB580]

SENATOR WHITE: Two questions: should the taxpayer alone have the right to make that election, given that they're the ones generally who won't be able to afford a full scale trial? [LB580]

JEFFREY SILVER: You can make that available to both the county and the taxpayer, but I think for all practical purposes you're never going to have the county make that election. [LB580]

SENATOR WHITE: Well, can they force, then, every homeowner to go into a full scale trial, or would you say a homeowner ought to have right to go to a simplified system? [LB580]

JEFFREY SILVER: I think the homeowner ought to have that option without being forced to go to a full hearing by the county. [LB580]

SENATOR WHITE: On the appeal should that be, then, on the record? In other words, the ones the commissioner is the trial court; the single commissioner. And then it's on the record after that? [LB580]

JEFFREY SILVER: I kind of like the small claims analogy where you can go to small claims court, you can have a decision made between two people, two litigants, and then

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it gets appealed and it's de novo on the appeal to the district court. [LB580]

SENATOR WHITE: Is it de novo on the record or is it a de novo trial? [LB580]

JEFFREY SILVER: I would say it should be a de novo trial. [LB580]

SENATOR WHITE: And at that de novo trial now does the full array of evidentiary rules apply? [LB580]

JEFFREY SILVER: I would think that would probably be the case. [LB580]

SENATOR WHITE: Okay, so we don't, we only postpone the date that poor old lady can't (inaudible)? [LB580]

JEFFREY SILVER: Well, I think...again, I haven't given that particular aspect the consideration I gave to LB580, but I suspect that we can, or you can, put some mechanism in there that prevents the county board from appealing every single time you would go to an expedited single commissioner ruling and force the taxpayer to appeal. If you're doing that, as you say, you're effectively making it as if it didn't exist in the first place. You're just putting another intermediate step before you get to the ultimate goal of having to go to the full commission. [LB580]

SENATOR WHITE: Do you agree there must be a way we can make it affordable on the modest appeals and simplified like a small claims process? [LB580]

JEFFREY SILVER: I agree, because I think...although I certainly don't ever want to speak for TERC, I think that their expertise spans all of the pieces, the agricultural, the commercial real estate, and residential. But certainly in the commercial real estate, their expertise and the ability to have a full-scale trial or hearing with the accompanying expenses makes that more appealing and would allow the homeowner to have an expedited small claims, if you will, concept. [LB580]

SENATOR WHITE: Thank you. [LB580]

SENATOR DIERKS: Senator Hadley. [LB580]

SENATOR HADLEY: Not being a lawyer I guess I can ask dumb questions. Would we ever have a situation where we had the one-person hearing and the person making the appeal, the homeowner, gives up the right to appeal that further by having the one-person hearing? [LB580]

JEFFREY SILVER: You could certainly, I think, structure the law so that if a taxpayer opts to have the one judge, one commissioner ruling that there's no appeal. I don't know

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that I'd like that as a taxpayer. I'd like to be able to have the right to appeal. But I think if you're going to change it, you certainly can provide...well, I think you have some constitutional issues there by having the right to appeal. [LB580]

SENATOR HADLEY: I was just thinking that... [LB580]

JEFFREY SILVER: Yeah. [LB580]

SENATOR HADLEY: ...that what Senator White is bringing up of how we suddenly changed the rules again for the taxpayer that, if I lose at the one... [LB580]

JEFFREY SILVER: Right. [LB580]

SENATOR HADLEY: ...then when I go to the full hearing then I'm back with the complete rules of evidentiary and I've got to have an attorney and that... [LB580]

JEFFREY SILVER: I don't...I think if given some thought, you could probably figure out some give-and-take where there's some sacrifice so that if the taxpayer decides to do that... [LB580]

SENATOR HADLEY: I guess I was thinking of some sacrifice that... [LB580]

JEFFREY SILVER: Right. [LB580]

SENATOR WHITE: The best, and probably the most constitutional, is to limit it to the evidence that was accepted at that hearing; they'd live with that evidence. And it's...and then do you say the guy wasn't fair in looking at it? Bring it up that that's the evidence--you don't get another shot. [LB580]

SENATOR DIERKS: Other questions? Thank you, Mr. Silver. [LB580]

JEFFREY SILVER: Thank you very much. I'll e-mail these to you guys (inaudible). [LB580]

SENATOR DIERKS: Other proponents? Go right ahead. [LB580]

JUSTIN BRADY: Senator Dierks and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as a registered lobbyist for the Nebraska Realtors Association and the Nebraska State Home Builders Association in support of LB580. And their position is that they feel that LB580 addresses one of the many concerns that they and their members have, but at least, they feel, it's a more appropriate standard for property owners to go in and make that argument to TERC. And with that I'd try to answer any questions. [LB580]

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SENATOR DIERKS: Questions for Justin? I guess not. Thanks so much, Justin.
[LB580]

JUSTIN BRADY: Thank you. [LB580]

SENATOR DIERKS: Further proponents? Any more proponents for LB580? Is there opposition? Go right ahead, sir. [LB580]

RICK KUBAT: (Exhibit 4) Hello, Senators. My name is Rick Kubat, R-i-c-k K-u-b-a-t. I'm the coordinator for the Douglas County Board of Equalization and I am here on behalf of the Douglas County commissioners. I want to quickly talk about our process in Douglas County and what we do. We hire somewhere in the neighborhood between 20 and 30 real estate appraisers, all of which are licensed. Our commercial real estate appraisers are all general certified. I think it's important to emphasize that, on average, our staff has over 20 years of experience. This is what these folks do day in and day out: they're real estate appraisers. They're not county employees. We bring them in to look at the evidence submitted by the county assessor's office, look at the information that the property owner's submitted, and do their best to render a fair and equitable judgment. When they make their initial determinations, they look at the cases, they presume that the county assessor's information is correct. The Douglas County Board, in the past, has been criticized at times for being too generous at the County Board of Equalization level. On average, two out of three people over the last few years are winning at the County Board of Equalization level. If the standard review is changed to a preponderance, you're taking the credence that these professional's determinations and what they've arrived at...you're taking that down a few notches. You're also doing something that is interesting to me. At the initial level they're starting with the presumption that the county's correct. But if they file an appeal, we're going to change that to a preponderance level. And when I think of preponderance, I think of a scintilla more than 50 percent on the tax value. When we're talking about valuations we're not talking about an exact science, we're talking about a range. So you're going from presuming the counties to be correct to going to the next level of appeal and then we're going to lower it to preponderance. What this is going to do is this is going to encourage litigation. If this bill becomes law, if I'm a commercial attorney, I'm going to tell all of my clients they're crazy not to file a TERC appeal now that a preponderance of the evidence is a standard. Lastly, and most importantly, I found some information provided by the Tax Equalization and Review Commission to be rather interesting. The last set of numbers we have is from 2006. 2006, I believe, TERC heard roughly 1,200 cases. Of those 1,200 cases, 826 people got relief. And you can talk about how difficult it is to win at a TERC hearing, but I think we're missing the whole conversation when we don't talk about the fact that most of these cases are resolved through confessions of judgment where the property owners in the county see eye-to-eye and essentially come to an agreement, thus cases don't necessarily get litigated at TERC. And I'm going to go

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ahead and hand that out if I can. My last statement is this: I find it ironic--I've been here in the audience the last couple of years and the Tax Equalization and Review Commission has said that they would probably like to have more resources so they can timely hear cases. If we're going to be lowering the standard of review, I think it's logical to assume that more cases are going to come TERC's way. If this bill is going to be enacted, I think it would be logical that you provide more commissioners so that these cases can be heard in a more timely fashion. [LB580]

SENATOR DIERKS: Okay, thank you, Rick. Any questions? Senator White. [LB580]

SENATOR WHITE: A number of questions. First of all, if, of course, we said all decisions by the Board of Equalization are always correct there wouldn't be any appeals and that would be most efficient, correct? I mean, we could make it impossible to overturn them. Would that be the most efficient use of the public funds then, because there wouldn't be any abuse. [LB580]

RICK KUBAT: You know, there wouldn't be any appeal if they...Senator, I think we can both agree that wouldn't be a fair way. [LB580]

SENATOR WHITE: Well, and I would argue with you that a clear and convincing standard, when there's no rules of evidence below, isn't fair either. It's absolutely almost unheard of. To get that level of deference to what isn't even an administrative hearing. [LB580]

RICK KUBAT: You know, to me, I like to look at the numbers and when we look at the 2006 numbers, in two out of three people that are leaving the Board of Equalization upon appeal are successful in their cases, I don't think it's necessarily a situation where the property owners aren't getting a fair shake. [LB580]

SENATOR WHITE: Well, let's ask ourselves something about that. Is that because they're not getting treated in the first instance, that two out of three times the assessor's just wrong? I mean, I don't know that you cheer about that. [LB580]

RICK KUBAT: You know, in cases...I think if you brought the county assessors forward, they themselves would say that they're not perfect every time. [LB580]

SENATOR WHITE: Well, two out of three you're saying are wrong. And those are just the people that appeal, not the people that bite their tongue and go forward. [LB580]

RICK KUBAT: That's correct. [LB580]

SENATOR WHITE: Okay, well that...I'm struggling: why should that give us comfort? [LB580]

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RICK KUBAT: Well, my example in describing that two out of three people are getting relief at the initial level is also saying, that, you know, we've got a system in place right now where we're bringing in qualified experts to review this--all the information that's in front of them, and plenty of people are getting relief at the initial level. [LB580]

SENATOR WHITE: I don't think anybody has a problem so much with that, as if I still feel aggrieved and two out of three were found in error on the way down, why wouldn't a more moderate review with more acceptable evidentiary standards be a positive step forward? [LB580]

RICK KUBAT: I would say with the current standard that we have, I mean, just look at those numbers. Two out of three people that are leaving the BOE right now are getting relief. If you lower the standard, what's that going to do? And another thing that we need to look at, if... [LB580]

SENATOR WHITE: Well, and despite that, how many appealed in 2007? From the BOE? [LB580]

RICK KUBAT: In 2007 it was 10,600. [LB580]

SENATOR WHITE: And two out of three of them got relief. [LB580]

RICK KUBAT: That's correct. [LB580]

SENATOR WHITE: Thank you. Do you agree the small homeowner needs an affordable method to have the Board of Equalization decisions reviewed? That that's a healthy thing in a democracy? [LB580]

RICK KUBAT: Definitely. [LB580]

SENATOR WHITE: Do you agree it's not an affordable option for the vast majority of people right now? [LB580]

RICK KUBAT: Yes. [LB580]

SENATOR WHITE: I appreciate that. [LB580]

RICK KUBAT: I guess when you're saying...when I answered that question I was thinking should we have to force them to hire an attorney at the TERC level? [LB580]

SENATOR WHITE: I agree. If you have to hire an attorney, it's not affordable for the vast... [LB580]

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RICK KUBAT: I don't think that's affordable but certainly, Senator, you know, filing at the Board of Equalizations for free, filing at TERC for \$25--I would find those to be affordable mechanisms for appeals. [LB580]

SENATOR WHITE: Just out of curiosity, I'm representing the county and you're a 75-year-old homeowner: you file that \$25 with TERC, full rules of evidence apply, how long are you going to last with me in a courtroom? [LB580]

RICK KUBAT: You, Senator? Probably not very long. (Laughter) [LB580]

SENATOR WHITE: Thank you. [LB580]

SENATOR DIERKS: Other questions for Rick? I guess not. Thank you very much, Rick. [LB580]

RICK KUBAT: Thank you. [LB580]

SENATOR DIERKS: Further proponents? I see one. Oh, opponents, I'm sorry. [LB580]

JON EDWARDS: Good afternoon, Senators. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm assistant legal counsel with Nebraska Association of County Officials. We are here today in opposition to LB580 and just as a practical matter from our organization's standpoint, there's been a lot of discussion about the standard of review and what that should be, so on and so forth. Obviously, there is a desire here to lower that standard or to make TERC more accessible to appeals on property valuations. And from our standpoint, we believe that the way the statutory structure is right now it gives great deference to the County Board of Equalization and it makes it a pretty lofty standard to get to TERC. And we believe if we lower that standard, obviously, it would then stand to reason that there will be more appeals to TERC which will ultimately raise the cost for the counties in terms of defending those increased cases at TERC. So just as a practical matter, from our standpoint, it does create that issue for counties, and I think...we've heard a lot of testimony about the standard and what it should be and what it means and I think at this point I'll just end my testimony there and... [LB580]

SENATOR DIERKS: Thanks, Jon. Questions for Jon? You got off scot-free. [LB580]

JON EDWARDS: I sure did. (Laughter) Thanks, Senators. [LB580]

SENATOR DIERKS: Other opposition? Is there anyone who wants to testify in a neutral position? Whenever you're ready, sir. [LB580]

WILLIAM WARNES: (Exhibit 5) Mr. Chairman and fellow members of the Revenue

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Committee, my name is Bill Warnes, W-a-r-n-e-s. And you can see that I learn from my past mistakes because I started off last time without even mentioning who I was. I am the current chairman of TERC. I commission with three other commissioners, and I want to clear the record. Three of us now are lawyers, but the statute only requires that two of us be, and I understand that. Now it seems like there is some common ground here. One, like the president said: we all love our country. Here, isn't the goal of TERC and the ad valorem process to get it right? That's what our goal is. And the goal is further defined by the fact that we're looking for the proper value. And we've learned that, Senator White, we don't want to go against him in court because of his trial experience. It's mostly Senator White's questions and ideas that I would love to address further, but you realize this is on the burden of proof. And I will, if you'll just let me make a couple of comments, though, about LB212 because, you know, like in Dancing with Wolves, some of this information that I hear hurts my ears. Now first, I want to be clear that I'm hoping that LB212 is that deferred method of handling mom and pop who don't know a thing about the law who need to come into an environment that is friendly. Remember, this is a voluntary...LB212 is voluntary by both the county and the taxpayer. Now, we're doing it voluntary as a first go-round. If we found that that was not going to work we'd have to change something. Secondly, this is not the trial. This single-commissioner hearing is not the trial level because there is no due process in the single-commissioner hearing. There's no record being made, there's no rules of evidence. If someone doesn't like the ruling that I make, if I'm the single commissioner, they just say, don't like it and within 30 days ask for the trial with TERC, with a panel of TERC. So I'm hoping that that's clear, because it really amounts to you don't have much to lose if you're a taxpayer going to the single-commissioner hearing, but you will have an order that will be issued. And you can either like it and accept it, or you can ask for a full hearing. The word appeal doesn't apply--it doesn't apply. There's no due process there; I'm the first one to admit it. Now, so you have a little confidence that this isn't something that I just created out of my imagination, this is one of the first rounds of Kansas's appeal process. People can choose to have a single-commissioner hearing and they call it--it's part of the small claims division, that's what they call it. And I thought of calling it this: expedited--meaning we can get you set down within three or four months if we have this option versus the way it is now--informal single-commissioner hearing. And that connotes what I'm trying to get done. Now are there some issues...now I listened to a couple of things here that I'm concerned about even with LB212. And they need to be addressed; there are some concerns there. But the standard of review, which means arbitrary and unreasonable, and the burden of proof, which means how high do you have to prove that--which is by clear and convincing evidence--that remains the same in a single commissioner hearing as it would in a full panel hearing because I would have no authority, nor would anyone in my commission, to change that burden. Now I want to point out something. Clear and convincing is not in the statute. That's kind of interesting, isn't it? Because the taxpayers reading 77-5016, paragraph 8, it doesn't say clear and convincing. Nor does he see the presumption. But where'd that come from? It came from the Supreme Court. It didn't come from Bill Warnes or Commissioner Wickersham

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or TERC. And you know, we're not in the policy making...whatever is the law is what we'll follow. Now I do have some concerns about changing the law that's been in existence for 50 years. And I itemized those for you--it's late in the afternoon, maybe you'll appreciate that I've itemized them, but there's nine items that I have addressed. And with my handout, you now have the rest of the story. You have the correct numbers. These numbers were just generated by our new program and basically, if you're handling a residential appeal and we hear it, you've got a 13.5 percent chance of winning. But please take into account the fact that when they come to us, we're not seeing the first of them being filed--we're seeing the very last cases after all the reviews have been attempted by the assessor, County Board of Equalization, with their protest. And the counties really should be given the pat on the back, of sorts, because they do settle a lot of their cases. They settle a lot of them. If you take the ones that are settled by the county and add to it the ones we hear and give relief, it comes out to there's almost 63 percent of them get a reduction. Commercial, it's even better than that as far as when we hear them--about a third of what when we hear a case--not quite: 30 percent, but there's not quite so many of them that are reduced on a confession of judgment. So with respect to the burden, look upon it like this. You're sitting as a County Board of Equalization which means the county board just putting on a different hat. That's what a County Board of Equalization is--same board members. Don't always have to have the same chairman, but they listen to the cases and they make a decision. Usually they're resting on the assessor's information. Now when that case gets to TERC, first you have a presumption that they're correct. Now wouldn't that be something if a governmental agency didn't have some presumption that what they did was right? In Douglas County, with 200,000 parcels, it is assumed that every one of them could be right, may be wrong. No, they have a presumption. And it's a presumption that the county board faithfully performed their duties and secondly, they had sufficient, competent evidence. Now that presumption can be rebutted and it's not what you just heard by Mr. Silver, God love him, I appreciated the compliment, but it only takes competent evidence. You know what that means? Just about anything. Well, it doesn't really mean that but TERC handles it like this: we don't direct out anybody. Everybody is allowed to go forward with their case. We have...so then if the taxpayer provides any evidence--I'm just going to tell you--when we hear the case, we then are looking to see: can they show by clear and convincing evidence that the value that was placed by the county is arbitrary and unreasonable? In other words, can they prove a different value? What happens too often in the cases we hear, and this is just a 101 primer: the taxpayer, instead of proving value, they turn to the county and disparage their information. That doesn't really help them. They need to turn and provide value. How do they do that? They provide comparable sales--sales of property that is comparable, so. Now here's what'll happen if the burden is reduced, and these are concerns I have--and I'm only providing them to you as concerns. There will be both a perception and a reality that it'll be easier to prevail at TERC. That's item two. Three, more appeals will likely be filed. Now that takes me in the wrong direction of what I'm trying to do which is hear appeals within the year, but whatever happens, happens. I

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want you to be aware that the Supreme Court has spoken on this case as recently as this last August with Brenner v. Banner County. Very, very strong language approving of the law that we follow. Of course that's what we follow: they change the law, or if the law gets changed by policy makers, we will follow that. Now here's an important issue. If you're sitting there as the county and the taxpayer does anything, and the burden has been reduced from clear and convincing--which I will tell you, that is a high burden. It gives great deference to the County Board of Equalization. But if that's reduced down to just simply preponderance of the evidence, or greater weight of the evidence--51 percent, what would you do as a county attorney? Would you sit there and not provide any evidence at all, regardless of what the taxpayer put on? No, you'd feel compelled to do something. And oftentimes now we have the counties resting at the end of the taxpayer's case when they thought they hadn't proved their case. Now what's that going to do? That's going to cause longer hearings and fewer cases that we set in here. It's a concern that we have. You've already heard that preponderance of the evidence is not a technical, legal term. But that's just dodging the bullet because it's close enough. It's greater weight of the evidence--that's what the civil jury instruction would use and that's what it means--in my opinion it does. So if the burden is reduced, the burden of proof for the standard of review of arbitrary and unreasonable, what you've done is you have taken away...you're not giving deference any longer to the county board and what they did. It will reduce it. And you will have, as Mr. Kubat said, I think he's right: there will be a lot of people advised that whatever happens at the county board, just go on to TERC. Which isn't all bad, but I mean, if we could handle the cases in a more expeditious manner. Now here's another thing I want you to be aware of, and this is maybe my second most important point I'm making. Right now, all you're talking about is reducing the burden of proof regarding one issue of many that TERC hears. You're talking about taxable valuation. You aren't talking about exemptions. You're not talking about even equalized valuation--equalized meaning I don't care what my property's worth, I can find a house down the street exactly like mine and it's not uniformly, proportionately valued to mine. That's what equalization means. And we always leave the evidence open in all cases for both issues. So you're now going to have two different standards if you reduce the burden on taxable valuation. I don't know if persons interested in exemptions...well, if you tried to do that with exemptions you'd probably have a lot of opponents. But you see, you will have two different standards here. And with that, what I've just given you, and the time of the day--because I love talking about this--I'd be open to questions.
[LB580 LB212]

SENATOR DIERKS: Okay, thank you, Mr. Warnes. Questions? Senator White. [LB580 LB212]

SENATOR WHITE: Thank you, Mr. Warnes. Let's start with evidence. If a homeowner comes in front of TERC, which is very magnanimous, you indicate, in keeping the record open, and testifies the value of my house is \$80,000--not the \$100,000 the assessor stated. Is that sufficient evidence to carry it to decision? [LB580 LB212]

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WILLIAM WARNES: Now we're talking in generalities here and I'd say... [LB580 LB212]

SENATOR WHITE: No, I'm talking very specific... [LB580 LB212]

WILLIAM WARNES: Okay. [LB580 LB212]

SENATOR WHITE: ...a very specific question and I hope for a very specific answer. A homeowner walks into TERC, testifies the value of my house is \$80,000, not the \$100,000 the assessor and the Board of Equalization say, is that sufficient to carry it to decision? [LB580 LB212]

WILLIAM WARNES: I want the committee to know that a homeowner can testify as to the value of their home, but they cannot testify to any other property beside their own property. Now is there any other evidence, Senator, that's going to be in front of the commission besides just that one piece of evidence? [LB580 LB212]

SENATOR WHITE: Well, the challenge is the Board of Equalization has \$100,000--that's in evidence, correct? Because it's on appeal? [LB580 LB212]

WILLIAM WARNES: Yes, according to you it is. [LB580 LB212]

SENATOR WHITE: Well, it's not, in TERC's normal standards? [LB580 LB212]

WILLIAM WARNES: Well, but what I want you to be aware of is we have the county's evidence, often, that starts right from the very beginning that's received, so we know what the county has for their evidence. [LB580 LB212]

SENATOR WHITE: Well, and that's what I assumed. But so now you have evidence the Board of Equalization says it's \$100,000, the homeowner says it's \$80,000. Is that enough to carry it to a decision? [LB580 LB212]

WILLIAM WARNES: I would say that's lacking. That's lacking in sufficient evidence. [LB580 LB212]

SENATOR WHITE: Now you understand that's counter to the level of evidence in the district court, though the district court might be more persuaded by the county's appraiser, they would be justified in believing the homeowner and not believing the county's evidence, and under ordinary rules of appeal and deference, they could easily and should be sustained. Do you agree? [LB580 LB212]

WILLIAM WARNES: Well, we know that all of the matters that TERC hears cannot be heard any other place. District court cannot hear them any longer. [LB580 LB212]

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SENATOR WHITE: But the...and one of the things you're so proud of, the 50-year-old law, that came out of the court system from a bunch of judges who didn't want to hear these appeals. [LB580 LB212]

WILLIAM WARNES: Now be careful, you're giving me credit for...you use the word magnanimous...I'm just reminding everybody that I'm not the one that created that law--that's the one I'm living with... [LB580 LB212]

SENATOR WHITE: I agree. [LB580 LB212]

WILLIAM WARNES: ...and we're all living with, okay? [LB580 LB212]

SENATOR WHITE: I know some of the people responsible for that law. (Laughter) [LB580 LB212]

WILLIAM WARNES: Well, well...(laugh) so I want to clear that up. Now, what we would like for a taxpayer--just to kind of answer your question on a practical basis--we know mom and pop's not an appraiser, we know they're probably not going to hire an appraiser, so what can they do? We're hoping that they will...you can go on the Web site now very easily in Douglas County or other counties, find other properties that are similar to yours, and get the property record cards and give them to us. I'll tell you what: they do that, they got a serious case. [LB580 LB212]

SENATOR WHITE: Exactly. But we don't have a system where there's a clerk or anybody early on to help them say do that; put this together; maybe put it in a computer program, put it in a simple letter. Nobody helps them do that. [LB580 LB212]

WILLIAM WARNES: Now, now Senator, listen: we have a pamphlet, we have an order, we have a handout. We tell them how to win at TERC. You know what, in my three years, I'm disappointed. We don't seem to have the taxpayers read our materials. [LB580 LB212]

SENATOR WHITE: You're not reaching them, are you? [LB580 LB212]

WILLIAM WARNES: You know, I have to tell you, in all honesty, that's a concern. It is. [LB580 LB212]

SENATOR WHITE: I have to tell you, in all honesty, the taxpayers don't like TERC. Believe me, they really are not satisfied with the system, based on what they tell me. Whether you're doing a good job or not, and that may be quite possible, the perception is that you are not. [LB580 LB212]

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WILLIAM WARNES: Now I'm hoping that LB212, if it was enacted, will give me, as one of the commissioners listening to these cases, a lot more flexibility because, just as an example, if I'm hearing a case with mom and pop and they don't know what to do, I'm going to be asking some questions. I'm going to be asking the county, let me see your assessor's report. Let me see the records you're bringing in here. And hopefully mom and pop will have something, and I'll try to see what we can do. I mean, but I don't want you to misinterpret. This is not mediation. There will be an order. [LB580 LB212]

SENATOR WHITE: One last question. You show, in 2007, 1,034 total cases filed, and yet Douglas County was in here, said they had 10,000 appeals from the Board of Equalization to TERC. There seems to be real... [LB580 LB212]

WILLIAM WARNES: All right now, now let me make a point. Because the last year I heard you say thousands and thousands of appeals. [LB580 LB212]

SENATOR WHITE: Did they testify in 2007? Did you hear the testimony that said there were 10,000 appeals in 2007? [LB580 LB212]

WILLIAM WARNES: Let me clear this up. Douglas County does have--they did two years ago--10,000 protests...protests. [LB580 LB212]

SENATOR WHITE: But they didn't (inaudible) appeals to TERC? [LB580 LB212]

WILLIAM WARNES: Oh, obviously, if we had 10,000 appeals to TERC we'd be swimming. No, those protests were all..if I remember two years ago, those 10,000 were weeded down to 5,000 and then they ruled on them, and only one property did they change anything on. And you might be able to guess what it is but I'm not even going to say it here, it's a public hearing. But the point is...it's a perennial case that we have every year, so. But the point is, these numbers are not complete in the sense that you're not going to have the total numbers that were filed for 2007 here. But what you do have is exactly...because everyone is owed knowledge of what has happened with TERC. You all know that. Now this is the first time we can accurately see it. If you would ask me I would guess that probably 20 percent of the taxpayers prevail; turns out it's 13.5, so that's what it is. But when you add the county's work to settle cases, that rises considerably, to 60 percent. That means they reached an agreement. Were they wrong initially in making...you know, I don't get into that, I noticed what you asked. The point is, are they getting it right finally? That's the question. [LB580 LB212]

SENATOR WHITE: Let's just really say what happens. You have a little old lady. She protests her taxes after the Board of Equalization, she tries to read your pamphlet--she can't, she calls a lawyer, lawyer says I'll charge you 1,000 bucks, she said, my taxes will only go up \$200 and she gives up. [LB580 LB212]

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WILLIAM WARNES: Okay. I don't have anything better than LB212 right now. And that's the best I can do. [LB580 LB212]

SENATOR WHITE: And I appreciate your patience and your answers. [LB580 LB212]

WILLIAM WARNES: No, no, I love talking about this business. [LB580 LB212]

SENATOR DIERKS: Senator Hadley. [LB580 LB212]

SENATOR HADLEY: Thank you, Senator. One quick question since we brought up LB212. Can the county say we don't want to have our case heard by the one? Because I think to myself, if I'm a county, the heck with it. Let's go to the full bore, because we have more rules, we have more...you know, it's harder--they're going to have to get an attorney. So I'm just going to say that I would think we might want a rule that says the taxpayer has the right to have a one... [LB580 LB212]

WILLIAM WARNES: Senator, if I had my way that's the way it would have been worded. But I'm using the voluntary standard because I thought initiating something new, that would be the best way to do it. But I hear you, and I said, if I had my way... [LB580 LB212]

SENATOR HADLEY: Well, I just think if I was a county official... [LB580 LB212]

WILLIAM WARNES: ...they would be a right to have it, because that'll give us--no one's asked, but if we had 1,000 cases heard by the single commissioners, we're not going to settle all of them. There's going to be some that still ask for the full hearing. But I'll bet it's going to be a high percentage. And I bet the recidivism on it won't be bad. There'll be some who will say, you know, do a dry run on us and then say I'll take the full hearing. But I checked with this down in another jurisdiction that's working this program and they tell me--I talked to three attorneys with their program--that no, they don't have very many. They mostly accept what the single commissioner has come up with. [LB580 LB212]

SENATOR DIERKS: Senator Louden. [LB580 LB212]

SENATOR LOUDEN: Yes, thank you, Senator Dierks. When you talk about the people that, you know, come with the TERC committee and they can go onto the Web site in Lancaster, Douglas Counties and get comparable sales on the residential and everything like that and bring that information forwards as...to make a case. What do you do about out here in these western counties where the ag land is and there's maybe, what, one-tenth of 1 percent of the land will be sold within 200 miles of an area and then you're supposed to find a comparable sale and you go from there, so how do we make a case when we do that? Unless we just literally complain that the county is

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valuing it too high? I mean, where are you going to go to find comparable sales to get anything like that? [LB580 LB212]

WILLIAM WARNES: All right, now, Senator, first off, my LB212 is addressing the main problem that we're facing right now: Douglas County residential. You're bringing up ag. The same principle is involved but I don't have the single commissioner's hearing, or suggest that they hear the ag and the commercial right now. Maybe, you know...but now, what would be the basic rules that you'd follow, you'd try to find land sales in the county--and I can almost guess what counties you must be talking about, but be that as it may--and if you can't find them there, you are allowed to go, you know, around in the other counties. You have to go where there is someplace to find a sale. [LB580 LB212]

SENATOR LOUDEN: Right, but the further away you go the more you get into a different kind of land... [LB580 LB212]

WILLIAM WARNES: I understand. [LB580 LB212]

SENATOR LOUDEN: ...or a different community or perhaps you get to where there's some big landowners that's buying land that joins them and they're paying more for it, accordingly, than if it was 100 miles away, or 50 miles away, so. I'm wondering how you can bring anything forwards to a TERC committee to build a case for yourself. I've been there once or twice myself, and this is what happened. When we did bring this forwards, why then they throwed it out because it wasn't a comparable sale. But where do you go to find a comparable sale with like land that you have? [LB580 LB212]

WILLIAM WARNES: All right, first off I hope you appreciate that TERC didn't guess at things. If they don't have comparable sales, they don't support the taxpayer. That's just what you would expect, I hope, from professionals. Well, if we don't have something that gives us a basis to show that we've got a new value that we should be using here, we wouldn't guess at it. And the other thing is, you're pointing out a difficult problem in certain parts of the state, okay? With ag, other types of land. And I only can give you that one explanation that I gave you. Now I guarantee you that if an appraiser was hired...and I'm not saying that I want to encourage that that has to happen, but you can be sure an appraiser will find some land that he can compare it to. [LB580 LB212]

SENATOR DIERKS: Senator White. [LB580 LB212]

SENATOR WHITE: All right. Wait a minute, if there isn't a comparable sale, that means the county assessor's guessing. Or, if you can't establish it, there's no value. [LB580 LB212]

WILLIAM WARNES: Hey, hey, hey and... [LB580 LB212]

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SENATOR WHITE: No, now wait. Don't try to be... [LB580 LB212]

WILLIAM WARNES: No, that's right. No, no, I'm saying you're right. And you don't think I'd catch that? [LB580 LB212]

SENATOR WHITE: Well... [LB580 LB212]

WILLIAM WARNES: You don't think I'd realize that? [LB580 LB212]

SENATOR WHITE: Well, except in Senator Louden's case you threw him out of court because he couldn't establish a comparable sale. And yet you're saying well, we throw you out of court because you can't establish it. Well, that means that whatever the assessor's doing can be completely arbitrary and you're not going to do a darn thing about it. And there are other ways to value land in the absence of comparable sales and they're well recognized in law. [LB580 LB212]

WILLIAM WARNES: Well, I'm basically agreeing with you, so (laugh) I'm not picking an argument on that. [LB580 LB212]

SENATOR WHITE: I mean, if you don't have a comparable sale you look at what will it produce in the way of economic return? [LB580 LB212]

WILLIAM WARNES: You're looking at an income method. [LB580 LB212]

SENATOR WHITE: Yes. [LB580 LB212]

WILLIAM WARNES: All right. And you know, you're not wrong, but typically in ag land there will be sales. But there are times where it probably is very difficult, and I think you've hit on something that's a very difficult issue there. I don't have all the answers for that, okay? I just don't. [LB580 LB212]

SENATOR DIERKS: Other questions? [LB580 LB212]

SENATOR CORNETT: Just real quick, I just want to clarify that none of these bills deal with ag land, specifically. [LB580 LB212]

WILLIAM WARNES: I know. [LB580 LB212]

SENATOR CORNETT: Okay. [LB580 LB212]

SENATOR DIERKS: I think we've tested you to the max. [LB580 LB212]

WILLIAM WARNES: All right. And I want the committee to know that if you ever have

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any questions about TERC and the business of TERC, I am the chairman--I will be for another year--but the other commissioners also are very interested to try to answer questions if we can for you, okay? And this update was designed so you'd have a real catchup real quick where we're at, so. [LB580 LB212]

SENATOR DIERKS: Thank you very much. [LB580 LB212]

WILLIAM WARNES: Thank you. [LB580 LB212]

SENATOR DIERKS: Other neutral testimony? Would you like to close, Senator Cornett? Senator Cornett waives closing. Well, that closes the hearings for the day, folks. [LB580 LB212]

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Disposition of Bills:

LB212 - Held in committee.
LB213 - Held in committee.
LB553 - Held in committee.
LB580 - Held in committee.

Chairperson

Committee Clerk