

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

Revenue Committee
February 01, 2008

[LB778 LB864 LB897 LB989 CONFIRMATION]

The Committee on Revenue met at 1:30 p.m. on Friday, February 1, 2008, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB778, LB897, LB864, LB989, and gubernatorial appointments. Senators present: Ray Janssen, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Carroll Burling; Abbie Cornett; Chris Langemeier; Don Preister; Ron Raikes; and Tom White. Senators absent: None. []

SENATOR JANSSEN: Good afternoon, Ladies and Gentlemen. Welcome to the Revenue Committee. I will introduce the members of the committee who are here today. My name is Ray Janssen, I'm from Nickerson, Nebraska; and to my far left is Senator Don Preister from Omaha; and next to him is Senator Carroll Burling; next to me on my immediate left is "Cap" Dierks; to my right is Senator Chris Langemeier; and Senator Raikes; Erma James is the committee clerk; George Kilpatrick is the committee counsel. One thing I would...Senator White will be along shortly, I'm sure, and Senator Cornett. One thing, and I know you've heard it a thousand times, please turn your cell phones off while you're in the hearing room. I hate to single someone out and have you ejected from the room because your telephone was on. This isn't the Transportation Committee, this is the Revenue Committee. Sign-in sheets for testifiers are on tables back by both the doors and they need to be completed by everyone when you come up to testify. If you're testifying on more than one bill, you need to submit a form for each one. Please print and return the form prior to coming up to testify. When you come up to testify, hand that sheet to the committee clerk, Erma, over on my right. There are clipboards in the back of the room that if you do not wish to testify, you can just leave that sheet here, indicate your support or your opposition of that particular piece of legislation. We are not going to follow the agenda as posted on the door; we will go back down to the bottom, we have the people who are up for confirmation to the TERC board that are here today and so we will...the Property Assessment and Taxation board. So we...Senator Pirsch has graciously let us take those people first, and then we'll follow the agenda after that. So we will begin the afternoon with the confirmation hearings. We will take Ruth Sorensen, Rob Hotz, Nancy Salmon, and William Wickersham. So, Ms. Sorensen, are you ready? [CONFIRMATION]

RUTH SORENSEN: I am ready. [CONFIRMATION]

SENATOR JANSSEN: Thank you. Welcome. [CONFIRMATION]

RUTH SORENSEN: (Exhibit 1) Thank you. Good afternoon, Chairman Janssen and members of the Revenue Committee. I am Ruth Sorensen, S-o-r-e-n-s-e-n, and I appear before you today to ask for confirmation of my appointment as a Property Tax Administrator for the state of Nebraska. First thing about myself: I was raised in New Hampshire, where I began my professional career in banking, which lasted

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

Revenue Committee
February 01, 2008

approximately 13 years. In 1992, I moved to Nebraska to attend the University of Nebraska College of Law, receiving my juris doctorate in 1994. (Microphone scratches) I'm sorry, can you hear me? Since law school, I've worked in both public and the private areas of law, and for a few years I worked as an attorney for the Department of Revenue. Then, from 2003 to 2007, I was employed as an attorney for the then Department of Property Assessment and Taxation. Last year in April 2007, I was appointed and confirmed to the Tax Equalization and Review Commission. This was a short-term appointment, as I was then appointed to the Property Tax Administrator position, effective August 2007. Throughout my legal career, I've been involved with various real and personal property matters and issues. Since 2003, I have been actively involved with the assessment and measurement of property in the state of Nebraska. Specifically, the Property Assessment Division of the Department of Revenue oversees the assessment function in 9 counties, and works closely with the remaining 84 counties ensuring compliance with the Nebraska constitutional and statutory requirements of property evaluation. It's this experience that I bring to the Property Tax Administrator position. I look forward to continuing to work with the county officials and property owners of the state of Nebraska and continuing to fulfil the duties and requirements of the Property Tax Administrator position. With that, I ask for your confirmation of my appointment as Property Tax Administrator and I can take any questions that you may have of me. [CONFIRMATION]

SENATOR JANSSEN: Thank you, Ms. Sorensen. Are there any questions? Senator Langemeier. [CONFIRMATION]

SENATOR LANGEMEIER: Thank you, Chairman Janssen, and thank you, Ms. Sorensen. I appreciate your testimony and coming forth today. When property tax administration and the Department of Revenue was merged, it was my understanding that this position of Property Tax Administrator was eliminated or was not filled at that time. Where do you see your role at this new...I should say, where do you see this role at this new merger? [CONFIRMATION]

RUTH SORENSEN: My role in this new merger is to oversee the Property Assessment Division of the Department of Revenue, and I do report to the Tax Commissioner, Doug Ewald. But it is still statutorily...a statutory position and it is appointed by the Governor and confirmed by the Legislature. [CONFIRMATION]

SENATOR LANGEMEIER: Okay. Thank you. [CONFIRMATION]

RUTH SORENSEN: Sure. [CONFIRMATION]

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

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

Revenue Committee
February 01, 2008

RUTH SORENSEN: Great. Thank you very much. [CONFIRMATION]

SENATOR JANSSEN: Rob Hotz? [CONFIRMATION]

ROB HOTZ: Good afternoon, Chairman Janssen, members of the Revenue Committee. My name is Rob Hotz. I was appointed by Governor Johanns to the Tax Equalization and Review Commission this past August. Prior to that time, I had been in service in state government and a number of state agencies from the Public Service Commission to the State Treasurer's Office, State Auditor's Office, the Attorney General's Office, over a period of years. I am an attorney; I've been in practice since 1994, both in public and private practice. I've had some experience even in the Legislature as a legislative aide for a couple of different senators. I would appreciate a confirmation; I feel like it's a pretty good fit for me to be working at TERC, and I would appreciate your support in that endeavour. I'd be happy to answer any questions you may have. [CONFIRMATION]

SENATOR JANSSEN: Any questions? Ron. [CONFIRMATION]

SENATOR RAIKES: I will correct you: I think it was Governor Heineman, probably. [CONFIRMATION]

ROB HOTZ: Did I not say Governor Heineman? (Laughter) [CONFIRMATION]

SENATOR RAIKES: You mentioned the fit with you and TERC. What is it about your experience and collection of expertise over the years you think will be helpful in your duties as a TERC commissioner? [CONFIRMATION]

ROB HOTZ: One of the things that has been helpful, I hope, already is that I had some experience in other state agencies that has helped (phone rings)... [CONFIRMATION]

SENATOR JANSSEN: Excuse me just a minute. Telephones? Apparently did not take heed. I'm sorry for the interruption, Rob. You go right ahead. [CONFIRMATION]

ROB HOTZ: No problem. As general counsel, legal counsel, in other state agencies, it has been helpful as I've helped with some of the administrative role of TERC. The legal background, both in administrative law and constitutional law, which typically are required in any role you have as counsel to a state agency, that's very helpful in working in any state agency. And I feel that I have been helpful as an attorney being able to work through the legal issues and sometimes the complexity of...I've tried to learn quickly and it is a challenge. The TERC statutes and the case law relating to the TERC statutes sometimes can be very complicated, and I feel like I've tried to work hard at getting up to speed quickly. [CONFIRMATION]

SENATOR RAIKES: Okay. Thank you. [CONFIRMATION]

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

Revenue Committee
February 01, 2008

SENATOR JANSSEN: Any other questions? Senator Langemeier. [CONFIRMATION]

SENATOR LANGEMEIER: Thank you, Chairman Janssen and Mr. Hotz, thank you for your testimony. What are the biggest issues kind of to face TERC in the future? [CONFIRMATION]

ROB HOTZ: The most pressing practical issue right now, I think, that the commissioners would say is that we've had an increase, a surge in appeals filed in the last year or two. And in the last several years, there seems to be a trendline where the number of appeals statewide has increased significantly; 2007 appeals spiked quite a bit, so that's a pretty practical, that's a practical challenge that we have. I think otherwise dealing with the legal issues and dealing with as there are changes in the law, staying atop that. And frankly trying to do as well as we can with an agency really that is just barely older...you know, hardly more than a decade old. In dealing with all of the things that any state agency that's created, there are a lot of things to work out where you may have critics, you may have those who don't think the system works. I think we've...my observation is we've attempted to make some strides towards being responsive to those concerns. [CONFIRMATION]

SENATOR LANGEMEIER: You've talked a lot about reviewing the statutes and the statutes that form TERC. What in your experiences allows you to have some knowledge in evaluation of properties? [CONFIRMATION]

ROB HOTZ: Prior to coming to the commission, I did not have any specialties in being an appraiser or in being an attorney who practiced in that area. What I would bring would be as an attorney who worked in state government and in private practice where I have tried to be intellectually honest with statutory schemes and understand the rules of construction in relation to how TERC would have to make decisions based on what the statutes say. [CONFIRMATION]

SENATOR LANGEMEIER: One more, I'll ask you. Thank you, you've done a great job. What do you think the role is between TERC and Property Taxation and Assessment? [CONFIRMATION]

ROB HOTZ: We don't have any "joined at the hip" role. They are two separate executive branch agencies, the Department of Revenue now having... [CONFIRMATION]

SENATOR LANGEMEIER: I guess, how do you see the relationship together? I know the structure. [CONFIRMATION]

ROB HOTZ: The statewide equalization function, which I haven't personally gone through yet that is coming up here soon, where I think we will be working on a function,

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

Revenue Committee
February 01, 2008

the statewide equalization function, in a way that evaluation and equalization cases and appeals, we don't have any direct contact with that agency. Statewide equalization we will, but I haven't experienced that yet. [CONFIRMATION]

SENATOR LANGEMEIER: Okay. Thank you. Good luck. [CONFIRMATION]

SENATOR JANSSEN: Tom. [CONFIRMATION]

SENATOR WHITE: I have gotten, as a senator, more complaints about TERC than any other agency that I have anything to do with on any committees. Properly or not, fairly or not, many of my constituents perceive TERC to be fundamentally broken. Would you cooperate in efforts to try to find statutory solutions, administrative solutions, to address those concerns if you're confirmed in this? [CONFIRMATION]

ROB HOTZ: Yes, Senator White. I'm the first up today and the newest member of TERC, and so...but I'm not dismissive at all of those concerns that I've heard and the concerns that the commission has, you know, that we've discussed. "Fundamentally broken" is a pretty strong phrase. I, as an individual member of the commission, am committed to the extent that TERC may be broken, I'm committed to helping make it work right. [CONFIRMATION]

SENATOR WHITE: You will work with the members of the committee and others in efforts to improve it? [CONFIRMATION]

ROB HOTZ: Yes, sir. [CONFIRMATION]

SENATOR WHITE: Thank you. I appreciate that. [CONFIRMATION]

ROB HOTZ: You bet. [CONFIRMATION]

SENATOR JANSSEN: Any other questions? I don't see any. Thank you very much. [CONFIRMATION]

ROB HOTZ: Thank you, Senator. [CONFIRMATION]

SENATOR JANSSEN: Nancy Salmon? [CONFIRMATION]

NANCY J. SALMON: Salmon, very good. Just like the fish. [CONFIRMATION]

SENATOR JANSSEN: Just like it sounds or not like it's spelled, but just like it's supposed to be sound. All right. [CONFIRMATION]

NANCY J. SALMON: (Laughs) Good afternoon, Chairman Janssen and members of the

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

Revenue Committee
February 01, 2008

Revenue Committee. My name is Nancy Salmon and I appear before you today to ask for your confirmation to my appointment at the Tax Equalization and Review Commission. Governor Heineman has appointed me as the representative from the 3rd District. I was born and raised in Hamilton County, attended Grand Island School of Business, and was an office manager of a medical clinic in Aurora for approximately 11 years. In 1982, I was appointed as the Deputy Hamilton County Assessor, and in 1990, I was elected as the assessor and served in that capacity for approximately 17 years. I'm a Nebraska certified residential appraiser and as the Hamilton County assessor, had appraisal duties. My responsibilities as county assessor and appraiser included measuring and valuing real and personal property, processing exemption applications, working with various tax programs such as your tax increment financing, certifying valuations to the political subdivisions, and filing the statutorily required reports to the Property Tax Administrator. Many of my duties included involvement with the Hamilton County property owners and also the Hamilton County Board of Equalization. I served on the NACO Board of Directors as the representative for the assessors on the legislative committee. I was the president of the Nebraska Assessors Association in 1998, and the vice president in 2007, and I also served for 6 years on the (inaudible) Board of Directors. As county assessor, appraiser, and a member of these boards, I've gained considerable experience, which includes understanding the importance of statewide equalization, a practical working knowledge of real and personal property evaluations, and the ability to evaluate the testimony and exhibits offered by taxpayers and county officials at appeal hearings in a fair, objective, and impartial manner. I have the confidence and the skills to perform the duties as a commissioner, and I ask for your confirmation as a commissioner on the Tax Equalization and Review Commission. Thank you. If you have any questions, I'd be happy to answer them. [CONFIRMATION]

SENATOR JANSSEN: Thank you. Senator Preister. [CONFIRMATION]

NANCY J. SALMON: Yes? [CONFIRMATION]

SENATOR PREISTER: Thank you, Ms. Salmon, for appearing today...
[CONFIRMATION]

NANCY J. SALMON: Yes. [CONFIRMATION]

SENATOR PREISTER: ...and for serving, and your credentials certainly seem appropriate. My question to you is, has the downturn or the change in the economy regarding houses and the valuations of houses had an impact on the TERC rulings, and if so, how? [CONFIRMATION]

NANCY J. SALMON: As you know, I began in July and at this situation, we have pretty much been seeing 2006 valuations, so I can't really answer that question at this point.
[CONFIRMATION]

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

Revenue Committee
February 01, 2008

SENATOR PREISTER: Okay. [CONFIRMATION]

NANCY J. SALMON: I'm sure that maybe in 2007 as we start to see the appeals. I'm not sure what we will see. And I think it's different in every county. I'm not sure every county in the state of Nebraska is having a downturn, but. [CONFIRMATION]

SENATOR PREISTER: Okay. Thank you. [CONFIRMATION]

NANCY J. SALMON: Thank you. [CONFIRMATION]

SENATOR JANSSEN: Any other questions? Senator White. [CONFIRMATION]

NANCY J. SALMON: Yes? [CONFIRMATION]

SENATOR WHITE: I asked a similar question, whether or not TERC has any problems, certainly people have repeatedly expressed to me that they believe it does. Will you help cooperate in efforts to try to improve the climate of TERC and its ability to serve the citizens of this state if you're confirmed in this position? [CONFIRMATION]

NANCY J. SALMON: Yes, that is really one of my intentions I'd like to see. As a county assessor, I believe I've had the experience working with property owners. As you know, they come in...and you get valuation notices, you understand how they feel...and I think that I can bring that to the board, I really do. [CONFIRMATION]

SENATOR WHITE: Thank you very much, ma'am. [CONFIRMATION]

NANCY J. SALMON: You're welcome. [CONFIRMATION]

SENATOR JANSSEN: Any other questions? Seeing none, thank you for being here today, Mrs. Hotz (sic). [CONFIRMATION]

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

SENATOR JANSSEN: Or Mrs. Salmon, all right. Yeah, yeah. Okay, the fourth one is William R. Wickersham and he's in his chair. [CONFIRMATION]

WILLIAM R. WICKERSHAM: Mr. Janssen, members of the committee, my name is Bob Wickersham. I currently serve as a commissioner on the Tax Equalization and Review Commission. I was appointed to that position in May of 2002 by Governor Johanns. I have been reappointed by Governor Heineman. Prior to service on the commission, I had...well, I'm not quite sure how many years, something over 30 years of experience with the assessment system and the valuation of real and personal property. I would be

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

Revenue Committee
February 01, 2008

happy to try to respond to any questions that members of the committee might have.
[CONFIRMATION]

SENATOR JANSSEN: All right. Are there any questions? Chris. [CONFIRMATION]

SENATOR LANGEMEIER: Senator Janssen, thank you and thank you, Mr. Wickersham, for coming forth today. I asked a couple questions, I'm going to ask the same ones. What do you think the biggest issues are facing TERC? [CONFIRMATION]

WILLIAM R. WICKERSHAM: I would generally agree with the assessment of Commissioner Hotz that they can be divided into two areas. One is the practical issues that are confronting us. We have an extremely large caseload for...derived from filings in the year 2007, something like 1,800 cases. As a practical matter, the commission can hold hearings in slightly over 300 of those cases, simply due to time constraints. So if we're to have a timely disposition of appeals, and I think the commission feels strongly that an appeal that is more than a year old would not be timely decided, we have to figure out something. Now the commission cannot and would not, of course, tell people that they should withdraw their appeals. We can't tell counties to settle them. But there's going to have to be the development of some kind of a process to deal equitably and fairly to all the parties with the mismatch between 1,800 appeals that we have to hear, and the reality that we can only hear about 300 of those. Now, the other issue that I think confronts the commission and continues to...has always, in my opinion, confronted the commission apparently still confronts the commission, is as much as anything the issue of expectations. And quite frankly, I sometimes am at a loss to understand how we could meet everyone's expectations. But I understand that people have those expectations. We're anxious to hear about what their expectations are. And if it is possible, either within the law or within the resources of the commission, meet those expectations. [CONFIRMATION]

SENATOR LANGEMEIER: Thank you. To build on that, you've kind of taken me a different direction here, to build on that, what, in your idea, can we do to make this process more timely and a more fair manner to handle this? [CONFIRMATION]

WILLIAM R. WICKERSHAM: Well, in 2001 or I'm sorry, in 2005 the commission ran a pilot mediation project in Douglas County. We knew that that had to be a pilot project. It was entirely funded with state dollars that the commission had received as an appropriation. We sent letters to about 114 residential property owners in Douglas County. Something over 89 of those cases, of those appellants decided to participate in mediation; 84 of those cases were settled. We proposed a like program in the year 2006, but on a cost-share basis; no one was willing to share in the cost. We're prepared to offer a mediation program again for the year 2007 appeals that we'll be hearing in 2008. That would have been a cooperative effort with the Department of Revenue. So far, again, we have not had any county that said that they would be willing to participate

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

Revenue Committee
February 01, 2008

in the program. Of course, Senator, I don't know what your knowledge or experience with mediation is, but you can't force people to mediate. Well, I guess you can if it's in family law because I understand there's forced mediation in dissolution actions. But there's nothing in the statutes that would force appellants to the commission to participate in mediation. Now, and frankly I'm not sure that that would be advisable as a matter of law to mandate that. Mediation is probably not a fit in all cases. And it is probably the parties to the case, not the commission, that would have a better idea whether mediation would be an appropriate way for them to attempt to resolve their dispute. But given that, the pilot project was very, very successful, both in terms of the disposition of cases on a timely basis and, from what we understood, from the interviews of the persons who participated. The taxpayers liked it. They thought it was more informal. In fact, I think if, to just be candid about it, I think it is more what they expected out of the commission. But it is something that the commission really can't deliver because, you know, if you participate in a mediation session, nothing is evidence in a later proceeding. There is no formalities required in a mediation session. All that is required, as I understand it--and I'm not a mediator--is frankly the people will talk to each other. Now that's a very easy process. It is one that does not require the kind of formality in terms of swearing in witnesses, in terms of having your testimony recorded, in terms of having to make rulings on exhibits that you would find at a commission hearing. So the mediation process, I think, met people's expectation--if I can characterize it as that--of an informal and taxpayer-friendly environment. Now we think that the county also found the mediation process rewarding because as we understand it, they thought they obtained greater cooperation from the taxpayers in that mediation setting than they do when they're preparing for a hearing in front of the commission. Now a primary piece of cooperation for either a commission hearing or a mediation session from the counties' perspective, at least as I understand what they're concerned about, is oftentimes an inspection of the property. They want to go out and verify that their records are correct. If their record says you have a 2,000-square-foot house and you're claiming you have an 1,800-square-foot house, they probably want to go out and check. Well, some taxpayers, for whatever reason, deny the assessors access. In the mediation process, it was our understanding that the taxpayers felt much more comfortable allowing the assessor access than they may feel comfortable doing if you come to the commission. So those were aspects of...but that was what was reported to us, Senator. And I hope I haven't mischaracterized what somebody reported to us. [CONFIRMATION]

SENATOR LANGEMEIER: Thank you for that answer. If TERC was designed to be a friendly step for all parties to proceed prior to going to a court system, and you've just said mediation has worked successfully, would you support legislation that made TERC more like mediation if, in fact, what you just said that all people were...expectations were met? [CONFIRMATION]

WILLIAM R. WICKERSHAM: I do not think that the commission could...the commission

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

Revenue Committee
February 01, 2008

or members of the commission could properly act as mediators. The commission's decisions are...remember, mediation is an agreed settlement. What the commission produces is a settlement based or is a resolution based on evidence presented. It's not going to be satisfactory to both parties. It is the direct opposite of a mediated settlement that is agreed to by both parties. [CONFIRMATION]

SENATOR LANGEMEIER: My question is not whether you would want to mediate. My question is would you work with the committee to create TERC in a more friendly atmosphere to make it more like a mediation system as a primary step?
[CONFIRMATION]

WILLIAM R. WICKERSHAM: Senator, if we could do something to "make the TERC proceedings less formal," I would certainly do that. [CONFIRMATION]

SENATOR LANGEMEIER: Thank you. [CONFIRMATION]

WILLIAM R. WICKERSHAM: I certainly would. But, Senator, in all candor at the moment, I frankly do not know what that would be. Our decisions are not agreed settlements. They are the result of evaluation of the evidence and the applicable law and they're reviewed by the Court of Appeals or the Supreme Court. We have to produce a record that those courts can review and that record has to meet various standards. Witnesses have to be sworn or it's not deemed to be evidence. You have to make rulings on exhibits that are offered. You have to make rulings on testimony that is objected to. I don't know of any other way to do it. If somebody can suggest how else to do it, I'll be happy to hear about it and to experiment if that's what's required. But at the moment, Senator, I'm confounded by the requirement that we produce a record that can be reviewed by a Court of Appeals or by the Supreme Court and protect the rights of the parties in the proceeding. [CONFIRMATION]

SENATOR LANGEMEIER: I guess that tips on my concerns is I'm fearful that we don't put people on committees...on commissions that don't have the vision to see the problems within that agency and have an idea how to fix them. That's where my concern lies. [CONFIRMATION]

WILLIAM R. WICKERSHAM: Well, Senator, I sat on this committee in 2001 and I sat on this committee in 1996 when the commission was formed. In 2001, my personal assessment was that the commission wasn't meeting my expectations. I was chair of this committee. We had an extensive interim study. And we, at that time, put into statute the provisions that allowed for the use of referees. That was the precursor of the language that was changed in 2005 so we could use mediators. I understood even then that however it was operating or whatever the constraints were on it that the commission was not meeting my expectations. It wasn't meeting...Senator White, wasn't meeting the expectations of my constituents either, the same problem. When I went to

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

Revenue Committee
February 01, 2008

the commission, I still knew that those problems existed. But I also, at that time, had a much better knowledge of the operations of the commission due to the interim study that we conducted, the testimony that we'd heard, the investigation that we'd made. And, Senator, if you want to characterize it as lack of vision, a lack of imagination, however you want to characterize it, I'll confess I didn't have it and I still don't. That's the reason if somebody else is willing to suggest how to cut through that knot of preparing a record for a court and protecting the rights of parties, I'll be happy to do it. But I...if you want me to do it, right now just sitting here, I can't. [CONFIRMATION]

SENATOR LANGEMEIER: Thank you for your very good testimony. Thank you. [CONFIRMATION]

SENATOR WHITE: You have how many appeals last year, Commissioner? [CONFIRMATION]

WILLIAM R. WICKERSHAM: The appeals that were filed in 2007 were about 1,800 in number. [CONFIRMATION]

SENATOR WHITE: And the max you can hear is 300, so you're going to be 5 years behind at the end of working hard all year if you have no appeals filed this year. [CONFIRMATION]

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

SENATOR WHITE: Have to do something. [CONFIRMATION]

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

SENATOR WHITE: And you'll work with us to try to find a solution? [CONFIRMATION]

WILLIAM R. WICKERSHAM: Absolutely, sir. And we... [CONFIRMATION]

SENATOR WHITE: That's all I needed to know. Thank you. [CONFIRMATION]

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

WILLIAM R. WICKERSHAM: All right. Thank you very much. [CONFIRMATION]

SENATOR WHITE: Thank you. [CONFIRMATION]

SENATOR JANSSEN: We're going to open up for comments, anyone who would like to comment on any of the appointees to the commission. Is there anyone that would like to

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

Revenue Committee
February 01, 2008

speak for any one of the commissioners or all of them? Seeing none, thank you. And that ends the confirmation hearings and we will go to Senator Pirsch as LB778. Welcome to the Revenue Committee, Senator Pirsch. [CONFIRMATION]

SENATOR PIRSCH: Thank you, Chairman. [LB778]

SENATOR JANSSEN: Your first time here, isn't it? [LB778]

SENATOR PIRSCH: It is. It's the maiden voyage, yeah. [LB778]

SENATOR JANSSEN: Yeah, maybe your last. (Laugh) No. [LB778]

SENATOR PIRSCH: (Laugh) Well, thank you very much, Chairman Janssen, for your welcome and members of the Revenue Committee. My name is Pete Pirsch, I represent District 4 in Omaha. I'm the sponsor of LB778. LB778 changes the provisions relating to property tax assessment and equalization. Essentially LB778 would simply expand the valuation protest period from 7 to 13 weeks. I think this is the very least that we can do for the taxpayers of Nebraska. The greater part of this expansion is at the beginning of the process. The change notices will be mailed May 10 instead of the current June 1, and the protest period would begin May 1. LB778 accomplishes this by requesting an earlier completion of the initial valuations and shortening the equalization process. LB778 adds 16 days to the end of the process by eliminating county petitions for class or subclass adjustments. This is similar to the current process in larger counties and this bill would make that procedure automatic and general. As I mentioned, I think this really is the least that we can do for the taxpayers of Nebraska. You know, as I was going around talking to the people in my district as I was campaigning door to door, it became very crystal clear to me the number of repetitions from people I heard who had sustained valuation increases that were very material, double digit, even in some instances 70 percent of the value of their house were added in 1 year and even over. And of course that is a cyclical thing, but that is...and may not happen every year, but it will happen some years, perhaps. And so I think that given these profound increases, and we're talking about sums of dollars then that just greatly and materially affects Nebraska families and their quality of life. We're talking about people's homes. These are not things that they can do without and they, like I said, these are core to their lives, and so. Many individuals in my district and throughout the state of Nebraska lead busy lives. They travel, both for pleasure but also for work, trying to earn a living and they have busy family lives as well, kids in school, a number of draws on their time that are just core. Many are elderly or have...many of the elderly get to that point in age that their faculties are such that they have problems understanding the significance of that which they receive in the mail, their new valuation. And even if they do understand what the significance of this piece of paper that they've received is, many of them have little clue what to do about it or you know, and so it takes them a longer while to process, I think, those types of understandings and judgments about what to do. And so I think this really

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

Revenue Committee
February 01, 2008

is the least that we can do to help those people, to give them a realistic chance, and that's the problem. I heard that comment quite a bit. Boy, I, you know, I came back from my trip and, you know, found this thing. I just didn't have the time to get to it, even though it was a market amount of money that raised and even though I deeply disagree with it. And I think that it's a wrong process that we would utilize if we say, well, we keep this process so short because we know that there is a feeling among a lot of people that this is, that the results are wrong, so we need to artificially limit this to such a short period so that we don't...we've built a system of review that can only process so many per year, and so we should limit and so that not all who feel that they've aggrieved by this can have a say-so in that. And so that is one of the...you know, I just think that that's a bad way to approach it, so I think there are other more sweeping and profound and revolutionary changes that have been suggested and will be suggested. This is a very modest proposal in the total spectrum of those types of changes and I think the least we can do for the taxpayers. So I look forward to working with the committee and other stakeholders in this area to achieve great things with this bill. My purpose in bringing this forward is to start the dialogue about...with those stakeholders to see if we can't move towards this goal of being more fair with people who are being so greatly affected. And so I thank you for your time here today. [LB778]

SENATOR JANSSEN: Thank you, Senator. Any questions? Chris. [LB778]

SENATOR LANGEMEIER: Thank you. It's my understanding that Douglas County had somewhere between 8,000 to 15,000 appeals of their value this year. Do you think changing the dates...and they did nothing with them because they couldn't, they just couldn't...by changing the date, do you just have more people if they need more time, just to put their name into a pool of nothing? [LB778]

SENATOR PIRSCH: I guess what you're saying is, and I just ask for clarification of your question, is your question such that you believe that for the most part what the population of 8,000 to 15,000 who do appeal, is your question, do you believe that everybody who would be appealing by the large numbers appears to have appealed or is the question that there might be problematic to allow more people to appeal? [LB778]

SENATOR LANGEMEIER: If the dates truly are the hindrance for more to file, like you had suggested... [LB778]

SENATOR PIRSCH: Yes. [LB778]

SENATOR LANGEMEIER: ...my fear is if they aren't handling the ones they have now, even if we expand the date, they get more they do nothing with... [LB778]

SENATOR PIRSCH: I see that point, and I do totally understand that point, as I think the prior hearing prior to this bill coming forward had testified, there's a...right now the

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

Revenue Committee
February 01, 2008

system envisions a certain number of slots per year that you can process. And that system is being vastly overwhelmed and so the concern is, I think if I understand it, to add more volume onto that high number would even more vastly overrun the system and back it up potentially for years, correct? I mean, so... [LB778]

SENATOR LANGEMEIER: I think so. I'm not sure I followed you, but I'm with you, okay. [LB778]

SENATOR PIRSCH: Okay, okay. Well, I, let me... [LB778]

SENATOR LANGEMEIER: Thank you. Thank you. [LB778]

SENATOR PIRSCH: Yeah. I...well, I'm sorry... [LB778]

SENATOR LANGEMEIER: You lost me. But that's okay, that's okay. [LB778]

SENATOR PIRSCH: I'm just trying to understand the question. But I guess towards that, if I do understand it correctly, I have no problems whatsoever if the committee wishes to address that problem as well, which is, how do you set up, establish a different process that more, it's more of these complaints can be addressed per year. This, I think, would run separate and apart. Whatever that decision is by the committee, I just think from an ethical standpoint that when you're talking about Nebraskans and such great dollars, that that consideration should not be artificially imposed. I think what the committee should be striving for is to be fair with the people and to give them when you have such large changes and such material effect on their life, an adequate amount of time such that they can appreciate what's going on and have a fair chance amidst their busy lives to have a chance to appeal that. And so I think that's a separate and apart, and if the system doesn't now encompass that, then I think that we should change the system so it does encompass that. [LB778]

SENATOR LANGEMEIER: I guess that's my fear is if we change the dates to say, that's going to help you get this process, and then still nothing happens. [LB778]

SENATOR PIRSCH: Yeah. [LB778]

SENATOR LANGEMEIER: We've given them kind of false hope with the date that it...enough, thank you. [LB778]

SENATOR PIRSCH: Right. And this doesn't operate in a vacuum, I understand that. [LB778]

SENATOR LANGEMEIER: Right. [LB778]

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

Revenue Committee
February 01, 2008

SENATOR PIRSCH: And that is one of the concerns that you on Revenue Committee will undoubtedly have to take up. [LB778]

SENATOR JANSSEN: Senator Preister. [LB778]

SENATOR PREISTER: Thank you, Senator Janssen. Senator Pirsch, I guess it's kind of a follow-up to Senator Langemeier's conversation. Have you had communications with the Douglas County Assessor or the Tax Commissioner to see how this might impact their current processes? [LB778]

SENATOR PIRSCH: You know, I...since filing the bill, I have not been contacted by the Douglas County Assessor or the...oh, I'm sorry. [LB778]

SENATOR PREISTER: No, my question was, have you contacted them? [LB778]

SENATOR PIRSCH: Right, and that was my second sentence. [LB778]

SENATOR PREISTER: Okay, I'm sorry. [LB778]

SENATOR PIRSCH: I have not contacted them. Through the means of this introduction, I had hoped to spark those conversations to, as I said, begin the process of the dialogue. I think that ultimately that there's going to be testimony here today and that it is the committee's duty or should be the committee's duty to listen to those responses and to determine whether or not there's...and I'll be here as well listening to those, and I think that there is going to be ultimately room for compromise. I'm suggesting that we extend it about six weeks at this point. If there are certain concerns and considerations, you know, I'd be very...you know, my whole approach is one of compromise and if there's legitimate concerns and reasons behind not being able to extend it out that far, then I'd be more than willing to do that. So it's a beginning of a dialogue, I guess. [LB778]

SENATOR PREISTER: Okay, and I appreciate your sensitivity to the taxpayer. I'm just...does the horse go before the cart or the cart before the horse? And my approach is always to go the people who can impact things first and to see what can be accomplished or to see where the compromise is. I think I'm hearing you saying you got their attention, you bring the bill, and then they'll come forward and then maybe we can have the dialogue. [LB778]

SENATOR PIRSCH: Yeah, I think it's very important. I don't mean to suggest that we move forward without having that knowledge and I look forward to working with, as I said, all stakeholders. [LB778]

SENATOR PREISTER: Thank you. [LB778]

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

Revenue Committee
February 01, 2008

SENATOR JANSSEN: Abbie. [LB778]

SENATOR CORNETT: Pete, I think...and I don't mean to put words in Senator Langemeier's mouth, but the problem we already have, and we've discussed this in among ourselves, is the fact that the taxpayers currently in Douglas County are not having a hearing. They do not have any way to vocalize their protests. They're filing them and nothing is being done with them because of the number of filings for a protest. By opening up that time period further, all we're going to do is compound the problem that we already have that we don't have a solution for yet at this time. And that's something we're working on. So, I mean, in my estimation, until we find a way to deal with the tax protests, the last, I mean, the last thing we need to do is have more protests because you're just going to have more people that aren't going to have the right of due process. [LB778]

SENATOR PIRSCH: Um-hum. Well, I certainly appreciate those comments and I think they probably do a fairly...well, I don't want to put words in the mouth of Senator Langemeier, too...but I think that that probably echoes some other concerns, and so I'm glad that you brought them out. As you mentioned, no hearing is currently because of the sheer numbers in Douglas County right now. And I agree with you, if you're looking at the system as it currently, I think the way to approach this is this: Let's not be wedded to the structure of the past. Let's be open to what is fair in the abstract and if the current system doesn't allow for fairness, let's not be, you know, wedded to it just because historically we were wedded to it. And I think that...I'm open to this just as one facet as part of a wider type of dialogue or wider reforms. But I think if you are looking at others, it's important to put this on the table, too, that you should consider fairness in the abstract if you do consider a new structure and that would include, I believe, having an appeals process. And I'm not commenting on what that structure is or if it's...but I am saying that in the abstract, I think that the people of Nebraska with such a large, when you just think about in the abstract, humongous changes in cost, a lot of people are living at the margin as it is. I just think that in the abstract we had better have a system in place that will allow for people to have adequate notice of that, understanding of what that is, and a fair opportunity then to appeal that. And I understand that within the constricts of the current, you know, system, that the system is struggling as it is with the current procedure in place to process those cases. And I know that you're going to be...this committee has had been working towards finding a solution towards that, including, as I think was mentioned at the prior hearing, possibly less formal types of approaches to that. My only comment to that is, as you're looking at these alternatives, as a piece to that, also consider looking at this fairness argument when it comes to people being able to understand and appeal their property valuations because it does affect their life so drastically. [LB778]

SENATOR JANSSEN: Any other questions? I don't see any more. Thank you, Pete.

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

Revenue Committee
February 01, 2008

[LB778]

SENATOR PIRSCH: Thank you very much. [LB778]

SENATOR JANSSEN: Are you going to stick around to close? [LB778]

SENATOR PIRSCH: I'm going to waive my closing here, so thank you. [LB778]

SENATOR JANSSEN: Okay, all right. Do we have any proponents? Any proponent to LB778? There we go. [LB778]

SHAUN JAMES: Good afternoon, Senators. My name is Shaun James, I am an attorney from Omaha, Nebraska, and in the last year I represented approximately 60 property owners, primarily commercial property owners, who appealed and protested their property valuations. I am here in support of this bill and would like to lend particular support to the extension of the time periods for property owners to get information, to get supporting documentation for their protests, and to make those appeals to the local county boards. I have worked over the summer with various committee members and your respected legal counsel here on some of the issues that are presented in this bill. And one of the other issues that I'd really like to lend support on is the idea that all of this will become electronically available to taxpayers. My experience in Douglas County primarily is that the information was not available and we have even in two cases lost protests that we could not properly then appeal or work with the local county because information was not available. I'm sorry I'm a little scattered on this position right now, but I do want to recommend that the time periods be extended and that this is a very good legislation that I'm here in support, and I would be happy to answer any questions that you may have. [LB778]

SENATOR JANSSEN: Senator Raikes. [LB778]

SENATOR RAIKES: Yes. Was the lack of...in the 60 cases you dealt with... [LB778]

SHAUN JAMES: Um-hum. [LB778]

SENATOR RAIKES: ...was the lack of time to submit the protests a problem? [LB778]

SHAUN JAMES: It was in a large portion of them, especially in Douglas County. And the reason for that is that the county limited to a 2-week period with a very small number of opportunities to meet with actual referees. And so we were not able to pull together the information and meet appropriately, and to provide that information so that we would receive a fair hearing before the final determination of the board. An extension of the time would allow property protesters better access to not only the County Assessor's Office and the referees, but an opportunity to cure a lot of the problems that then carry

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

Revenue Committee
February 01, 2008

on into the TERC. One of the examples I think you were given earlier is like a residential property owner who has a 1,800-square-foot house that's listed at 2,000 square feet, that's an administrative error that can be cured up early if we have enough time in the protest process to address it. [LB778]

SENATOR RAIKES: But in a way, this was...there were a limited number of opportunities to meet with the referees. [LB778]

SHAUN JAMES: Correct. [LB778]

SENATOR RAIKES: And you're assuming if you widen that, you, say you double it, you double the number of opportunities to meet with the referee. [LB778]

SHAUN JAMES: To meet with the referee and/or to put together sufficient information that referees could then review on their own, the referees don't have adequate time either to review this information as it is. They're overwhelmed with huge numbers of the protests at the county level. [LB778]

SENATOR RAIKES: Well, okay. At minimum, you get the valuation number. [LB778]

SHAUN JAMES: Um-hum. [LB778]

SENATOR RAIKES: How long do you need before you meet with the referee in order to put together whatever you need to put together? [LB778]

SHAUN JAMES: If I had a single property tax...property owner that I was dealing with on that, the minimum would be four weeks in order to hopefully get an appraisal done and be able to meet with the referee. When you're talking about large numbers--and that's if you can get an appraiser to do it--when you're talking about larger numbers, that time period needs to be expanded, and a lot of these property owners come to us with multiple properties that each have specific issues that need to be addressed. So I would say at a minimum, I would like to see the March 12 deadline rather than the March 15 deadline and I would also like to see it extend into September, if at all possible. [LB778]

SENATOR WHITE: Counselor, thank you for coming. Do you understand that the counties have a real time problem on the other side? [LB778]

SHAUN JAMES: I do indeed. [LB778]

SENATOR WHITE: They cannot set their budget, they don't know what their tax base is, they cannot function as a government unless these things resolve. We cannot just push the time back because then the counties will not be able to budget and they won't be able to function. I know you're representing your clients and their interests, but for a

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

Revenue Committee
February 01, 2008

moment can you tell us what could we do to find common ground between your clients' interests and the counties' needs to know what their budget is so they can prepare to govern for the next year? [LB778]

SHAUN JAMES: I would be willing to work with this committee and any subcommittee that you would like to put together to try and reach a resolution on that. It is important that our counties be able to properly budget, and it is important that the individual taxpayers have the appropriate opportunities to be fairly represented and have their properties fairly valued. Immediately off the top of my head, Senator, I don't have an answer to that, but I would work towards a resolution. [LB778]

SENATOR WHITE: Thank you very much, Counselor. [LB778]

SHAUN JAMES: Um-hum. [LB778]

SENATOR JANSSEN: Chris. [LB778]

SENATOR LANGEMEIER: One question so I have this correct. You talked about four weeks for one individual. [LB778]

SHAUN JAMES: Um-hum. [LB778]

SENATOR LANGEMEIER: Does the state limit the individuals to file or does it limit the number of cases that you could represent because there's not enough time to get them all in? [LB778]

SHAUN JAMES: Right now with the notices coming out in May... [LB778]

SENATOR LANGEMEIER: Okay. [LB778]

SHAUN JAMES: ...and the deadline for protests between June 1 and June 30, it makes it difficult for me personally as an attorney to properly represent all of my clients that do have this issue. And the importance of having--and I don't want to sound self-serving--but the importance of having an attorney involved early in the process is when you get to the TERC, if you get to the TERC, you have to have set that record so adequately that you can overcome, and I know you have a bill later in the day that you're looking at on this... [LB778]

SENATOR LANGEMEIER: I'm going to fix that as soon as you're done. [LB778]

SHAUN JAMES: (Laugh) You have to overcome that burden of proof, and so you have to have set a proper record. A lot of the taxpayers that do this on their own and can get it done in four weeks may not have the appropriate record below in order to take it up to

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

Revenue Committee
February 01, 2008

the TERC level and actually get a satisfactory result. [LB778]

SENATOR LANGEMEIER: Okay. Thank you. [LB778]

SHAUN JAMES: Um-hum. [LB778]

SENATOR JANSSEN: Any other questions? Seeing none, thank you. [LB778]

SHAUN JAMES: Thank you. [LB778]

SENATOR JANSSEN: Any other proponents? [LB778]

RANDY LENHOFF: Chairman, my name is Randy Lenhoff, spelled L-e-n-h-o-f-f, and I'm with Seldin Company in Omaha. We have a large number of properties we manage in Omaha. And I've been in the business since 1977 managing properties in Lincoln and Omaha, and I can tell you that this year was the most frustrating year I ever had in trying to protest our property taxes. We had very little time. I filed the protest, I didn't get a hearing with anyone, I didn't get a meeting with a referee because a referee told me he was inundated, he didn't have time. So I feel like at this point just about every one of ours is going to the TERC because we're hoping somewhere we're going to get a hearing. Extending the time, I think, is very important. I think Senator Pirsch has come up with a good idea. We need more time in Douglas County. We get 15,000 protests filed, you got to give the taxpayers time to come in and put their side out before you. And I don't know how else to do it unless we have more time. I mean, to turn around...I was told if I didn't have them in by June 15, I wasn't going to get a hearing, so I rushed and got down as many as I could. I still didn't get a hearing on those that I got in before June 15. So it's a real problem, and it is broke, and there needs to be a fix. I think all three of these bills today are all good ideas. This is a good start. Thank you. [LB778]

SENATOR JANSSEN: Questions? Tom. [LB778]

SENATOR WHITE: Boy, have I heard your... [LB778]

RANDY LENHOFF: I'll bet you have. [LB778]

SENATOR WHITE: The same issue, though, is, do you have any suggestions on how we can accommodate your, what I think is a constitutional right, to have the protest heard at least, and the counties need to have a predictable property base to budget from. You got something for us? [LB778]

RANDY LENHOFF: Well, you know, and I...and maybe I oversimplify things sometimes, but I think one of the things that need to happen is the counties need to be more accommodating to this responsibility. I mean, my feeling was that the county probably

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

Revenue Committee
February 01, 2008

didn't have enough people on payroll as referees or they would have been able to hear our protests. That's their obligation and I think the counties need to be held accountable to do that. And if that means they're going to raise that many taxes, they should prepare for it. I mean, when I know...I work in property management, that's what I do...I mean, when I know I've got a roof to replace, I've got to plan for it, and I've got to have the money there to do it. I don't think anybody was surprised with the large amount of increases that were coming through the county this year. It shouldn't have been that big a surprise. I really think it points back the county just didn't budget enough money to handle the numbers that are coming in. And as a taxpayer, I expect to have a hearing. I think I have a right to that, I should be able to get it. [LB778]

SENATOR JANSSEN: Any other questions? Abbie. [LB778]

SENATOR CORNETT: When you say the counties didn't budget for it, those hearings are heard by the county board, correct? [LB778]

RANDY LENHOFF: Well, they're not doing it in Douglas County anymore, but I would have at least liked to have met with a referee who was the appraiser that the county hired to go over my information. I didn't even get that this year. [LB778]

SENATOR CORNETT: Okay, fair enough. I was going to say, it's just in Douglas County when it's heard by the county board. There's no way you can budget for more...I mean, there's limited number of people set. [LB778]

RANDY LENHOFF: Right, and I understand that. And that's, that's...I understand that part of it, but...and maybe I didn't say it right, but what I'm trying to say is that they should have had more referees available to meet with all the taxpayers. [LB778]

SENATOR CORNETT: That's fair. [LB778]

RANDY LENHOFF: And they didn't. [LB778]

SENATOR CORNETT: That's fair. [LB778]

SENATOR JANSSEN: Tom. [LB778]

SENATOR WHITE: Could you live with a system, for example, that might, as a suggestion, propose that if the county doesn't have the resources to give you the hearing, they shall extend the time to go ahead and have hearings until everybody gets a hearing, they don't get a property tax basis until they've met that obligation, something that might be flexible? [LB778]

RANDY LENHOFF: Yeah, that would be fine. I just think there needs to be some

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

Revenue Committee
February 01, 2008

pressure there that they give us a hearing. [LB778]

SENATOR WHITE: So in other words, if the county wants to belly up and pay for enough referees, they get their...they get to go forward with their property base for that year, earlier rather than later? [LB778]

RANDY LENHOFF: Yeah. [LB778]

SENATOR WHITE: Some middle ground... [LB778]

RANDY LENHOFF: Yeah, I'm fine. [LB778]

SENATOR WHITE: ...that the businesspeople in Omaha could work with that? [LB778]

RANDY LENHOFF: Sure. Yes. [LB778]

SENATOR JANSSEN: Senator Langemeier. [LB778]

SENATOR LANGEMEIER: We're making good time here, so I'll ask one more question. You said you work in Douglas and Lancaster County. Are you still doing both right now? [LB778]

RANDY LENHOFF: We manage some properties in Lancaster, but not near as many. We're mostly in Douglas County. [LB778]

SENATOR LANGEMEIER: I was just going to ask if you could give us some comparisons to how that happened, what your experience was this year in both counties and maybe you can't. [LB778]

RANDY LENHOFF: Well, I can tell you that we're out in Grand Island, I can't think of the county name out there, but... [LB778]

SENATOR LANGEMEIER: Hall. [LB778]

SENATOR JANSSEN: Hall. [LB778]

RANDY LENHOFF: Hall County, right. And we had a protest out there. We protested, went in, had our hearing, and it was taken care of in a timely manner. And that's what I expect, and that's what we are in other counties across the state, and I usually...Douglas is where I'm having the most problems right now, I can absolutely tell you that. [LB778]

SENATOR LANGEMEIER: Thank you. [LB778]

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

Revenue Committee
February 01, 2008

RANDY LENHOFF: Um-hum. [LB778]

SENATOR JANSSEN: Senator Cornett. [LB778]

SENATOR CORNETT: Back to Douglas County, and we've discussed this among ourselves... [LB778]

RANDY LENHOFF: Sure. [LB778]

SENATOR CORNETT: ...in regards to the amount of protests filed in Douglas County. If you couldn't have a hearing, you would be...what would you think would be an appropriate... [LB778]

RANDY LENHOFF: Well, that is the problem with this. I mean, a lot of times assumptions are made, there's a lot of errors, and I guess... [LB778]

SENATOR CORNETT: Because it concerns us and we've been talking about it, but... [LB778]

RANDY LENHOFF: Right. [LB778]

SENATOR CORNETT: We looked at the number of tax protests and if you looked at it that, say for instance a county board... [LB778]

RANDY LENHOFF: Right. [LB778]

SENATOR CORNETT: ...could have met every day for I think it was five years, and they still wouldn't have heard all of the hearings. [LB778]

RANDY LENHOFF: I understand. Yeah, and I understand that problem and I've come to accept the fact I'm probably not going to get a hearing before the county board because of the numbers, but I'd sure like to have a meeting with the referee to have a conversation with him. [LB778]

SENATOR CORNETT: So if we set up a system where there was a step to...I don't want to use the word "weed out," but... [LB778]

RANDY LENHOFF: Um-hum. [LB778]

SENATOR CORNETT: ...to examine the protests and see which ones had validity or not, and then send those with validity on to a hearing? [LB778]

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

Revenue Committee
February 01, 2008

RANDY LENHOFF: That would be helpful. I also think mediation is an excellent idea, I heard that mentioned earlier. I think that, you know, over the years it seemed like when I protested we had a chance to present to a referee and typically a hearing back when Douglas County was still having it, and most...I mean, I only had two cases prior to this year that I took to TERC. Right now I think I've got over 20 sitting there because I've got owners that are that upset with the fact that they haven't gotten the chance to voice their, you know, voice their opposition to what they think is an unfair value. And I think that that's part of the problem here. [LB778]

SENATOR JANSSEN: Seeing no other questions, thank you for being here. [LB778]

RANDY LENHOFF: Thank you. [LB778]

SENATOR JANSSEN: Next proponent, please. [LB778]

BILL PETERS: Mr. Chairman and members of the committee, my name is Bill Peters, Suite 320, 411 South 13th. I'm appearing here in an individual capacity in support, at least of the concept, of this legislation, and to add some more detailed experience from Lancaster County. That's where the bulk of my experience is, though I do have Omaha experience, probably different ballots. All of this cannot be solved by statute, but the real positive improvement is to try to get as much time for the county to take action. I think you should be real cautious in crowding the levy date anymore. But if we pick up even 20, 30 days at the front end, that's more opportunities. This is not going to solve all of the problems. Part of the problem can only be solved by the county. In Lancaster County, we have referees as long as it takes and they get done by August 10, even when we have a, you know, a substantial reappraisal. There's no cutoff imposed by Lancaster County. A taxpayer can appeal during the month of June. You don't have to rush in there by the 15th in order to get your appeal filed in order to talk to a person. I think...so more time will help. Lancaster County is going back to an old system and that is, I don't know if you've noticed, but they're mailing notices to taxpayers as we speak for informal conferences so that the people can come...know what's going to happen, and they can come in and talk to the taxpayer. This system works. It worked tremendously on mass reappraisals in the state of Nebraska during the 1960s and early 1970s. I think you'll get some good experience, but in the meantime, more time will give the counties an opportunity to work under the system. And quite honestly, there are cases that a referee shouldn't be probably expected to handle in my opinion, some very big complex commercial properties. I simply tell the taxpayers, you know, we have this procedure that we got to go through the form in Nebraska, so we'll protest, we'll waive our hearing, they'll turn us down, and then we'll have time to come in with an appraisal and visit. We talk about the number of cases filed at TERC. That's not necessarily a meaningful number because we know on some big cases that we file it so we have more time to meet with the assessor's office and for the county and the taxpayers to get together. Not all those cases have to go to trial, but you can buy yourself another three

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

Revenue Committee
February 01, 2008

or four months, and that resolves a lot of cases. It's really a matter of time. So I would support this bill, at least on the front end of giving more days to be just a step. It's not a cure, but it will certainly help. And then, I think, at some point certain size taxpayers are going to have to work with the assessor ahead of time or after the county board. And that would conclude my observations. [LB778]

SENATOR JANSSEN: Ron. [LB778]

SENATOR RAIKES: Bill, you said there are notices going out now in Lancaster County to property owners? [LB778]

BILL PETERS: Yes. [LB778]

SENATOR RAIKES: What is the nature of these notices and to which... [LB778]

BILL PETERS: Valuation increases, 4,000 of them. This is not a mass appraisal, it's their pickup in additional work. The purpose of these notices is to advise the taxpayer...and I haven't gotten one yet...but it gives the taxpayers a date that if you want to talk with the assessor's office to go over this, make, you know, call and make an appointment, appraisers from the assessor's office will sit down with the taxpayer, review the issue, and they'll still have their opportunity come June; they'll get a formal notice, a second notice that's the one that you appeal to the county board. The better thought is to identify those mistakes, you know, the 1,800 instead of the 2,000 or vice versa or that perhaps by the taxpayer coming in, they won't be happy, but they'll understand that this is what the law requires. We used to do that regularly. [LB778]

SENATOR RAIKES: "We" being Lancaster... [LB778]

BILL PETERS: The state and the counties. When we'd have a mass reappraisal of the county, I approved 65 of them in my tenure, and in those appraisals, everybody got an informal notice and got a chance to meet with the appraiser before the county board took place. [LB778]

SENATOR JANSSEN: Tom. [LB778]

SENATOR WHITE: So what this says is that basically the appraiser's office says, this is what we're thinking about doing, you want to talk? [LB778]

BILL PETERS: Right. [LB778]

SENATOR WHITE: It gives the taxpayer a chance to lobby or talk to the appraiser's office before they come to a determination, doesn't crowd the county board on setting their budgets. [LB778]

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

Revenue Committee
February 01, 2008

BILL PETERS: Correct. [LB778]

SENATOR WHITE: Boy, this just has too much common sense in it, doesn't it? [LB778]

BILL PETERS: Especially from an assessor's office, (laugh) but it's our assessor. Well, the common sense is it sure cuts down on their work. [LB778]

SENATOR JANSSEN: Any other questions? Thanks, Bill. Next proponent? Any more proponents? No. Any opponents? [LB778]

DAN PITTMAN: Good afternoon, Mr. Chairman and members of the Revenue Committee. My name is Dan Pittman, P-i-t-t-m-a-n. I'm the Sarpy County Assessor and I represent NACO in opposition to this bill. And this is a perfect time for me to speak because you've heard a lot of testimony about how to fix the problem and this bill suggests changing dates, which I would be against because the dates as they are for at least Sarpy County work very well. There was just testimony about a proactive assessor getting more involved with seeing the problem he has coming with a lot of protests and getting the word out to the property owners sooner, which is what had happened evidentially in Lancaster County from this last testimony. This is something that assessors in the bigger counties should do. Sarpy County has settled the majority...I don't want to say "settle" because it's not the right term...actually come to some agreement on valuations because property owners have come in, have looked at the records online, have called us in advance or have taken our...have responded to our prompts to come talk to the county assessor and go through their records, make any material changes to the record that might be an in error, and come to some agreement on value. I have some numbers, and now Sarpy County does not have the type of protests and numbers that Douglas County does. We had 655 protests; 376 of those never went to protest because they came to the County Assessor's Office. We went through the record with them. We talked about the different physical characteristics to value, and we were able to come to terms with the value. Oftentimes it was just something on the record that was incorrect that we worked with the property owner, did a physical inspection, and fixed it. And that's the way to do it because, you know, the old garbage in, garbage out, we cleaned up the garbage in front and it never came to protest. Now, I do know from my experience of being an assessor--I'm on my third term--that many times that property owners will want to have their hearing before referee, feeling they're going to get the fairer treatment. They don't want to talk to the assessor; the assessor has already exposed his value to them and is wrong. But if they will come talk to us, we have a wonderful opportunity to clean that record up and get the value right, which will carry on into each following year because the data on the record is correct. Any time during the year, we're able to share market information with property owners because we keep that up to date. Sarpy County is fortunate in the sense that they're able to put their values out on the Internet, that we can put our sales on the

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

Revenue Committee
February 01, 2008

Internet. We can transfer that information in electronic fashion; now, a lot of counties can't. What I'm hearing basically is this is a problem peculiar to Douglas County, and it is the biggest county in our state, so I can understand that problem. The problem Roger Morrissey has up there is much bigger than mine. And so I really can't even get my mind around what he is trying to do up there because he has such a large tax base. But I would really hate to see these dates change, especially on the front end where we have to report our values earlier. We are just scraping by right now working overtime trying to get all of our depreciation tables built, and get our new values in some type of form that could be sent to the printer so these values can be sent out to the property owners. So moving that timeline up in the front is not helpful to us at all. Expanding the protest period keeps the assessor's focus on the protest, being there for the referee and for the Board of Equalization to answer questions, and then meet the taxpayers as they come to our counter. And we're not able to get out in the field and measure houses and do the pickup work and do the type of stuff that appraisers typically do to stay current on what's happening with all the properties in Sarpy County. So I, you know, wasn't going to testify on Senator Prisch's bill because we have another one coming up that's very similar that expands on that a little bit, but some of this testimony is very good and was...not only is this fresh in your mind, what that testimony was, I just wanted to go in and put my 2 cents in about the way I see it from the administrative end as a county assessor. [LB778]

SENATOR JANSSEN: Questions? Chris. [LB778]

SENATOR LANGEMEIER: Chairman Janssen, thank you, and thank you for stepping up. It's a good feedback behind the other testimony. How easy is it to look at your data when you, before you go to print, and you still got it in your computers? How easy is it to look at your data and sort out...if I said sort out all your properties that had valuations change more than 20 percent? Could you do that? [LB778]

DAN PITTMAN: Well... [LB778]

SENATOR LANGEMEIER: And I know you've not done it, so maybe you don't know, but would that be possible? [LB778]

DAN PITTMAN: Well, it would be toward the end of the process in March before you'd have to report those values, before we'd have everything done. Of course, we could run a query on that database and say, okay, what's gone up more than 20 percent? But that would be a little bit later in the process; it would be just before the notices would have to go out on June 1. So I'm speaking in the case of Sarpy County. [LB778]

SENATOR LANGEMEIER: I'm just...the reason I ask is if we said we want you to send out notices by May 1 for all evaluations that changed more than 20 percent. [LB778]

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

Revenue Committee
February 01, 2008

DAN PITTMAN: Um-hum. [LB778]

SENATOR LANGEMEIER: I know you don't like the move up... [LB778]

DAN PITTMAN: Right. [LB778]

SENATOR LANGEMEIER: ...but do you think it would be possible? [LB778]

DAN PITTMAN: It would be something we could look at. It might be possible. [LB778]

SENATOR LANGEMEIER: Okay. Thank you. [LB778]

SENATOR JANSSEN: Any other questions? Carroll. [LB778]

SENATOR BURLING: Thank you for coming today. Do you or NACO know how many counties in the state have the electronic capabilities you talked about? [LB778]

DAN PITTMAN: You know, I don't have the number. I can tell you that the majority of counties, I believe, have a Web site. My concern is, I think many of the counties don't have the ability to reach into their computer system, mass appraisal system, capture that data, and put it over into the Web site. And I wish I had the numbers for you and maybe another representative from NACO would know that. But I see that as being a problem. I am just sure out of 93 counties that there are going to be a majority of them that don't have the capability that, you know, Sarpy, Lancaster, Douglas has of reaching in there, grabbing that information, and putting in on display. So I would say, you know, I really don't know. [LB778]

SENATOR BURLING: Okay. [LB778]

DAN PITTMAN: But I would say the majority just don't have that capability. [LB778]

SENATOR BURLING: Okay. [LB778]

SENATOR JANSSEN: Any other questions? Seeing none, thank you. [LB778]

DAN PITTMAN: Thank you for your time. [LB778]

SENATOR JANSSEN: Any other opponents? Anyone in a neutral capacity? [LB778]

WILLIAM C. WARNES: Senator Janssen, members of the Revenue Committee, my name is Bill Warnes. I'm the new chairman of TERC. The...by the way, the conversation is very interesting. Time is of the essence in valuations, but I'm here to just make one point, and that has to do with statewide equalization. TERC will get done whatever it is

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

Revenue Committee
February 01, 2008

asked to do, at least it will die trying. But currently we have through May 15 with a starting date after March 15 to do equalization. The way we do it is we run 93 counties through in a week. That sounds like a lot, but with the preparation we do and the division of responsibilities, we get it done. This LB778, we've gone through and looked at the calendars, will reduce the number of working days that we have to do this process from excess of 24 now to 16 in 2 years and 17 in the other 2 years. Now, everybody wants extra time, but when you pull back the date for us to give final notice from May 15 to April 25...and by the way that's the same in LB897 which you're going to hear next, so there's no improvement there that way...but the difference between the two bills on working time is that the LB897 will start March 12. So I just want you to be aware because, as Senator White has pointed out, this equalization process has got to occur first before we can certify the values out to the counties. And just so you know, the way we do it is we take a few days after the preliminary, excuse me, after the reports and opinions come to us, I've already gotten the preliminary reports, but we really can't look at them and do much with them because there's so many changes that will occur. I've got two years doing this, so, I mean, I've got two years worth of experience, and not that that makes me an expert, but I've watched this now two years in a row. Then we do five days of hearings, working days of hearings. We do 93 counties in 1 week, but we have to then call back counties that aren't meeting the level of assessment. In other words, they're not in compliance or they're...might not be in compliance. And we have to give them five days' notice for a show cause hearing. Two years ago, we had 19 counties that we brought in out of the 93, and last year we brought back 12, and there weren't that many that were ordered to make any changes, but that's the number of show cause hearings we had to have. And then it takes us about five days to get the orders out after we have the show cause hearings. So you can see that I would make a pitch for 20 days plus, if I could make the pitch, if I can make that point, but I understand all of the criteria and all of the constraints that are going on here, so I just want you to take into mind statewide equalization. It's very important. Any questions? [LB778]

SENATOR JANSSEN: Questions? Chris. [LB778]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. I don't really have a question, but I've talked to all, the whole TERC board here today, so I thought I would make some comment. Thank you. [LB778]

WILLIAM C. WARNES: Well, you're going to get to hear from me more in a minute. [LB778]

SENATOR LANGEMEIER: I'm sure we will. [LB778]

WILLIAM C. WARNES: But the answer to the questions that were asked is yes, to Senator White, all of the commissioners are willing to look at improving the performance

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

Revenue Committee
February 01, 2008

and the appearance and perception of TERC. I am very concerned with it. I am the trained mediator that has been appointed. I have met with Douglas County regarding their 1,200 appeals from this last year. I am working and have deficit funding, at least tentatively approved, for mediation for not this year but the following year coming out of basically our cash fund from TERC. We just need as many people as possible to encourage and create another level with TERC appeals which includes mediation, a much softer approach, an approach that has as its main value discretion. See, when a case comes to TERC and I'm listening to the case with the other commissioners, we don't have much discretion, it's just something you have to understand. We're operating off the rules, regulations, and the statutes. That doesn't mean we don't get to make our own judgment on things, but you understand what I'm saying. I would love to see a leveling in TERC that relates to mediation. And we had it set up for this year using the Department of Revenue to do mediation and we were going to send them 1,000 cases, 850 would have been from Douglas County, and we're working on trying to see if we can still do that. So it's a new thing, new things cause issues with people, but I am totally motivated to do that because I think it's what people expect. And face it, the fewer number of cases that we have coming to TERC, the better off. So if there's more time that can be provided for protest hearings, that's better for TERC. So I am not against the concept here. I just want you to be aware of the need for a time for statewide equalization because I think that's considered by most people of one of the important things TERC is doing. Okay. [LB778]

SENATOR LANGEMEIER: Thank you. [LB778]

WILLIAM C. WARNES: You bet. [LB778]

SENATOR JANSSEN: Other questions? Seeing none, thank you. [LB778]

WILLIAM C. WARNES: All right. Thank you. [LB778]

SENATOR JANSSEN: Anyone else in the neutral capacity? Seeing none, that...I think Senator Pirsch did waive closing, so that ends the hearing on LB778. And I have the next bill, I'll turn the chair over to Senator Dierks. [LB778]

SENATOR DIERKS: Go get them, Tiger. (Laughter) We will now open the hearing on LB897 by the Chairman of the committee, Senator Janssen. Whenever you're ready, Senator Janssen. [LB897]

SENATOR JANSSEN: I'm always ready. I'm not always capable, but I'm always ready. [LB897]

SENATOR DIERKS: Always ready. [LB897]

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

Revenue Committee
February 01, 2008

SENATOR JANSSEN: For the record, my name is Ray Janssen, representing Dodge County, 15th Legislative District, here to introduce LB897. In 2007, the Revenue Committee introduced LB114 to study the protest process before the county board of equalization. A couple of bills introduced last session questioned whether or not their current process was fair to the taxpayers. This particular bill mentions three specific...or LB114 mentioned three specific questions: Number one, what should the county process consist of? Number two, should there be a record maintained of the county proceedings? And three, what should the county board provide by way or training, procedure, and transcription that would assure a fair process? In the alternative, should the TERC be given more resources to assure a fair original process? If taxpayers do not always receive a fair review, at least three factors could help explain why: First there is so little time to hear protests. The deadline for protests is June 30 and all protests must be resolved by July 25. Larger counties may act to extend the date to August 10, but that still means that there are only 40 days between the protest deadline and the deadline for resolving these protests. County board members work part time and have other business to attend to during that time. Second is expertise: County board members are not required to be trained in appraisal and no special training is provided. Third is politics: Elected county board members may be more concerned about the needs of individual voters than industrial or commercial taxpayers. Even if this is not true, the appearance may be inescapable. The committee staff met with numerous interested parties throughout the interim to discuss the process outside the box. That process generated a proposal to expand greatly the length of time counties have for handling protests and replacing the county board of equalization review with an initial review by the county assessor instead. This committee met and discussed LR114 in November. In addition to those ideas, we discussed possibly replacing a county board review with a state aid protest system. We discussed using technology to make sure a state-operated system operated conveniently and extensively in all areas of the state. This bill does a little of all of this. It steals ideas from everyone. Most of the LB897 is committed to make the date changes to provide more time for reviewing protests. This bill would shorten the time available to do an initial assessment, perform intercounty equalization, rectify values, and file protests to accommodate a longer protest period. Under LB897, March 12, the county assessors would complete the initial assessment of all real property in the county, complete the abstract and forward it to the Tax Equalization and Review Commission for purposes of intercounty equalization. Currently, this date is March 19, so this would accelerate this deadline for county assessors by a week. March 28, the Property Assessment Division provides its reports and opinions of the level of value. Currently, this date is April 10, so this change creates 6 more days for the review process. March 28 to April 25, the Tax Equalization and Review Commission performs the intercounty equalization process. On April 25, the TERC would issue its orders to the counties, if any. Currently, this takes place between April 7 and May 15, so this proposal would begin the process 1 week earlier and shorten it by almost 2 weeks. May 1, the counties recertify the abstract and post all values on the Web site so they would be available to any taxpayer. The Web site

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

Revenue Committee
February 01, 2008

posting process is a new requirement. May 10, the assessor sends notices of changes to the taxpayer. Currently, this date is June 1, so this change opens up 3 additional weeks for the local review process to occur. May 31 becomes the protest deadline; this is one month earlier than the protest deadline currently. It would also be the same date as the personal property review period. May 1 to August 10, review period. Currently, this period runs only from June 1 to July 25. From July 26 through August 10, the counties may petition the TERC for a class or subclass adjustment after the protest hearing. The bill would eliminate this process, proposing that this two-week period would be better spent on hearing disputes. The bill makes one other big change: It would create a State Property Taxpayer Referee Division of the Department of Revenue. The bill authorizes the division to gather evidence, meet with parties, settle differences, and hear protests. Counties may refer protests to the division in whole or in part as the county sees fit by June 10. Counties could choose to refer only residential property protests, for example, and only commercial and industrial. Counties would refer only those where the amount in the dispute is over \$100,000 or it could only refer protests to the state referee system in the years a complete reappraisal results in thousands of them. All of these are examples of how it might work. Referees may be employed by the state or contracted out into a private entity. The state referee would address each protest assigned to him or her, conduct meetings, take evidence, and transmit all papers relating to the case together with his or her findings and a recommended order to the county board of equalization by July 25. The county could accept the recommendation, reject it or ignore it and take new evidence on its own. Counties have those same options now with regard to their own locally hired referees, which would be eliminated by this bill. The bill would cost about \$1.6 million annually and all of that is for the state referee system. As I noted earlier, a number of ideas from different sources contributed to this bill and I'm not committed to any one aspect or idea. I'm committed into working toward change that would help a process that is stretched past the breaking point in some instances. Property and owners deserve thoughtful and competent consideration of their protests. The state needs to do all that it can to make sure the values are correct. I think we need to do something to change the status quo. Any questions? [LB897]

SENATOR DIERKS: Thank you, Senator Janssen. Questions? You did a great job. [LB897]

SENATOR JANSSEN: Well, I just read what was written down here for me to read. [LB897]

SENATOR DIERKS: You have a good editor. Are there proponents of this legislation? Is there a proponent out there? Anyone wish to speak in favor? Thank you. [LB897]

RANDY LENHOFF: My name is Randy Lenhoff. I spoke earlier, I'm with the Nebraska Association of Property Owners along with Seldin Company. I don't really have a lot

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

Revenue Committee
February 01, 2008

more to say, I gave my testimony earlier, which I think you all heard. If you have further questions, I'll be happy to answer them, but I just wanted to say that I'm in favor of this bill. [LB897]

SENATOR DIERKS: Thank you, Randy. Questions? I guess not. Thank you much. [LB897]

RANDY LENHOFF: Thank you. [LB897]

SENATOR DIERKS: Other proponents? [LB897]

SHAUN JAMES: A similar statement. Shaun James. If I had to choose between two bills, I would highly recommend this one over the prior bill I testified to, but the testimony is essentially the same. Any questions? [LB897]

SENATOR DIERKS: Thank you very much. Are there questions for Shaun? I guess not. She must have done a good job the last time. Thank you. Other proponents, please. Anyone else in support? Is there opposition? Go ahead, sir. [LB897]

DAN PITTMAN: Good afternoon, Senator Dierks and members of the Revenue Committee. Dan Pittman, P-i-t-t-m-a-n, Sarpy County assessor, representing NACO in opposition to this bill. You had already heard me address the issue about changing dates, so I probably don't need to talk about that any further. The concern about a state board of referees...oppose the idea until such time as you could take a better look at that. It's creating another level of bureaucracy which might work, but at this point we're left some opportunities as counties to hire outside referees that are familiar with our market areas. I can speak for Sarpy County in the sense that we hire people that do fee appraisal work in Sarpy County, so they know those markets and they can speak about what is happening with market trends and they're very familiar with our subdivisions and what is happening in the market overall. That has been very beneficial to us. I can see where maybe some smaller counties might want to tap into a pool of referees where they don't have enough experienced people to come to some of the smaller counties or more remote counties. But at this time, I really would not be in favor of seeing them make any real drastic changes such as taking away our opportunity to have independent referees and having us go to a state referee board. That's basically my testimony. [LB897]

SENATOR DIERKS: Thank you. Questions? Okay, thank you very much, Dan. [LB897]

DAN PITTMAN: Thank you. [LB897]

SENATOR DIERKS: Is there other opposition? Anybody else in opposition? Is there neutral testimony? Go right ahead, sir. [LB897]

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

Revenue Committee
February 01, 2008

WILLIAM C. WARNES: Senator Dierks, other members of the Revenue Committee, my name is Bill Warnes, I'm the chairman of TERC. The only point I want to make about the bill is that this bill, in comparison with other bills that have been proposed, gives more time for statewide equalization. If you count them out, you'll find that in 3 years you have 20 working days, and in opposite years, you're going to have 19 days. This is a workable number of days for TERC to complete statewide equalization in normal years. I am familiar with the history where many counties were brought in and this would not be enough time. If TERC was to make its position known clearly, we would like 23 working days. But if this bill were to pass with these number of days, in a normal year we could make statewide equalization work. I'm testifying in a neutral capacity to this bill. [LB897]

SENATOR DIERKS: Thank you very much. Senator Raikes, please. [LB897]

SENATOR RAIKES: A clarification for me. The statewide equalization process...currently you have how much time? [LB897]

WILLIAM C. WARNES: Well, we have an excess of 24 days right now, and... [LB897]

SENATOR RAIKES: It begins March... [LB897]

WILLIAM C. WARNES: Well, the way it's triggered is, March 15 triggers...and whatever date that date is, that first date triggers the assessors to provide the abstracts to the Department of Property Tax Administration. They have so many days to then provide us the reports and opinions to us, and then we start as soon as we can. [LB897]

SENATOR RAIKES: So the Property Tax Administrator is really the start of the process. [LB897]

WILLIAM C. WARNES: Well, for us it is. Until we get those records, we don't have anything to review. [LB897]

SENATOR RAIKES: Okay. Well, my question is this: Are there some counties that you decide early in the process, they're okay, we're not going to have to call those back in? [LB897]

WILLIAM C. WARNES: Senator, I can anticipate what you're saying. If I had...because the show cause requirement that gives us a real time crunch, if there was some way we knew of the 93 counties where we had issues and could bring them back in or if there was some way that we could feel 100 percent confident, but practically speaking we just run through them. But I have an idea this year, if I can get it done, to do what you're suggesting, look through and see if there's counties that look like there are no issues

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

Revenue Committee
February 01, 2008

and if there are counties that may have an issue. And try to sort those through and take as many of the ones with issues as fast as we can so that we could bring them back in on a show cause or find out that there isn't an issue there. [LB897]

SENATOR RAIKES: Well, I guess the opposite side of that coin I was thinking about, if you have counties that are not going to be called back in for that, maybe they could then begin their process of valuation notification and protest sooner. [LB897]

WILLIAM C. WARNES: Okay. I'm listening to you, and I don't know if there's a reason why that couldn't be done. It hasn't been done, we've waited and done it all in bank, en masse. I will take back that question in my mind and see if I can't get an answer for you on that. [LB897]

SENATOR RAIKES: Okay. All right. Thank you. [LB897]

WILLIAM C. WARNES: Because there's nothing wrong with the question, it's a good suggestion, really. [LB897]

SENATOR DIERKS: Senator Burling, please. [LB897]

WILLIAM C. WARNES: Yes, sir? [LB897]

SENATOR BURLING: Yeah. Thank you for appearing and giving us that information. As I remember, it was you that suggested that you might look with favor on another step, a more informal, mediation-type situation to take place here. Does the referee portion of this bill address...do you think it addresses that idea? [LB897]

WILLIAM C. WARNES: The distinction, Senator Burling, is that in this bill you're dealing with preappeal activity, in other words, before an appeal has been filed with TERC. It's with the protest at the county level, county board of equalization. Now, I am the one that said what you recounted and what I did was violate, I guess, what you're supposed to not do is testify about stuff that hasn't nothing to do with the bill that you're testifying to, but I just...but I did it anyway. And the answer to your question, yes, what I would like to see in the TERC process, if it can be worked out, is mediation as a level once the appeal has been filed with TERC. [LB897]

SENATOR BURLING: Over on the other side. [LB897]

WILLIAM C. WARNES: Yeah. [LB897]

SENATOR BURLING: Okay. [LB897]

WILLIAM C. WARNES: Once it's hopped over to that. [LB897]

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

Revenue Committee
February 01, 2008

SENATOR BURLING: Yeah. Um-hum. [LB897]

WILLIAM C. WARNES: But here...statewide referee system, if it was in place, has the appearance of another opportunity for the taxpayer and the county to talk about the issue. And any time you have that, I think that's good. [LB897]

SENATOR BURLING: Okay. [LB897]

SENATOR DIERKS: Other questions? [LB897]

WILLIAM C. WARNES: Sure. [LB897]

SENATOR DIERKS: Senator Langemeier. [LB897]

SENATOR LANGEMEIER: Vice Chairman Dierks, thank you, and I want to commend you for having some thoughts and some acknowledgement that there is issues that you're willing to try and come up with ideas to solve them. [LB897]

WILLIAM C. WARNES: Well... [LB897]

SENATOR LANGEMEIER: Thank you. [LB897]

WILLIAM C. WARNES: Okay, thank you. [LB897]

SENATOR DIERKS: Thank you. Other people want to testify neutral? Anyone else neutral? [LB897]

RUTH SORENSEN: (Exhibit 2) I am Ruth Sorensen, Property Tax Administrator for the state of Nebraska, and I am testifying in a neutral capacity on LB897. The statutory date changes that have been discussed here in LB897 will open the window within which property valuation protests can be heard. It does not really open the dates within which protests can be filed because there is currently a 30-day window. The earlier bill that you heard does maintain the 30-day protest filing dates. This bill here, LB897, would shorten it by 9 days. But it does open up that window within which the property owners then can prepare and have their protests heard because the nine days shorter, that's just when they have to file the documentation and thereafter then they can prepare and be heard. So we believe that this would open up and allow more people to have their valuation protests heard. And also what we have observed over time is that oftentimes the protests are filed very close to the last day or very close to the deadline within which is open, so by just narrowing it by nine days, we'll still receive the protests from the property owners, but then expand that date. And hopefully by being able to work more with the county boards, it may limit the number of appeals that will go on to the Tax

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

Revenue Committee
February 01, 2008

Equalization and Review Commission. Earlier I heard some questions from senators regarding this, there's been...their frustration with, you know, they filed the protest but they just never were heard and the time constraints and we are of the opinion that this would open that window and allow them for appropriation. And one final comment I want to make on the bill is, we had asked or are proposing amendments to 2 additional statutes and that would be 13-509 and 18-2148. And what we are asking is that we look at the dates there in which the county assessors are required to certify values. And currently in 13-509, they're required to certify by August 20. And then also in section 18-2148, that is regarding tax increment financing projects, and the county assessor is required to certify valuations by August 20 in that statute as well. If we are going to move the date to August 18 in LB897 within which written notices go to assessors regarding county board action, we just ask that perhaps that August 20 date in those 2 statutes be changed to August 25, moving that 5 days, allowing county assessors more time to certify the valuation and the growth values. And that would conclude what I have to comment on the bill. If you have any questions... [LB897]

SENATOR DIERKS: Thank you, Ruth. Are there questions for Ms. Sorensen? I think not. Thank you very much. [LB897]

RUTH SORENSEN: Okay, thank you. [LB897]

SENATOR DIERKS: Any other testimony in neutral? Whenever you're ready, Gary. [LB897]

GARY KRUMLAND: Senator Dierks, members of the committee, my name is Gary Krumland, representing the League of Nebraska Municipalities. I had not planned to testify on this bill until just, Ms. Sorensen mentioned moving the date back that the assessors get the property values from August 20 to August 25. The concern we have about that is that narrows the amount of time that local governments have to prepare budgets and if you move that five days, that narrows that amount of time. So I just want to mention that, that if those dates move, it puts a burden on all local governments because their budgets are due on September 20. Within that time they have to give notice, they have to hold hearings, and they usually wait until they get those property valuations before they can do the budgets so they know what the tax that they...affect is on taxes, so. I'm not saying that it can't be worked out, but it is something to at least for the committee to consider if they're looking at changing that date. [LB897]

SENATOR DIERKS: Thanks, Gary. Questions? Maybe we ought to just add two more weeks to the year, would that work? [LB897]

SENATOR LANGEMEIER: I think we can do that, right? [LB897]

GARY KRUMLAND: Yeah. (Laugh) [LB897]

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

Revenue Committee
February 01, 2008

SENATOR LANGEMEIER: In the Legislature we can do anything we want. [LB897]

SENATOR DIERKS: Okay. Any other testimony in neutral? I think...do you want to close, Senator Janssen? [LB897]

SENATOR JANSSEN: No, I don't believe so, "Cap." [LB897]

SENATOR DIERKS: Senator Janssen waives closing, so we'll go to LB864 and Senator Langemeier. [LB897]

SENATOR LANGEMEIER: Chairman Dierks, thank you. I think a few more days would solve many of the problems we deal with on a daily basis, so I think you've come up with a solution. [LB864]

SENATOR RAIKES: It would aggravate others, though. (Laughter) [LB864]

SENATOR LANGEMEIER: (Laugh) I like it. LB864 would change the standard of review for appeals in cases before the TERC, Tax Equalization and Review Commission. The current standard of review requires that an appellant show that action taken by a county board of equalization was unreasonable or arbitrary. The standard of review adopted in LB864, if adopted, would require the appellant to show clear and convincing evidence that the action of the county board of equalization was without sufficient basis. In cases of appeal of the value of a property, the greater weight of evidence would establish a different taxable value. And with that, I'm going to stop because there are attorneys to follow me and this is all legal jargon, so I'm going to let them come up and follow and then I'll answer questions as we get to the end, if there are any. [LB864]

SENATOR JANSSEN: Proponents? Are you a proponent, Bill? [LB864]

BILL PETERS: Mr. Chair, I am a proponent. [LB864]

SENATOR JANSSEN: Okay. [LB864]

BILL PETERS: Mr. Chairman, members of the committee, my name is Bill Peters, Suite 320, 411 South 13th. I am appearing here in a dual capacity, primarily for myself, but also for the State Chamber of Commerce of which I am a member of the tax committee. I can get the Chamber testimony in real quick, and then we can get down to the real stuff. The State Chamber is supportive of this bill as a more reasonable standard of review for taxpayers on appeal to TERC. And quite honestly, that's where I'm coming from; it's a high fence to have to jump as far as the standard of review. We have to establish that a decision of the county was arbitrary, which we have to establish that decision was made in disregard of facts and circumstances and without some basis

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

Revenue Committee
February 01, 2008

which would lead a reasonable person to the same conclusion. You know, there are differences of opinion, but what this compels one to do when it gets into a really contested case is really abuse and malign the county officials that just had a difference of...a different judgment. But no, the standard is we have to establish that they were arbitrary, that they made their decision in disregard of the facts and circumstances. We can dodge making them arbitrary 'blankety-blanks' and go on to unreasonable. When a decision is unreasonable, if the evidence presented leaves no room for differences of opinion among reasonable minds, that's the standard that's required in the statute. What is proposed is somewhat of a less standard, but it requires that the taxpayers must establish that the value that they desire is correct. It's more they have to establish that it's a...with a greater weight of the evidence establish a different taxable value. It's not just a mere difference of opinion, it's a higher standard than in many of our other civil cases. You know, 50-50 plaintiff loses, 51-49 taxpayer loses. So as a result it places, I think, to a higher burden than is reasonable on the taxpayers. And secondly, it puts people in the position of having to beat up on the county officials when it's unreasonable. You know, do you establish that a county official was arbitrary? No, just that you made the wrong decision. That's not quite making it arbitrary. Now, I don't believe that this will increase the number of cases going to TERC. The bulk of the cases going to TERC, in my opinion, and I haven't seen the statistics, go to TERC in order to buy time for people to work out their differences because of the shortness of the time frame, which I've mentioned before. And it's only the attorneys and some appraisers that appreciate this high standard and advise taxpayers. That individual out there that's just fed up with his house being overvalued, I don't think makes the decision of appealing to TERC based upon the standard of proof that he's going to learn about later on. I think this is straightforward and is a reasonable approach for the taxpayers and our entire system of property taxation. [LB864]

SENATOR JANSSEN: Any questions? Ron. [LB864]

SENATOR RAIKES: So this is not going to make it so you win more often? [LB864]

BILL PETERS: No, not me. I think what this will do is it will cause some more settlement, but on winning, most of the time we're going to win when we go to TERC because we're not taking up losing cases. It will be a... [LB864]

SENATOR RAIKES: Why wouldn't it cause less...well, I guess you could look at it either way. But if I'm protesting my value and me as the protester, if I realize there's a really high standard for me to win at TERC, I'm probably going to be, okay, really ought to be, they stuck me with \$200, really ought to be \$180, maybe I'll take \$190. [LB864]

BILL PETERS: I would agree, yeah. I would like to retract, we are probably going to win more when we go to TERC. [LB864]

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

Revenue Committee
February 01, 2008

SENATOR RAIKES: And so if you win more, aren't you going to go more? [LB864]

BILL PETERS: No. In the clients that I represent, the problem we have is we have people going to TERC and then finding out later that is on the individual. It's going to be cheaper for us to go to TERC, but I don't...thinking of my commercial... [LB864]

SENATOR RAIKES: It's cheaper and you win more, but you're not going to go more? [LB864]

BILL PETERS: I don't have that many clients that want to go more. [LB864]

SENATOR RAIKES: Okay. [LB864]

SENATOR JANSSEN: Tom. [LB864]

SENATOR WHITE: One of the points is whether or not this burden would settle more cases, and it takes two to settle. If I'm the commissioner and I know they have to prove that I'm arbitrary and reasonable, I've got almost no incentive to settle anything because you may think \$190 is fair, but my...I'm not going to be driven to give you anything because the standard is I get to be dumb, I just can't be outright stupid on what I did. So the question is, you're right, but most cases will settle when there's reasonable possibility on both minds that you'll lose. That's where you get a compromise. When one person is in a situation where they don't think they're going to lose or they're going to lose 1 in 100, they're not going to compromise any. Is that your experience? [LB864]

BILL PETERS: That's my experience. And the experience is the county says...you know, I've taken cases to TERC where we spent \$10,000 to \$15,000 for an appraisal to overcome that burden. The county hadn't even inspected the property before they valued it or hadn't inspected it before the hearing. [LB864]

SENATOR WHITE: Okay, great. [LB864]

SENATOR JANSSEN: Tom. [LB864]

SENATOR WHITE: And this is a little technical and it's a Friday, but it's maybe very important. There's a difference, isn't there, Counselor, between the burden of proof, that what we call "burden of proof" or persuasion and the burden of who's got to produce the record. [LB864]

BILL PETERS: Yes. [LB864]

SENATOR WHITE: Who's got to put the evidence in. [LB864]

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

Revenue Committee
February 01, 2008

BILL PETERS: Yes. [LB864]

SENATOR WHITE: And that's something here, folks, that we might want to think about. TERC says a lot of the appeals fail because the taxpayer doesn't have the records, and we've heard they're not even available in some circumstances, to attack what the county did. County comes up and says, you prove I'm arbitrary and unreasonable and if there's no evidence, I win and I walk. And if I control the evidence because I don't make the similar property values available, I win automatically. I can't lose, I get to deal the cards and I get to tell you what's in your hand, too. We could, for example, split that and say, the county any time they raise an assessment has a burden of producing a record, sufficient stuff, but a lower burden, perhaps. But if they have a reasonable record, then we defer to their judgment. Would that help? [LB864]

BILL PETERS: I'm not sure I want to put that much of a burden on the county. I think if... [LB864]

SENATOR WHITE: You're a lot more generous to your opponents that I am to mine. [LB864]

BILL PETERS: (Laugh) I think, you know, the taxpayer has to go in and, you know, prove that the county was wrong, carry the burden of proof, and establish that the taxpayer's value is better than that value established by the county. [LB864]

SENATOR WHITE: But if the county doesn't give them an opportunity to even put the evidence in to make a record, you're saying the taxpayer has to play a rigged game. [LB864]

BILL PETERS: Well, except that generally it's a trial de novo, not de novo on the record. [LB864]

SENATOR WHITE: At TERC? [LB864]

BILL PETERS: At TERC. [LB864]

SENATOR WHITE: Which is one of the big, huge problems of TERC that makes them only able to handle 300 matters a year... [LB864]

BILL PETERS: Well... [LB864]

SENATOR WHITE: ...is because you have an initial trial but they're also an appeals court. [LB864]

BILL PETERS: You know, I would say, to a certain extent. But the record is created at

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

Revenue Committee
February 01, 2008

TERC and that does take some more time if you can't get the cases resolved. I would be against requiring a record at the county level because that would take two or three-fourths of the year to keep track of all of that. [LB864]

SENATOR WHITE: What if the counties required at TERC to produce the records? And then you're required, based on the records produced, to show that they're wrong. [LB864]

BILL PETERS: I suppose, again, we wouldn't be wanting to be go that far of putting the burden on the county. [LB864]

SENATOR WHITE: Okay. [LB864]

BILL PETERS: At least I wouldn't. I shouldn't use the term "we" until we know who that is. [LB864]

SENATOR JANSSEN: Any other questions? Seeing none, thanks, Bill. Next proponent? Any more proponents? There we go. [LB864]

SHAUN JAMES: Good afternoon, again. Shaun James, I'm with Slusky Law in Omaha, here representing myself as an attorney and the taxpayers and property owners that I represent. I'm here in favor of the bill. And if I could go through just real briefly, the bottom line for my clients is to get to the right value. We don't even get to address the value under the current standard because we have to overcome that burden of proving that the county board's action was arbitrary or unreasonable. And that's the TERC's responsibility to maintain that level. By lowering the burden just a little bit to clear and convincing, we at least get to the issues of value. It isn't the lowest standard that we have to prove, it isn't the highest standard, but it's a reasonable expectation for the property owner to come in and say, we gave the county appraiser, the referee, whoever, sufficient evidence to show that their value was wrong, here it is, they still set us up here. That's clear and convincing evidence. Now, if the board has the arbitrary and unreasonable standard of review on their side, all they have to say is well, our referee recommended something else. You know, I'm being a little glib, but that's the point. We never get to the true heart of the matter, which is the proper value for somebody's property, and that's what the TERC should be working on, that's what the county should be working on, and that's what the taxpayers expect. And with this burden of proof in place as a clear and convincing evidence, everyone stands a better shot of doing that. The county assessors are working very hard as it is and I really respect the efforts that they put into this. Their hands are tied. If we have to go to the board and the board says, well, it doesn't matter if the information was wrong, it doesn't matter if something here was done, we've got the record, it shows that we were there. We're not to that burden of proof, they are acting on something in their records and we cannot overcome that arbitrary and unreasonable standard. So that is why this bill is very important to the

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

Revenue Committee
February 01, 2008

taxpayers. Ultimately it allows us to get to the bottom line, which is the proper value for your property. Those are my statements. [LB864]

SENATOR JANSSEN: Ron. [LB864]

SENATOR RAIKES: So for purposes of dramatics or whatever, a taxpayer never wins at TERC now? [LB864]

SHAUN JAMES: I wouldn't say a taxpayer never wins at the TERC now, but... [LB864]

SENATOR RAIKES: Give me...I mean, based on your experience, give me a situation in which the taxpayer won. [LB864]

SHAUN JAMES: The county failed to send out the notice that their hearing before the board of equalization would be heard, and when the taxpayer got it, it was the day before the hearing or the day of the hearing. That was arbitrary and unreasonable. Lack of proper notice. [LB864]

SENATOR RAIKES: Any other? I mean, when they were notified on time, they came and said, look, my appraiser says it's worth \$180, they say it's worth \$200... [LB864]

SHAUN JAMES: Um-hum. Um-hum. [LB864]

SENATOR RAIKES: ...they lose? [LB864]

SHAUN JAMES: Then you have a... [LB864]

SENATOR RAIKES: They automatically lose? [LB864]

SHAUN JAMES: Then you have a difference of opinion. You haven't overcome the burden of proving that that decision was arbitrary or unreasonable. [LB864]

SENATOR RAIKES: And so they would lose in that case? [LB864]

SHAUN JAMES: The taxpayer would lose. [LB864]

SENATOR RAIKES: I... [LB864]

SHAUN JAMES: Even if their value was correct, even if it was supported by an MAI appraisal. Right now, the county assessors don't have to live up to that MAI standard. Their referees don't have to live up to that MAI standard. I can walk... [LB864]

SENATOR RAIKES: MAI? [LB864]

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

Revenue Committee
February 01, 2008

SHAUN JAMES: It's a mass appraisal institute or a...is that the appropriate term, (inaudible)? Yes. It's the very high level of appraisal standards national certification. If I come in with my MAI appraiser and the county comes in with their local commercial appraisal...appraiser from the county board or from the county, we're held at different standards, even walking in. So the fact that I have this highly experienced, nationally recognized appraiser doesn't get me to the point of valuation of a property if I can't get past the burden of proof that the county board's action based upon that lower appraisal standard was unreasonable or arbitrary. [LB864]

SENATOR RAIKES: Okay. [LB864]

SENATOR JANSSEN: Tom. [LB864]

SENATOR WHITE: Counselor, basically if you have an unlicensed, unskilled appraisal in the county's possession, you have two or three MAI appraisals. Under this burden, the actual inquiry by TERC should be, is there any evidence in the record to support what the county did, not whether it's any good, not whether it's competent, not whether it makes any sense... [LB864]

SHAUN JAMES: Um-hum. [LB864]

SENATOR WHITE: ...just, is there any evidence to support what they did, and if there is of any kind, it's not arbitrary or capricious. Is that right? [LB864]

SHAUN JAMES: Correct. That is the way the statute currently reads. [LB864]

SENATOR WHITE: And so we could, everybody could agree the numbers are wrong... [LB864]

SHAUN JAMES: Um-hum. [LB864]

SENATOR WHITE: The county is flat-out working on wrong numbers, but they will still be affirmed. [LB864]

SHAUN JAMES: Because you never get to the issue of valuation. [LB864]

SENATOR WHITE: Because the only question is, is there any evidence supporting what they did? [LB864]

SHAUN JAMES: Correct. [LB864]

SENATOR WHITE: No matter how incompetent. [LB864]

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

Revenue Committee
February 01, 2008

SHAUN JAMES: That's the current standard as set forth in the statutes. [LB864]

SENATOR WHITE: So the truth really has no bearing in most of these hearings. [LB864]

SHAUN JAMES: No. [LB864]

SENATOR WHITE: Is that correct? [LB864]

SHAUN JAMES: As far as value goes, unless you can overcome that burden. [LB864]

SENATOR JANSSEN: Any other questions? Seeing none, thank you. [LB864]

SHAUN JAMES: Thank you. [LB864]

SENATOR JANSSEN: Next proponent? [LB864]

RANDY LENHOFF: My name is Randy Lenhoff. I'm here with Nebraska Association of Commercial Property Owners. I'm not an attorney. I've heard the testimony, though. I am in favor of this bill, I think it's just a matter of fairness as a businessperson. I think if I come in right now, especially in Douglas County...I talked about this earlier...we're not getting a hearing now. Now, all of a sudden, I'm having to go to TERC to get a hearing and now all of a sudden it's arbitrary; I've got to overcome an arbitrary and capricious and I haven't at this point had a chance really to present even my evidence of where my value is at. So I think this is really unfair to have that in the statute and I think the standards should be lowered to a point where both parties have to present their evidence and let the commissioners decide then. [LB864]

SENATOR JANSSEN: Any questions? I don't see any. [LB864]

RANDY LENHOFF: All right, thank you. [LB864]

SENATOR JANSSEN: Any other proponents? Any opponents? Anyone in a neutral capacity? We've got a couple. [LB864]

SENATOR RAIKES: I think you've got an opponent. [LB864]

SENATOR JANSSEN: Are you an opponent? [LB864]

JON EDWARDS: I'm an opponent, Senator. [LB864]

SENATOR JANSSEN: Okay. Hop right up here, Mr. Edwards. [LB864]

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

Revenue Committee
February 01, 2008

JON EDWARDS: Good afternoon. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm with Nebraska Association of County Officials. We're here today in opposition of LB864. I think all the committee members probably received a note from our executive director probably back in November stating that we would probably oppose any such language that came out of the discussions last summer based on the study done last summer. And so basically we are here to be on record in opposition to this language change, and it stands by the premise that most likely this will increase the number of cases to TERC. We've already heard testimony that TERC is already overwhelmed, that that situation is very complicated and it increased costs at that end for the state. It also will increase costs at the county end and following more cases to TERC and defending decisions at TERC. So I think there's a cost issue that's going to be pretty significant there. [LB864]

SENATOR JANSSEN: Abbie. [LB864]

SENATOR CORNETT: Tom brought up some good points... [LB864]

JON EDWARDS: Correct. [LB864]

SENATOR CORNETT: ...in regards to the burden of proof, the arbitrary and capricious. Whether it costs more or not, do you think that it is fair when you're proven to have an incorrect appraisal that that's not taken into account at these hearings? [LB864]

JON EDWARDS: That is problematic. [LB864]

SENATOR CORNETT: I would say so. [LB864]

JON EDWARDS: Yeah. The one thing, I guess how I would...what I would say is, I think the way the statutory scheme is currently constructed, it envisions the board of equalization should be responsible for the equalization of local taxes. And I think...it would seem to me that possibly TERC was seen as a last resort and therefore the BOE is in place to resolve these issues, right, wrong or indifferent. And that's why the standard is so high, which shows the intent that originally there was not an intent to have so many cases going to TERC. But I do, I do see the point that Senator White raises in terms of if you have evidence on the record and there's two different standards there in terms of how you set the valuation, and on the face of it, it seems completely unfair. I do understand that that's a problem. Working within the confines of the current scheme, from our position it certainly will increase that cost practically to the county to have to defend more cases. [LB864]

SENATOR CORNETT: So should we be looking at the whole fundamental structure? [LB864]

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

Revenue Committee
February 01, 2008

JON EDWARDS: When you're looking at making a change like this to the current structure, that would be my suggestion based on the testimony we've heard today. That may be...this is something we need to review, currently, what is going on overall in this process and whether we need to make a change. I know there was a lot of information brought forward this summer; that might be something that we really need to look a lot closer at, spend more time on and see if we can, the body or the...we can reach some sort of a conclusion on that. [LB864]

SENATOR JANSSEN: Tom. [LB864]

SENATOR WHITE: Given the importance of the board of equalization... [LB864]

JON EDWARDS: Right. [LB864]

SENATOR WHITE: ...and then TERC should defer to them heavily, is that your statement? [LB864]

JON EDWARDS: That would be the way I would view the way the scheme currently is put together. [LB864]

SENATOR WHITE: How do you respond to the fact that literally maybe 1,200, 15,000, 10,000 appeals in Douglas County never even got a hearing in the first instance? And how do we justify this standard of review when you didn't even get a hearing in the first instance? [LB864]

JON EDWARDS: Right. Yeah. [LB864]

SENATOR WHITE: I mean, do you think it's arbitrary and capricious automatically if a county doesn't give a taxpayer a hearing? [LB864]

JON EDWARDS: Right, and I...in Douglas County is a whole different problem to itself, but obviously I concede your point. And I see there...there again that's another argument: Where do we go with this in terms of the current situation? [LB864]

SENATOR WHITE: One of the real concerns I have is, as citizens, we govern with the consent of citizens. We don't govern by power or force, we're not supposed to. And that consent is obtained only if they think they're getting a reasonable, fair treatment. [LB864]

JON EDWARDS: Right. [LB864]

SENATOR WHITE: So if you've got a citizen that never got a hearing, then comes up and says, we don't care how silly it is, but if there's something in the record, we have to

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

Revenue Committee
February 01, 2008

affirm it. Do you think we're going to long continue to have consent of the citizens to govern in this matter, in this way? [LB864]

JON EDWARDS: Right. And I think I would...well, I understand Douglas is certainly an outlier in this situation, that the... [LB864]

SENATOR WHITE: It's also one third of the population of the state. [LB864]

JON EDWARDS: The...right. The idea of the BOE would be that the voters then are responsible for whether they maintain the current structure at the county level or whether they vote new people into office, and they would have that ability at the ballot box to try to force some change in a situation like that. I certainly do understand your concern, though. [LB864]

SENATOR WHITE: Thank you. [LB864]

SENATOR JANSSEN: Any other questions? I don't see any, Mr. Edwards. Thank you. [LB864]

JON EDWARDS: Thanks. [LB864]

SENATOR JANSSEN: Any other opponents? Those opposed to the bill? Anyone in a neutral capacity? [LB864]

WILLIAM C. WARNES: Senator Janssen, members of the Revenue Committee, I am Bill Warnes, the chairman of TERC. There is no question that this bill triggers a lot of good discussion because the statute under which TERC operates, 77-5016, and especially Section 8, is critical. You could not be a commissioner for very long before you would take great and intense look at, what are the standards that TERC has to follow? I mean, I was a private attorney for 30 years and I wanted to know what I had to prove to the judge in the different kind of cases I had, so too here I can reverse that very easily. I'm watching to see if what needs to be proven is proven. Now, I'd like to start by this, and then my testimony will get a little more detailed than what you've heard to this moment. You know, the ad valorem tax process is an extremely important process in this state. I believe the Department of Property Tax Administration, when they did their new calculations, figured out there's \$131 billion of property that's been assessed in this state, and it's from the taxation of that valued property that we run local government and the schools. Now, I've been on the commission for two years and it's my opinion that the process works fairly well. It begins with the county assessor and their appraisers, referees, and then the Property Tax Administration, under the Department of Revenue now, and the County Board of Equalization I think make a great effort at getting what should be the goal of this whole process, getting it right, getting the right valuation. Now, I just want in a neutral capacity to inform you of a few things that I think are important.

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

Revenue Committee
February 01, 2008

First, the standard of review...and by the way, "the standard of review" is a term of art that means the criteria required for successful appeal, standard of review...to be distinguished from "burden of proof," which is, how high does the evidence have to be? In a criminal trial, it's got to be beyond a reasonable doubt. Well, we don't have that, we have by clear and convincing evidence, the arbitrary and unreasonableness, and there are lower standards that could be used. So standard of review, burden of proof. These are important. And I'm not going to try to confuse you, but I will be referring to those in just a second. I want you to be aware that this statute that's being attempted to be altered has been in place since 1959. District court operated under it before 1995 when the constitutional amendment created TERC and in 1996 when we started TERC, hearing cases. I'm not saying that by virtue of that it makes it right. I just want you to be aware of the history because all of the case law, and there is much case law, meaning what did the courts decided these statutes mean, like the presumption, which there's a lot of confusion about. Maybe that is because TERC has never dismissed a case in my two years based on failing to get past the presumption. We just haven't, don't anticipate we will. But there is a standard there and there's a burden. But anyway. Now, I want you to be aware that as we do our work in TERC, our work is reviewed at the next highest level, which is the court of appeals on the same basis that this statute, 77-5016 paragraph (8) has. In other words, they are looking to see if we are arbitrary or unreasonable in our decision, just like we are supposed to review the decision of the county board of equalization. Having said that, I want to go right to the heart of what is unique about this proposed change. What is unique about it is...and by the way, if you come to TERC and you prove by clear and convincing evidence of value, you're going to prevail. Please understand that. That is not true that if...you have to only show the county board was incorrect in what they did. If you come to TERC and show by clear and convincing evidence the value, you're going to win. What happens so often in these hearings is the taxpayer turns their attention to what the county did and tries to disparage it, when, in fact, what they should be doing is proving value by showing comparable sales or whatever approach they want to use. If it's commercial property, we often would have the income approach. So what I want to point out here is in this new statute there is language that is very unique and the language that's very unique is, "without sufficient basis." That's..."without sufficient basis" has been substituted as the new standard of review for "arbitrary" and "unreasonable." Now, I don't claim to be necessarily the best legal scholar, but before coming here before you today, TERC and all of its resources attempted to find, what does this mean? What does this term mean? And we find no case law to define it. It concerns us, concerns me a great deal, what would I...how would I review cases without definition, you know? And being able to see case law associated with it. So they have substituted a new standard of review and so the burden of proof, "clear and convincing," applies to what? An uncertainty. Now, you can see the logic of my concern. So I want you to be aware that TERC knows that it does not establish policy, and whatever the law is, we would follow it. But there are certain assumptions that I think I'm making as I testify here today, which is that this new language; it appears to intend to lower the standard of review for the taxpayer, the

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

Revenue Committee
February 01, 2008

appellant. I make that assumption. I'm not sure because there's a term here that has no real legal definition to it. Secondly, if the new language has the effect of making it easier to approve the appellant's case, the taxpayer's case, then the concern would be that not only would we see more protests filed at the county level..."protest" is a term of art for the county...but obviously if there's more there, we would see more likely appeals to TERC. Now, having more appeals to TERC or more protests to the county board is not a bad thing. I want you to know, I'm not using that as a bad thing. I'm just making you aware that if this new language, which lowers the standard, if it was interpreted, somehow could be interpreted, that we would have at TERC two things happening. We'd have more appeals, and I have a feeling the county would be forced to do more in the hearings, which isn't all bad (laugh). It's not all bad, but it would lengthen these hearings and shorten the number of cases or reduce the number of cases that we could hear. It also would start making it look like we are a trial court, we are a trial court. We would not be given much deference or review of the county board. I don't know, that's for you to decide whether you want TERC to look like a trial court or not. So while the increased workload isn't something to shy away from, it isn't a goal to try to prevent, it is of concern. But what I've just pointed out to you, I think the heart of it is that well-intended...I mean, it's obvious to me that there's a lot of concern about TERC and its standards, it's obvious to me. But I don't know that this bill does what people would want it to do because it's using terms that are not legally definable and changing precedents which I have great respect for. Even if I don't understand all the reasons why they originally created it, I have great respect for it. And I'm a fairly conservative person, both in professional and personal life, and I am concerned that if this was to go into effect, we would have the concerns that would emanate from what I've just described. Now, I would certainly, you know, receive questions and I hope that I wasn't too complicated in my analysis. I mean, my intention is to try to make things so that everybody can understand them if it's possible, including myself. [LB864]

SENATOR JANSSEN: Any questions of Mr. Warnes? [LB864]

SENATOR WHITE: Can I...I want to... [LB864]

SENATOR JANSSEN: Tom. [LB864]

SENATOR WHITE: We are going through what is literally a year-long civil procedure class and maybe one of the most complex areas of law, folks. But it's really important, and so I'm going to ask you a couple of questions. We're going to work through why it's confusing because it's important or we're going to end up with something that's as bad or worse than what we've got, and that's not tolerable. Do you agree? Do you agree this is a complicated area? [LB864]

WILLIAM C. WARNES: No, you are going to have me more agreeing with you, Senator White. It is a complicated area. [LB864]

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

Revenue Committee
February 01, 2008

SENATOR WHITE: Let's start at the beginning, then. First of all, TERC is not a pure appellate court because it's de novo on the record, which is, in effect, means you get a new trial where you have to produce evidence. [LB864]

WILLIAM C. WARNES: All right. [LB864]

SENATOR WHITE: A very unusual situation... [LB864]

WILLIAM C. WARNES: It is. [LB864]

SENATOR WHITE: ...to have a de novo on the record...or no, it's not even on the record, it's de novo. [LB864]

WILLIAM C. WARNES: No, it's de novo. It's...yes. [LB864]

SENATOR WHITE: It's not even on...it's, so it's just like a trial court in that you're going to bring in new evidence and introduce it and they're going to say whether that evidence is good or bad, which trial courts do and appellate courts never do. [LB864]

WILLIAM C. WARNES: You're absolutely correct. [LB864]

SENATOR WHITE: Okay, so it looks like a trial court. [LB864]

WILLIAM C. WARNES: That part of it does. [LB864]

SENATOR WHITE: All right. So somebody has got the burden of producing evidence, which is different than the burden of initial persuasion or proof, which is different from the standard of review, correct? [LB864]

WILLIAM C. WARNES: Let me say yes to let you go on. [LB864]

SENATOR WHITE: Okay, well, the burden of producing evidence at TERC is on who? If the county ruled my property is worth \$200, who has to come forward with evidence and if they don't, they lose? [LB864]

WILLIAM C. WARNES: You are describing the term "presumption," which is... [LB864]

SENATOR WHITE: No, the burden of coming forward with evidence. Presumption is different. [LB864]

WILLIAM C. WARNES: Okay, okay. Well, all right, Senator. The person that has to come forward would be the appellant, which would be the taxpayer. [LB864]

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

Revenue Committee
February 01, 2008

SENATOR WHITE: In almost all cases. [LB864]

WILLIAM C. WARNES: But I want you to be aware of... [LB864]

SENATOR WHITE: But no, just... [LB864]

WILLIAM C. WARNES: Okay, all right. Go ahead. [LB864]

SENATOR WHITE: So, if the taxpayer doesn't come forward with evidence, they lose. [LB864]

WILLIAM C. WARNES: I think that would fairly easy to say yes to. [LB864]

SENATOR WHITE: All right. Now, you've talked about what is the standard of review of that evidence, correct? [LB864]

WILLIAM C. WARNES: There is a standard of review, yes. [LB864]

SENATOR WHITE: Right now, it is arbitrary and capricious. [LB864]

WILLIAM C. WARNES: Senator, capricious isn't...it's "arbitrary" or "unreasonable," but I understand that capricious is often used in other language in the law. [LB864]

SENATOR WHITE: In the language in the courtroom. [LB864]

WILLIAM C. WARNES: Yeah, and but... [LB864]

SENATOR WHITE: And in the opinions. [LB864]

WILLIAM C. WARNES: But they only use "unreasonable and arbitrary." [LB864]

SENATOR WHITE: That is different than "clear and convincing," isn't it? [LB864]

WILLIAM C. WARNES: Well, one is a standard and one is a burden. [LB864]

SENATOR WHITE: Well, but they've been used interchangeably because we don't know whether this weird hybrid we have is really a trial court because somebody has got to produce evidence or is it an appellate court. An appellate court would review the record to determine if the county did its job properly. But here we have to create a record and then review it. And in a normal trial, the person that has the burden of bringing the evidence forward also has the burden of persuasion, which in most cases is by preponderance of the evidence, which is 51 percent. Correct? [LB864]

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

Revenue Committee
February 01, 2008

WILLIAM C. WARNES: That's what preponderance can mean, yes. [LB864]

SENATOR WHITE: All right. "Clear and convincing" is higher than preponderance, which means it leaves the finder of fact with a firm conviction of the truth of a proposition, roughly speaking, correct? [LB864]

WILLIAM C. WARNES: Yes. [LB864]

SENATOR WHITE: Okay. That's different. Arbitrary and capricious is a standard that appellate courts used to look back at a persuasion to say, and that is, is there any evidence in the records supporting the decision? Isn't that true? [LB864]

WILLIAM C. WARNES: Yes, but can I make one point? [LB864]

SENATOR WHITE: Certainly. [LB864]

WILLIAM C. WARNES: (Laugh) I mean, the standard is high and it appears to me to have been put there to give great deference to the lower tribunal. [LB864]

SENATOR WHITE: I grew up in a trial court home and the reason that's there, you wondered, is because the judges hate these and they didn't want to decide them. And they said, the harder we make it, the more we'll discourage them, which is your point. [LB864]

WILLIAM C. WARNES: I'm not going to comment on that, and I'm not saying you're right or wrong... [LB864]

SENATOR WHITE: Oh, I'm right. [LB864]

WILLIAM C. WARNES: ...I'm just not going to comment. (Laughter) I'm just not commenting. [LB864]

SENATOR WHITE: All right. So what we've got here is a bunch of different terms being taken that are technical terms of art being taken out of context, applied to a situation they were never meant for, and we're telling some poor sap of a homeowner he's got to meet all this stuff. [LB864]

WILLIAM C. WARNES: Well, Senator, what I would say to you is I can agree that it would be much better if we could come up with language that was easier to understand for the average person. I mean, that's the common denominator we would share at this point. [LB864]

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

Revenue Committee
February 01, 2008

SENATOR WHITE: Okay, let's start then. Who should have to have a hearing where a record is presented? If a county doesn't have a hearing where a homeowner can come forward and protest, whose burden should it be initially to show that what they did, the new appraisal, is justified or unjustified? Should that be on the taxpayer and homeowner or on the county? The county did something and they must have some basis for it, right? [LB864]

WILLIAM C. WARNES: Well, there is a...the court of appeals has said that in this statute there is an assumption, a presumption that is assumed. Now, that is just law, that is just what we read. So I don't control that, that's what is being said. You know, there is kind of a practical basis for this. You have a government entity that has a job to do: Value property. They have many, many properties they have to do it for. Is it...I just ask, is it not reasonable that they do their work and if somebody wants to question it, it would be their responsibility to bring forward the evidence? [LB864]

SENATOR WHITE: All right... [LB864]

WILLIAM C. WARNES: That's, I think, part of the justification for it. But all I'm saying is that is what the situation is now. [LB864]

SENATOR WHITE: Every time arbitrary and capricious is applied, every time, except for apparently this situation, the courts apply it where there has been a hearing and somebody has allowed evidence to be introduced and they made a determination. But we've heard here repeatedly the counties are not affording that fundamental right. [LB864]

WILLIAM C. WARNES: Okay. [LB864]

SENATOR WHITE: Can you fairly justify that we're going to affirm on an arbitrary and capricious basis, an arbitrary standard, decisions where there wasn't even a right to talk to somebody from the county? [LB864]

WILLIAM C. WARNES: Well, Senator, I don't take any responsibility with TERC for what happens below at the lower level. [LB864]

SENATOR WHITE: But shouldn't you? [LB864]

WILLIAM C. WARNES: But I... [LB864]

SENATOR WHITE: That's the point. Shouldn't TERC take responsibility that the taxing system in this state be fundamentally fair? [LB864]

WILLIAM C. WARNES: Senator, what I would say is, there's a lot of aspects to the

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

Revenue Committee
February 01, 2008

answer to that question. But let me just say this to you: I understand what you're saying and TERC does not very often get a record of any kind. And so when you have the review aspect of what we're doing, it seems a little unusual because we have no record to review. [LB864]

SENATOR WHITE: That means that if you have no record, the appellant loses. [LB864]

WILLIAM C. WARNES: Well, no. [LB864]

SENATOR WHITE: No? [LB864]

WILLIAM C. WARNES: Senator, what I'm saying to you is, and the way the commissioners, the other commissioners work is that we have somebody come in, no matter what the record is showing down here, if they can come in and show by clear and convincing evidence the value of a property, they would win. But if they... [LB864]

SENATOR WHITE: But how do you do that without a record? [LB864]

WILLIAM C. WARNES: Well, I'm just saying the record is not necessarily going to be... [LB864]

SENATOR WHITE: Well, no, you said most cases there isn't a record. That means the county wins. [LB864]

WILLIAM C. WARNES: No, I...well, I didn't mean to say that they would win... [LB864]

SENATOR WHITE: Now, how can I...and also, how do you justify "clear and convincing" when the statutory obligation is "arbitrary"? Those are different. [LB864]

WILLIAM C. WARNES: Well, once again we've got to be careful of not mixing up the standard of review and the burden of proof. [LB864]

SENATOR WHITE: Do you have any statutory authority to say the burden of proof already is clear and convincing? Because the only one I know of is that you're supposed to review only for "arbitrary." [LB864]

WILLIAM C. WARNES: Well, it comes up in all of the cases the court of appeals decide. [LB864]

SENATOR WHITE: So it's based on the court decision, says that if... [LB864]

WILLIAM C. WARNES: Court decisions. [LB864]

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

Revenue Committee
February 01, 2008

SENATOR WHITE: ...at TERC, I show evidence sufficient for clear and convincing, you can reverse? [LB864]

WILLIAM C. WARNES: Well, and then in the statute, of course, in the statute itself they're referring to "clear and convincing evidence." But you don't have "presumption" in there, you don't have some other things in there. So what I'm doing is I'm kind of agreeing with you to this extent: There might be a better way to phrase the requirements for winning at TERC than what we have currently. [LB864]

SENATOR WHITE: If you and I can't agree and understand, I've been practicing in this area as a trial lawyer and appellate lawyer for 25 years, you spent over 30 years, and you're a commissioner, and we don't know what the hell we're talking about. And we don't, we don't agree. I mean, don't you agree we need to clean it up? [LB864]

WILLIAM C. WARNES: Well, okay, it could be made to be phrased in a more simple, concise manner. [LB864]

SENATOR WHITE: Thank you. [LB864]

WILLIAM C. WARNES: But I don't feel that I have adequately convinced you, and maybe I can't, and because in part it's difficult to go through this. But a taxpayer coming before TERC that can show by clear and convincing evidence of value is going to win, regardless of what happened at the lower tribunal. [LB864]

SENATOR WHITE: So this bill is unnecessary? [LB864]

WILLIAM C. WARNES: I don't know that it's...well, I don't... [LB864]

SENATOR WHITE: Or it doesn't matter because you're doing it already, right? [LB864]

WILLIAM C. WARNES: We are trying to do what I just said. Now, there are many other examples of where we have problems that show up at...and we do have times where we do see a record from below that shows there's problems at the county board of equalization level. I'm not going to say that that happens very often, but if it does, we would want to correct that, too. Because we're functioning in two ways, one is the review board and one is de novo. Does one trump the other? [LB864]

SENATOR WHITE: How do you combine them? Aren't you trying to have cat and a dog in one body? [LB864]

WILLIAM C. WARNES: Well, I have often asked, how did we end up with these dual standards? And I think...I'm not sure I got a good answer for all of that. So... [LB864]

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

Revenue Committee
February 01, 2008

SENATOR WHITE: But often they don't make sense. I mean, you're telling me, we both review under "clear and convincing" and "arbitrary." That's not possible. It's like having a square circle. [LB864]

WILLIAM C. WARNES: But what I want to make clear, though, is if a taxpayer comes before us bringing evidence of value and it's clear and convincing, they will win. And they shouldn't spend their time even caring about what the county did because that is just distracting. They are there to prove their value. It's obvious they don't like the county's value. [LB864]

SENATOR WHITE: So the county does not get the benefit of an arbitrary standard, then, in that circumstance? [LB864]

WILLIAM C. WARNES: In that circumstance, you could refer to it the way you are, yes. [LB864]

SENATOR WHITE: Thank you. [LB864]

SENATOR JANSSEN: Any other questions? [LB864]

SENATOR CORNETT: No. [LB864]

SENATOR JANSSEN: (Laughter) Okay. Ron, did you have one? [LB864]

SENATOR RAIKES: Well, a quick...to me, that's an important point. If it is true that a taxpayer comes focusing on their value, the information they have gathered to convince that their value is the correct value, and you're telling me they win? [LB864]

WILLIAM C. WARNES: Well, you see, if we get to that point, the county has got to be careful that they don't, that they're going to...one thing I wanted to make you aware of, Senator White, TERC sends out a requirement that they provide basic information to us from the property record files. [LB864]

SENATOR RAIKES: "They" being the county? [LB864]

WILLIAM C. WARNES: The county. So we always... [LB864]

SENATOR WHITE: So they do have the burden of producing a record. [LB864]

WILLIAM C. WARNES: Yeah. So, I wanted you to...I meant to tell you that way up front. So we always have that, we would be...there would be a problem if we didn't get that. [LB864]

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

Revenue Committee
February 01, 2008

SENATOR WHITE: Thank you. [LB864]

WILLIAM C. WARNES: So at least we have that. Now, I'm sorry, Senator, ask me again. [LB864]

SENATOR RAIKES: Well, my point...I was just asking you to affirm that if a...you have this record from the county which you made, here comes a taxpayer protesting, that taxpayer presents evidence which is, did you say clear and convincing? [LB864]

WILLIAM C. WARNES: Clear and convincing. [LB864]

SENATOR RAIKES: Clear and convincing that as you look at the taxpayer's evidence and whatever you got from the county, you're persuaded by the taxpayer on that burden of proof, the taxpayer wins? [LB864]

WILLIAM C. WARNES: That's the example of the de novo aspect of what we're doing. [LB864]

SENATOR RAIKES: That's what I was going to say. I have no idea what you're talking about. (Laughter) [LB864]

WILLIAM C. WARNES: Well, they can bring new evidence, they can bring new evidence beyond what was done down at the county level, they can bring new evidence. [LB864]

SENATOR RAIKES: "They" is who? [LB864]

WILLIAM C. WARNES: Taxpayers. [LB864]

SENATOR JANSSEN: The taxpayer. [LB864]

SENATOR LANGEMEIER: Both. [LB864]

SENATOR WHITE: Can the county bring new evidence? [LB864]

WILLIAM C. WARNES: Yes. [LB864]

SENATOR LANGEMEIER: Yes, it's both. [LB864]

WILLIAM C. WARNES: Yes, they both can. You're highlighting some of the confusion. [LB864]

SENATOR WHITE: We're also highlighting why TERC has a job that's damn near

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

Revenue Committee
February 01, 2008

impossible. [LB864]

WILLIAM C. WARNES: Well, my point is this: There might be clear...actually, that's a goal I have is to simplify things and make it easier to understand some things, but this bill will not do it for...it has deficiencies that I've pointed out. That's all I'll say further. [LB864]

SENATOR RAIKES: Well, the other point I wanted to address, if I may, is the issue of, what is your burden in the event that there's an overwhelm at the county level so nobody gets a hearing? And the first time the taxpayer gets to talk to anybody, it's to you. Does somehow your...I mean, in that case you can't...well I guess you can get evidence from the county, they can send you whatever they sent to the taxpayer, here's your value. [LB864]

WILLIAM C. WARNES: We always had that. [LB864]

SENATOR RAIKES: So what do you do in that situation? [LB864]

WILLIAM C. WARNES: Well, I'd say that the county might be in slightly less advantageous position, wouldn't they, because they have no evidence of any kind. [LB864]

SENATOR WHITE: Except they can bring it de novo for the first time in front of you guys. [LB864]

WILLIAM C. WARNES: They could, they could. And so we sit there in some cases in that role. [LB864]

SENATOR WHITE: So now you have a taxpayer coming in for the first time, the county dumps a whole lot of new evidence on him, and they don't know how to respond. They can't get...if it's a new appraisal, they can't get stuff to rebut it. [LB864]

WILLIAM C. WARNES: We require...we send out notices 60 days in advance and we require that the exchange date be...excuse me, 90 days in advance. We require the exchange date be 60 days in advance so that they would have at least 60 days to be looking at any evidence that was going to be provided. [LB864]

SENATOR WHITE: How about creating rebuttal evidence? [LB864]

WILLIAM C. WARNES: Rebuttal evidence is 21 days. [LB864]

SENATOR WHITE: But can you get an appraisal on a complex piece of commercial property that quickly? [LB864]

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

Revenue Committee
February 01, 2008

WILLIAM C. WARNES: You know, if before there is the exchange date pass, if a request was made to TERC for additional time to be able to get a commercial appraisal... [LB864]

SENATOR WHITE: You could get...okay. [LB864]

WILLIAM C. WARNES: I'm the chairman. I'm telling you that I would likely give that if I knew that was the reason. They've got to enunciate what the reason is, it just can't be for any reason because we have to move these cases along. And so we're very conservative about things. [LB864]

SENATOR JANSSEN: Senator Cornett. [LB864]

SENATOR CORNETT: Bill, the thing that concerns me in what I've heard here, aside from the confusion and the lack of any consensus in between anyone at this point, is that we've heard directly opposing testimony as to the standard. I cannot think of her name, but the woman from Slusky's law firm said... [LB864]

SENATOR RAIKES: Shaun. [LB864]

SENATOR CORNETT: Pardon me? Shaun testified that the standard for TERC, and if I'm not mistaken was arbitrary and capricious, and she believes that that is the standard that she is operating under. And is that... [LB864]

WILLIAM C. WARNES: That... [LB864]

SENATOR WHITE: That's not what she said. [LB864]

SENATOR CORNETT: Is that... [LB864]

SENATOR JANSSEN: Let's have just a single... [LB864]

WILLIAM C. WARNES: No, no...go ahead. [LB864]

SENATOR CORNETT: Yeah. [LB864]

SENATOR JANSSEN: ...back and forth here. The transcriber is going to get this all messed up. [LB864]

SENATOR CORNETT: And I might be mistaken, but I believe that's what she was talking about when she went to the TERC board. And you're saying that's not the standard or that's not how you... [LB864]

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

Revenue Committee
February 01, 2008

WILLIAM C. WARNES: No, I'm not going to disagree that she's wrong on the standard of review being arbitrary...or, excuse me, the standard that she's used, but I'm saying that if by clear and convincing evidence she can prove value, she would win regardless of what has happened. [LB864]

SENATOR CORNETT: I guess I thought that you had to go by what the statute, I mean, what it said, which is arbitrary and capricious. But you're not actually, you're applying two standards, or... [LB864]

WILLIAM C. WARNES: The statute refers to "clear and convincing evidence." [LB864]

SENATOR CORNETT: Clear and convincing, and that is what you're using? [LB864]

WILLIAM C. WARNES: Yes. [LB864]

SENATOR CORNETT: Okay. [LB864]

WILLIAM C. WARNES: We can't go anywhere different from that. Yes? [LB864]

SENATOR JANSSEN: Tom. [LB864]

SENATOR WHITE: But isn't that what this bill just reaffirms? It's clear and convincing, correct? [LB864]

WILLIAM C. WARNES: But it's clear and convincing, which is the burden of proof, on a standard of review that is without legal definition, which is without sufficient basis. [LB864]

SENATOR WHITE: As opposed to...what's the standard of review now? [LB864]

WILLIAM C. WARNES: Unreasonable or... [LB864]

SENATOR WHITE: Arbitrary? [LB864]

WILLIAM C. WARNES: Arbitrary. And like I say, I didn't create that, it's been in place for a long time. It gives great deference, apparently, to the lower decision and to what we have to be watching and looking for. So...I don't think I can add anything further. [LB864]

SENATOR CORNETT: Just one final thing. [LB864]

SENATOR JANSSEN: All right, Abbie [LB864]

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

Revenue Committee
February 01, 2008

SENATOR CORNETT: You said that this bill, if it was passed, would make TERC more like a trial court than it already is and we have attorneys in there that can't figure out what the standard is? [LB864]

WILLIAM C. WARNES: I'm not going to tell you that it would. I'm saying that it could have that impression to people. [LB864]

SENATOR CORNETT: Okay. [LB864]

SENATOR JANSSEN: All right. Any other questions? Seeing not, thank you. Any other testifiers in a neutral position? Seeing none, Senator Langemeier to close. [LB864]

SENATOR LANGEMEIER: As you've heard this discussion, I think this compounds the discussion I've had about appointments to TERC and the interpretation and how we need to think about that process greatly. And I want to commend the commissioner that sat here just before me in answering the questions as well as having some goals and some ideas on how to do this. I want to give you a little example as how this all works. The county takes your house and takes your 2,000-square-foot, three-bedroom home, two-bath home and puts them in a pot. And they fish out a number, whether it's at the high end of the scale or the low end of the scale. When you go in to protest that because you don't think you should be at the high end of the scale in this case, you hire an appraiser, which I happen to be one. The appraiser goes in and finds homes that are identical to yours. Your home may be three-bedroom, two-bath, 2,000-square-foot, but you may have a brand new kitchen, brand new marble countertops, a new Jacuzzi tub, and high detail. So that appraisal gets you down to an exact point within this spectrum of 2,000-square-foot, three-bedroom, two-bath homes. So when you go to TERC, you have to prove that the county didn't put you within that spectrum. It took your split-level, I'm going to add split-level to these homes, it took your split-level, 2,000-square-foot, three-bedroom home, two-bath and put it over here in this spectrum of ranch-style homes. You have to prove that that was unreasonable to put you over in this spectrum. "Clear and convincing" would allow you to take your appraisal that put you in an exact point within the spectrum of homes where you should be and prove your value. That's what "clear and convincing evidence" would allow you to do. Thank you. Questions? [LB864]

SENATOR JANSSEN: Thank you. [LB864]

SENATOR LANGEMEIER: Thanks. [LB864]

SENATOR JANSSEN: Okay, that ends the hearing on LB864 and the last bill of the day is LB989. Is Senator Friend here? [LB864]

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

Revenue Committee
February 01, 2008

SENATOR CORNETT: No, he won't be here today. []

SENATOR BURLING: Senator Friend's friend is. []

SENATOR JANSSEN: A friendly friend? LB989, yeah. []

RODNEY KROGH: Thank you, Chairman Janssen, members of the Revenue Committee. For the record, my name is Rodney Krogh, last name is spelled K-r-o-g-h, and I serve as the legislative aide for state Senator Friend, who represents the 10th Legislative District. Senator Friend regrets that he is unable to appear here today due to a prior commitment. Senator Friend introduced LB989 on behalf of the city of Omaha, and one of the city attorneys will be testifying subsequently to provide additional testimony detailing the current problem and the need for this legislation. LB989 allows special assessment liens made by metropolitan-class cities to gain equal standing for tax foreclosure purposes with generally levied real estate taxes. Examples of special assessments made by municipalities include building demolitions, weed cleanup, and litter cleanup. In 2007, the Nebraska Supreme Court issued a ruling which forbids a municipality special assessment lien on real property to run with the land. Any assessment on title placed after a tax sale certificate lien and before its foreclosure proceeding as filed is extinguished if there is not enough money from the sheriff sale to pay off the delinquent taxes and the special assessment. Senator Friend has been informed the Supreme Court's ruling in this case alone meant a loss of \$232,000 in special assessment lien funds for the city of Omaha. Prior to the Supreme Court's ruling last year, special assessment liens would not be extinguished if the foreclosure sale proceeds were insufficient to pay off all of the back taxes and delinquent assessment lien. The purchaser at the sheriff sale would either pay the assessment in full to release the lien or the purchaser...or purchase of property subject to the special assessment lien. In the event a sheriff sale does not provide complete payment of both the unpaid taxes and a special assessment, LB989 allows delinquent special assessment liens to remain in place and run with the land until paid. By allowing the city to recover those lien amounts, the taxpayers will be better served with a fund to accomplish demolition and cleanup. Senator Friend thanks the committee for its consideration of LB989. [LB989]

SENATOR JANSSEN: Questions? I have one. What you're saying is you wouldn't have to pay the whole ball of wax up front. If there's a special assessment against it, you could take your time in paying that, is that what you're saying? [LB989]

RODNEY KROGH: I'm going to defer the questions to one of the city attorneys of the city of Omaha, if you don't mind, Chairman Janssen. [LB989]

SENATOR JANSSEN: That's fine. Okay. Any other questions? Seeing none. [LB989]

RODNEY KROGH: Thank you. [LB989]

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

Revenue Committee
February 01, 2008

SENATOR JANSSEN: You better get...are you going to be here to close? [LB989]

RODNEY KROGH: No. [LB989]

SENATOR JANSSEN: Okay. Thank you. Proponents, please. [LB989]

PAUL KRATZ: My name is Paul Kratz, K-r-a-t-z. I'm the city attorney for the city of Omaha. First of all, I'd like to thank Senator Friend for introducing this bill on behalf of the city. This bill, we believe, is important for the city of Omaha for a number of reasons. We have quite a few of unsafe homes, homes that are uncared for. As a result, Omaha has set up a revolving fund to demolish these homes, to clean up weeds and litter. As a result of those demolitions and the cleanup, we make a special assessment on the properties. This runs approximately \$300,000 a year. By doing the demolitions particularly, we add value to the property and we keep the properties clean. As mentioned before, before 2007 these special assessments always ran with the land, even through a tax sale or sheriff sale and foreclosure. In 2007, the Nebraska Supreme Court reinterpreted the language of the statute to say that our special assessments do not run with the land. The effort of this bill is simply to put us back in the same position we were prior to 2007. I'd like to mention that this bill will not have any impact on developers. The developers in Omaha do not buy these properties, do not buy them at the tax sales or the tax certificate sale for a number of reasons: One, they're usually small lots; they're in undesirable areas; and you have a three-year redemption period, and most developers do not want to have that money held that long. Who does buy these tax certificates are land speculators who will buy the tax certificate, hold onto it for three years in hopes that it will be redeemed by the property owner. If it is redeemed by the property owner, then there is a 14 percent interest rate earned by that land speculator. As a matter of fact, I guess, in Omaha, 80 percent of these tax certificates are redeemed, and so the land speculator gets a fair return, a pretty good return on his/her money. It's that 20 percent that are not redeemed where we then have the special assessment and that does, under the current interpretation of the law, does get foreclosed out. Again, we wish...will ask for favorable consideration of this piece of legislation. Thank you. [LB989]

SENATOR JANSSEN: Questions? Tom. [LB989]

SENATOR WHITE: Paul and I have known each other many years. Paul, the language says, at least the description I read, said you want this to be a permanent and nonextinguishable through foreclosure lien. [LB989]

PAUL KRATZ: That's correct, and so it was prior to 2007. [LB989]

SENATOR WHITE: Actually what you want is a first priority, do you agree? [LB989]

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

Revenue Committee
February 01, 2008

PAUL KRATZ: That would be another way to put it, yes. [LB989]

SENATOR WHITE: I mean, but the permanent nonextinguishable language is problematic. [LB989]

PAUL KRATZ: It would be the same priority as general taxes. [LB989]

SENATOR WHITE: Well, if that's true, in fact, it could be extinguished, couldn't it? [LB989]

PAUL KRATZ: It could be... [LB989]

SENATOR WHITE: For example, you're in a bidding war at the...if it's on the same level, you actually want it to sort of be prior to that. [LB989]

PAUL KRATZ: And it would survive...that's correct. It would survive the foreclosure. [LB989]

SENATOR WHITE: If they're on the same level and we go into foreclosure, you bid in your money, the tax certificate guy bids in his money, and whoever bids a dollar more, gets the property free and clear of the other one, right? [LB989]

PAUL KRATZ: See, actually the tax certificate guy comes in before the foreclosure, buys the tax certificate...right. Okay. [LB989]

SENATOR WHITE: Right, but...and I mean, on sheriff's deed. [LB989]

PAUL KRATZ: Yeah. [LB989]

SENATOR WHITE: Is your problem that you lose your priority with the sheriff's deed or is it in the foreclosure? [LB989]

PAUL KRATZ: In the foreclosure, after that redemption period, and then it goes to foreclosure. That's where we lose the priority. [LB989]

SENATOR WHITE: Can you bid in your lien and force the tax certificate guy to bid it in, bid in over it to buy the property out from under you? [LB989]

PAUL KRATZ: Theoretically we could. The practical problem is that obviously we involve the city basically bidding on its own special assessment. That would take another pool of funds to be able to go through that bidding process. [LB989]

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

Revenue Committee
February 01, 2008

SENATOR WHITE: But then you'd end up with the property if they didn't come, I mean... [LB989]

PAUL KRATZ: We would end up...we would end up with the property, but no payment on the special assessment. We will have spent money to demolish the home, for example, and then buy it. [LB989]

SENATOR WHITE: I get that, but what we're saying is, a piece of property comes up for sale, you have \$1,000 lien on it for special assessments, you have somebody with a tax certificate. You're in a competitive bidding situation. City can bid up to \$1,000 for that special assessment, correct? [LB989]

PAUL KRATZ: Theoretically yes, we could. [LB989]

SENATOR WHITE: The guy with the tax lien has to bid in more than that, correct? [LB989]

PAUL KRATZ: Um-hum. [LB989]

SENATOR WHITE: And if he does, you get your money. [LB989]

PAUL KRATZ: And if he doesn't then we pay the \$1,000 for the property. [LB989]

SENATOR WHITE: No, you cancel...don't you just cancel your lien? It's not new money. [LB989]

PAUL KRATZ: It gets canceled eventually if it goes to the LRC and through that process, which would be subsequent to a foreclosure. If nobody bids in in foreclosure, then it goes to the LRC, and we have another situation with the LRC where that property we can buy from them for \$1 after all the liens are foreclosed. We then partner with some nonprofit firms in Omaha, put in some HED money, and sell it for development for... [LB989]

SENATOR WHITE: So the city could end up with that property without expending any new dollars, it just won't recoup money they put in to knock the building down. [LB989]

PAUL KRATZ: No, we would have to spend the new dollars. I guess it gets paid up, paid against us, but we're essentially...yeah, you're right, we would not recoup money we've already put in. That's a fair way to say it. [LB989]

SENATOR WHITE: That money is spent as soon as you knock the building down. [LB989]

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

Revenue Committee
February 01, 2008

PAUL KRATZ: It's spent with the expectation, I hope that we get it back. If we get it back, we put it back into this revolving fund so it can take off other problem homes. [LB989]

SENATOR WHITE: But the point is, you have a choice as the law sits now to either take that property, bid in your lien and get the property or get your money back. [LB989]

PAUL KRATZ: That's true. [LB989]

SENATOR WHITE: But what you want is another option that says, we get a permanent lien on that property and we can hold it until somebody wants to clear it up and pay us cash. [LB989]

PAUL KRATZ: We basically want our old option back that we had up until 2007. [LB989]

SENATOR WHITE: Thank you. [LB989]

SENATOR JANSSEN: Any other questions? I don't see any. [LB989]

PAUL KRATZ: Thank you. [LB989]

SENATOR JANSSEN: Thank you. Any other proponent? Gary. [LB989]

GARY KRUMLAND: (Exhibit 3) Senator Janssen, members of the committee, my name is Gary Krumland, representing the League of Nebraska Municipalities, appearing in support of LB989. I'm here both to support the bill and then ask the committee to consider an amendment. I have a rough amendment being passed out right now. And what we would ask the committee to do would be to consider extending the provisions of the bill beyond the cities of the metropolitan class to all cities and villages. I guess, I will mention, the amendment was not drafted to include sanitary improvement districts, which are also...would be affected by this sort of thing and by the court case, but if that is the committee's desire, they could...we have no problem with that. You heard the example of what happens in Omaha. In some of the smaller cities, special assessments are also used for public improvement projects like extending water, sewer, streets. A district is created, the property is assessed and determined how much they benefit, and an assessment is made against each property, bonds are issued to do the improvement, do the paving, extend the water, and then an assessment is placed on the property and the property owner pays that off over time. So it's not only a situation like Omaha where you have an assessment or a lien against a property to clean up the property, but also a special assessment is placed on the property based on how much they benefit from an improvement. So if that special assessment is extinguished in this situation, the payments for that benefit and for that project go away and the city has to come up with money through their general taxes or some other place to pay off those

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

Revenue Committee
February 01, 2008

bonds, so the property that is benefitted does not end up paying for it. So we do think it's important that this be applied to all cities also. I'd be happy to answer any questions. [LB989]

SENATOR JANSSEN: Questions? Tom. [LB989]

SENATOR WHITE: I'm troubled by the language. It says, such liens "shall be in parity." In fact, you don't want it in parity, you want it to be superior to all other general sales tax liens. [LB989]

GARY KRUMLAND: Well, I... [LB989]

SENATOR WHITE: You don't want to be in a bidding war with these folks, do you? You want it if they...somebody buys it that it still survives until they pay you cash. [LB989]

GARY KRUMLAND: I would...well, and I'll...I just was mirroring the language that was already in the bill, so I'll defer that. [LB989]

SENATOR WHITE: Right. [LB989]

GARY KRUMLAND: I would...I guess it's my understanding that we at least want to be in parity so that if there is not enough money, if the...goes through the process, that the lien is not extinguished by the sale of the land, so that a special assessment lien would still remain in place. So that anybody purchasing the property... [LB989]

SENATOR WHITE: Let's assume you're in parity. You've got \$2,000 special assessment lien and there's \$3,000 in general taxes and you get \$4,000...what, do you get paid pro rata, you split it then? Do you get paid...because if you're primary, you get your full \$2,000, then the secondary people get \$3,000. I mean, it sounds to me like... [LB989]

GARY KRUMLAND: I understand what you're saying. Yeah. [LB989]

SENATOR WHITE: ...you're saying one thing that you want to be equal, but you want it to survive. And if it's equal... [LB989]

GARY KRUMLAND: At least we would get...if it's equal and it's paid off pro rata, we at least get some benefit. [LB989]

SENATOR WHITE: So you'd take pro rata? I mean, if it's on the same level and they... [LB989]

GARY KRUMLAND: If that's it or the...yeah, yeah. Or the option would be if the taxes

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

Revenue Committee
February 01, 2008

are paid off pro rata determine, we would at least maintain...the lien would not be extinguished for the special assessments, which the court case said that it would be. [LB989]

SENATOR WHITE: If you file a lawsuit and your lien is on the same level and I got the general tax stuff and I file it and I foreclose it and...can I sell that property free and clear of both of our liens or not? If you're on the same level as me, do I have the right to force a sale? [LB989]

GARY KRUMLAND: I guess I don't know the answer to that. [LB989]

SENATOR WHITE: Yeah, I don't either. [LB989]

SENATOR JANSSEN: Chris. [LB989]

SENATOR LANGEMEIER: Chairman Janssen, thank you. This same court case is why I had my bill the other day, is to require a notice sent to the bankers. [LB989]

GARY KRUMLAND: Um-hum. [LB989]

SENATOR LANGEMEIER: And with that same notice, would we not want to maybe just add cities and municipalities onto that notice, with that notice? And then you would have the opportunity to go participate at an auction that you had a lien to to potentially bid in your potential loss instead of getting wiped off. I mean, that's what the bankers are going to do. [LB989]

GARY KRUMLAND: Yeah. [LB989]

SENATOR LANGEMEIER: They aren't getting any treatment to infinity. [LB989]

GARY KRUMLAND: Well, I guess we would consider a special assessment more like a tax than a loan. But that would be better than what it is now... [LB989]

SENATOR LANGEMEIER: Okay. [LB989]

GARY KRUMLAND: ...because they are paying for public improvements that benefit the specific property. We would think that...I guess we would argue that it's closer to a tax. [LB989]

SENATOR LANGEMEIER: Okay. Thank you. [LB989]

GARY KRUMLAND: Um-hum. [LB989]

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

Revenue Committee
February 01, 2008

SENATOR JANSSEN: Any other questions? Seeing none, Gary. Any other proponents? Any opponents? Anyone in a neutral capacity? Seeing none, did you waive closing or you want to close? You'll waive closing? Okay, he waives closing. That ends the hearing on LB989 and the hearings for the day. [LB989]

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

Revenue Committee
February 01, 2008

Disposition of Bills:

LB778 - Held in committee.
LB864 - Held in committee.
LB897 - Held in committee.
LB989 - Held in committee.

Chairperson

Committee Clerk