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Revenue Committee  
March 01, 2017

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[LB291 LB322 LB385 LB555]

The Committee on Revenue met at 9:30 a.m. on Wednesday, March 1, 2017, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB291, LB322, LB385, and LB555. Senators present: Jim Smith, Chairperson; Lydia Brasch; Mike Groene; Tyson Larson; Brett Lindstrom; and Paul Schumacher. Senators absent: Curt Friesen, Vice Chairperson; and Burke Harr.

SENATOR SMITH: Good morning, everyone, and happy Sesquicentennial Day for Nebraska's statehood. And appreciate you being here this morning. This is unusual for our committee to have a morning committee hearing and not an afternoon, but welcome to the Revenue Committee public hearing. My name is Jim Smith. I represent the 14th Legislative District in Sarpy County and I serve as Chair of the committee. The committee will take up the bills in the order posted on the outside of the room. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. To better facilitate today's proceedings, I ask that you abide by the following procedures. First, if you would please, turn off your cell phones and electronic devices so as not to interfere or interrupt the person testifying. As we begin to testify, if you'd like to move towards the front of the room if you're wanting to move into queue to testify on a particular bill. The order of testimony will be the introducer of the bill, proponents, then opponents, then those in neutral capacity, and then we will have closing remarks from the person introducing the bill. If you will be testifying, please complete the green form and hand that to the committee clerk when you come up to testify. If you have written testimony or exhibits for the committee and you would like to have those distributed, make certain you hand those to the page--and I'll announce the pages here in a moment--and they will help get those distributed. If you do not have enough copies, no worries, just let us know. We can help you get those copies made and get those distributed for you. When you do come up to the table to testify, we ask that you spell your name. That's to make certain that we get it accurate into the record. The microphone on the table is not to amplify your voice, so you'll need to speak loudly enough for everyone to hear. The microphone is to capture your testimony so we can get that into the record correctly. We are going to use the light system. We don't have a large number of people here today, but because we have a tight time frame this morning we are going to use the light system. The green light will be lit for four minutes, after which time it will turn to an amber color for the last minute. If you would use that period of time to wrap up your testimony so that by the time the red light comes on we will have your remarks concluded. If you would like your position to be known on a particular bill but do not wish to testify, please sign the white form at the back of the room and it will be included in the official record. Let me introduce you to the committee staff with us today. To my immediate right is legal counsel, Mary Jane Egr Edson. To my immediate left is research analyst, Kay Bergquist. And then to my left at the end of the table is committee clerk, Krissa Delka, and that's who you will turn your forms into when you come up to testify. Committee

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members with us today, I'm going to let them introduce themselves, but I'll first tell you that Senator Groene is introducing a bill in another committee and I believe he will be with us shortly. Senator Friesen is out today, as is Senator Harr, so we will have neither of those committee members with us today. And I'll let senators introduce themselves.

SENATOR LARSON: Tyson Larson.

SENATOR LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

SENATOR BRASCH: Lydia Brasch, District 16, Burt County, Cuming County, Washington County.

SENATOR SCHUMACHER: Paul Schumacher, District 22, that's Platte and parts of Colfax and Stanton County.

SENATOR SMITH: All right, very good. And our pages with us today, assisting us and assisting you, are Angela Ching, a junior at UNL, an English and political science major from Hawaii, and she brought all the wonderful weather to us. And Carlin Daharsh, a junior at Wesleyan, Spanish and political science major from Gothenburg, Nebraska. So we appreciate them being with us today and helping. And with that we're going to begin our hearings with the introduction of LB291 by Senator Larson. It relates to adopting the Special Economic Impact Zone Act. Welcome, Senator Larson. [LB291]

SENATOR LARSON: Good morning, Chairman Smith and members of the Revenue Committee. My name is Tyson Larson, T-y-s-o-n L-a-r-s-o-n, and I am here today to present LB291, a bill that creates and proposes to adopt the Special Economic Impact Zone Act. The purpose of this bill is to utilize the tax incentives provided within the act to encourage the formation and expansion of businesses on reservations in this state. I would like to share with the committee my motivation behind introducing such legislation. The Santee Sioux Indian Reservation, the Ponca headquarters, as well as a portion of the Winnebago Indian Reservation fall within the boundaries of Legislative District 40 and as such I have become familiar with the vast array of economic concerns which they all face. I have reached out to our Nebraska tribal leaders and have had the opportunity to meet with them, as well as representatives from all the tribes to discuss their similar concerns. It is my intent to provide both incentives and solutions through LB291, an attempt to promote economic growth and stability as well as maintain sovereignty within designated, special economic impact zones, as addressed in the bill. Pursuant to similar legislation introduced during the previous session and recommendations of the LR547 Tribal Economic Committee, LB291 was drafted with consideration given to the original testimony as well as suggested input provided by the Department of Revenue. LB291 provides

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various tax incentives for qualified businesses operating on an Indian reservation or special economic impact zone, as established by the bill. Qualified businesses, as defined in part, means such entity shall be located within a special economic impact zone on or after the effective date of this act shall, "Derive no more than 5 percent of its income from the sale of agricultural grain which it or one of its subsidiaries actively produced; and does not engage in Class III gaming activity authorized by the federal Indian Gaming Regulatory Act". LB291 also provides a preference for NIFA projects located on an Indian reservation and authorizes sales and revenue sharing agreement between state and Indian tribes. I would greatly appreciate the committee's consideration of this bill and I am happy to answer any questions. [LB291]

SENATOR SMITH: Thank you, Senator Larson, for your opening on LB291. Questions from the committee? I see none. [LB291]

SENATOR LARSON: Thank you. [LB291]

SENATOR SMITH: We move to proponents of LB291. Proponents are those wishing to testify in support of LB291. Anyone wishing to testify in support of LB291? Welcome, Mr. Wesely. [LB291]

DON WESELY: Chairman Smith, members of the Revenue Committee, my name is Don Wesely, D-o-n W-e-s-e-l-y. I'm here representing the Winnebago Tribe. And we want to thank Senator Larson for your leadership again in introducing LB291. I think many of you may have attended the luncheon we had with the Winnebago Tribe where Lance Morgan and Ho-Chunk were represented. We're very proud of the economic progress we've made over the last 20 years in part, large part, due to the success of the Ho-Chunk, but we have so much further to go. I think all of the tribes in Nebraska recognize the economic challenges that we face. And any assistance that could come from the state Legislature is much appreciated. Senator Larson here is trying to provide different tools that could be valuable to us as we continue to address those challenges. So just as we did last year with LB1104, we continue to support this effort in supporting LB291 and would encourage your support as well, so. [LB291]

SENATOR SMITH: Thank you, Mr. Wesely. [LB291]

DON WESELY: Thank you. [LB291]

SENATOR SMITH: Questions from the committee? Senator Schumacher. [LB291]

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SENATOR SCHUMACHER: Thank you, Chairman Smith. And thank you for your testimony, Mr. Wesely. Essentially, this makes a company that locates on the reservation income tax exempt in an unlimited amount of income? [LB291]

DON WESELY: I'm uncertain about that, but yeah, it would provide incentives for companies to locate on the reservation. [LB291]

SENATOR SCHUMACHER: I'm just trying to sort...unlimited income tax exemption for a business that locates on tribal land. [LB291]

DON WESELY: I'm not sure about that. [LB291]

SENATOR SCHUMACHER: Okay. And the first \$10 million worth of purchases on sales tax each year, sales tax exempt. [LB291]

DON WESELY: Yeah. [LB291]

SENATOR SCHUMACHER: And then, if a tribe presents an agreement with certain minimal requirements, the department shall--not may, but shall--approve the agreement. And one of the requirements regarding for purchases that are transacted on the tribal land is that it have a tribal tax that is less than the state sales tax. So am I right in thinking it could impose a tribal tax of, say, .00001 percent? [LB291]

DON WESELY: I think that's a possibility. [LB291]

SENATOR SCHUMACHER: Okay, so all...for all functional purposes then, all transactions made on tribal lands are exempt from Nebraska sales tax. And of that, if they do is a little tax, it would be 20 percent. And then what else is in the economic incentive here? Now, if someone...let's just suppose that we now have a nearly all exempt sales tax on purchases on tribal land. If someone sets up a business there and acts...makes the purchases there, but has the product delivered to another state, do you know what tax consequence there is in the other state? Is it tax free there, too? [LB291]

DON WESELY: I'm not sure about that. [LB291]

SENATOR SCHUMACHER: Thank you. [LB291]

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SENATOR SMITH: Further questions? I see none. Thank you, Mr. Wesely. [LB291]

DON WESELY: Thank you. [LB291]

SENATOR SMITH: Next proponent of LB291. Next person wishing to testify in support of LB291. Welcome. [LB291]

LUCAS LaROSE: (Exhibit 1) Thank you. Good morning. My name is Lucas LaRose, L-u-c-a-s L-a-R-o-s-e. I want to thank the committee for allowing me to testify this morning, providing my testimony on LB291. I'm a member of the Northern Cheyenne Tribe of Montana and I am a descendant of the Winnebago Tribe of Nebraska; you heard our lobbyist. I've lived on the Winnebago Tribe pretty much all my childhood life and then I moved to the Sioux City area. As of a few weeks ago, I was appointed a commissioner on the Nebraska Commission on Indian Affairs by our Governor. I also am a licensed attorney here in the state of Nebraska; I work at Ho-Chunk, Inc. as an attorney. They're aware of my presence, however I do not represent them here at this hearing. Before joining Ho-Chunk I specialized in getting my law degree in Indian and tribal law. So I consider myself a little bit more learned in this field than a typical attorney. I went into this whole line of work to better my people, so. I come here today to express my support for the first nine sections of LB291. I can't speak to the other provisions; I'm not an expert on NIFA nor tax revenue. You'll have to speak to the tribes themselves about negotiating an agreement with them. That's a government to government relationship. However, I believe the creation of economic impact zones will support economic development in Indian country which includes Indian reservations; service areas; and individually held trusts. Currently, under the Department of the Revenue's guidance, a transaction is exempt from the sales and use tax only if the transaction is made within the reservation and if it's also to a Native American. The department's guidance doesn't explicitly include service areas or individually owned trusts. However, LB291 would permit qualified businesses, even those located on those types of land service areas and individually owned trusts, to receive the sales and use tax exemption if it's (inaudible) within the zone. As such, I believe LB291's provisions could help establish a regime of entrepreneurs who need to buy goods and services and who are not already eligible for the provided exemption under state law. Moreover, certain tribes whose lands are not included within the already provided exemption will benefit as well. Finally, I believe that bills like LB291 will help cultivate stronger relationships between our state and the tribes of the state, so I encourage you to continue to cooperate with all the tribal governments. Thank you. [LB291]

SENATOR SMITH: Thank you, Mr. LaRose, for your testimony. Senator Schumacher. [LB291]

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SENATOR SCHUMACHER: Thank you, Chairman Smith. And thank you for your testimony. Do you know...I believe you said you were familiar with the first portions of this bill, is that correct? [LB291]

LUCAS LaROSE: Correct, the first nine sections. [LB291]

SENATOR SCHUMACHER: Okay. One of the provisions says that it requires that in order to participate in the benefits of this act the tribe cannot engage in Class III gaming under the federal Indian Gaming Regulatory Act. Is it permissible for a state to make rights available under one of its acts that requires the tribe basically to not do something that would otherwise be permitted under federal law? [LB291]

LUCAS LaROSE: I believe--and this is my personal opinion, you know me as someone who has read the IGRA, the Indian Gaming Regulatory Act--and actually, to be honest, you're asking a constitutional question between the power of the states and also the power of the federal government to determine its rights vis-a-vis tribal governments. I suspect as this bill doesn't explicitly authorize or permit such activity vis-a-vis the tribes, I would say my interpretation of it is that this type of activity would not be permitted under this bill. It doesn't necessarily establish rights or not. As you all know, Class III gaming under the IGRA is not currently legal in our state, so as of right now it merely says that if this type of activity were to appear it likely would not be...it would likely not enjoy the benefits as under LB291. [LB291]

SENATOR SCHUMACHER: Okay, thank you. [LB291]

SENATOR SMITH: Senator Brasch. [LB291]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Mr. LaRose, for coming forward to testify. I'm curious, do you know how many current businesses there are on reservations in this state? How many people this would affect today, not just new business expansion. [LB291]

LUCAS LaROSE: I won't purport to be an expert on tribal businesses or even individually Indian-owned businesses on reservations or even other areas that this bill will affect. But I can tell you that, even though we have the example of Ho-Chunk, Inc. and other successful tribal-owned businesses in our state, the number is far too little. It needs to encourage. One thing I will tell you about Indian country as a whole, across the entire country, a lot of businesses, they're far and few between. You have to find they're owned by tribes themselves. And so that's kind of the leader, that's the paradigm of economic development we are currently in. So this bill I think

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would help encourage the next phase, which is kind of an entrepreneurship type class, which is someone owning a restaurant or putting together food or even other types of businesses that are individually owned by tribal members and others within these proposed zones. So this would further encourage that, which I believe would be great for reservations and other affected areas as a whole. [LB291]

SENATOR BRASCH: And although you're not representing Ho-Chunk, they do have a presence not just in Nebraska, but in other states as well. Is that correct? [LB291]

LUCAS LaROSE: Yes, ma'am. [LB291]

SENATOR BRASCH: And international as well. Is that correct? [LB291]

LUCAS LaROSE: Yes, ma'am. [LB291]

SENATOR BRASCH: And so even though they had no incentives, they were able to grow and expand into a global business. Correct? [LB291]

LUCAS LaROSE: Through federal contracting, yes, they were able to grow and have a presence throughout the United States and across the world, the Middle East. Yes, ma'am. [LB291]

SENATOR BRASCH: And federal contracting with the DoDEA or with the... [LB291]

LUCAS LaROSE: Various agencies. [LB291]

SENATOR BRASCH: Various, multiple agencies? [LB291]

LUCAS LaROSE: Yes, Department of State, all the five branches within the Department of Defense and other federal agencies as well. [LB291]

SENATOR BRASCH: Okay. All right. It's wonderful to hear of their success story and I'm just wondering if their footprint alone will lead to other business opportunities. [LB291]

LUCAS LaROSE: Yes. Well, our CEO, Lance Morgan, is definitely an advocate and he's willing to speak to any tribes who want to listen and a lot of them do. So I encourage you all to reach out to the tribal leadership and Ho-Chunk, Inc.'s leadership to hear the story and get the details. [LB291]

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SENATOR BRASCH: Very good. Thank you for your testimony. I have no other questions. Thank you, Chairman Smith. [LB291]

SENATOR SMITH: Thank you, Senator Brasch. Senator Schumacher. [LB291]

SENATOR SCHUMACHER: Thank you, Chairman Smith. If this is a formula for economic growth in depressed areas and why wouldn't we make these special zones in any village under 500 with a median income below a certain standard? Why would we just want to limit it to tribal lands? Is there any constitutional reason why we're limited to tribal lands, we couldn't just say any poor, small community gets in on this deal? [LB291]

LUCAS LaROSE: I haven't discussed the intent with Senator Larson behind this bill, so I won't attempt...I won't misrepresent what they are. But I will tell you this, as a Native American, these areas have been afflicted. This entire nation when they planned its Indian policy throughout years, they specifically put tribes in areas where they didn't want other people to encounter them. And when they were encountered, like as in the case of the Black Hills, the people who were sent there to protect the Indians, like General Custer, actually did the antithesis of his mission. He actually helped open up the Black Hills to settlement. So this country has had a history of just a bad policy towards its Native Americans. And now the current paradigm that we're in is self determination. You may hear that buzz word a lot when it comes to relationship with Indian tribes. This bill actually fits in line with that and not only allows the tribes themselves to help determine their fate and to help succeed and accomplish, but it also allows the individual members to do so as well. So I would say that because that's the current paradigm the federal government is currently in with its policy toward Native Americans or tribes, I should say more accurately, that's likely a reason why we see a lot of legislation that's harmonious with that intent. [LB291]

SENATOR SCHUMACHER: Does Ho-Chunk pay any income taxes to Nebraska? [LB291]

LUCAS LaROSE: You know, I don't have knowledge of that question so I don't want to give you an answer to mislead you. [LB291]

SENATOR SCHUMACHER: Or sales taxes, do you know? [LB291]

LUCAS LaROSE: I do know that Ho-Chunk, Inc. is right now a holder of the...if you go to the Department of Revenue's current guidance for Indians or Native Americans and tax in this state there's a section there where an Indian or a Native American can have a sales tax exemption. Ho-Chunk Inc. is currently a recipient of one of those. [LB291]



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SENATOR SCHUMACHER: Thank you. [LB291]

SENATOR SMITH: I see no further questions. Thank you, Mr. LaRose, for your testimony. [LB291]

LUCAS LaROSE: Thank you. [LB291]

SENATOR SMITH: Next proponent of LB291. Welcome. [LB291]

JUDI gaiashkibos: (Exhibit 2) Thank you. Good morning, Chairman Smith and members of the Revenue Committee. I'm Judi gaiashkibos, the executive director of the Nebraska Commission on Indian Affairs, and my name is spelled Judi, J-u-d-i, gaiashkibos, g-a-i-a-s-h-k-i-b-o-s, and I am going to testify on behalf of the Commission on Indian Affairs firstly and then also on behalf of the Ponca Tribe of Nebraska. The Indian Commission is here to advocate on behalf of all of the tribes, as is our mission, and we are very appreciative of Senator Tyson Larson once again introducing this new version of what he did last year in the form of LB291. LB291 has a potential to help tribal economies. Unemployment in Indian country and among Native peoples in Nebraska is extraordinarily high. Nebraska is among the group of the second highest unemployment rates for Natives in the country, reaching from 30 percent to nearly 40 percent. It is only behind South Dakota. That is seriously a stark contrast to the statewide unemployment rate of only 2.5 percent. At the same time, nearly a third of Natives live in poverty while the statewide rate is less than 13 percent. No other race or ethnicity even approaches the unemployment and poverty rate for Natives in Nebraska. So some of the questions that I've heard thus far are about why Native Americans. And I think it's so appropriate today as we celebrate our statehood that Native people...we're the first peoples and yet we lag behind and our people have not had the benefits and are not doing as well as others. And considering the sacrifices we made, and we love this state and we want to be a part of the progress of the state. So I think by supporting LB291, it's a win-win for Nebraska and for our tribes. So that's my testimony as far as the Indian Commission. I'd like to present a bit of the testimony for the Ponca Tribe of Nebraska and then I'm going to give you a copy of it, because it's rather lengthy and I know we're on a time frame. So on behalf of Chairman Larry Wright, Jr., the Chairman of the Ponca Tribe of Nebraska and a commissioner of the Nebraska Indian Commission: The Ponca Tribe supports LB291 and believes it will be helpful to tribes. In particular, the tribe supports the fact that it is being included in the bill along with all other tribes geographically located within Nebraska's boundaries and not separated out because of its unique land base. The tribe has sought the opportunity to demonstrate how, with its unique land base, the government working together can generate grant opportunities and increased revenue, not only for the tribe and its members but also for the state of Nebraska, its local governments, and all residents of the state. A large part of the problem for Natives is the difficulty with economic development in Indian country. Those

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problems exist within the Ponca Tribe's territory, too, and are often exacerbated by the fact that the Tribe's territory is scattered throughout the state. The tribe was terminated in '62 and restored in 1990 without a residential land base and instead has service areas. So they are unique to the other tribes. Although, as you know, the story of Ponca Chief Standing Bear, we were first peoples here along the Niobrara. We had a huge reservation. Nebraska providing income and sales tax exemptions to businesses that choose to locate in a tribe's jurisdiction has the potential to improve tribal economies. It can be very difficult to attract outside businesses to Indian country. In most cases, tribes themselves must establish all businesses in Indian country to make up for the lack of outside business. But that is always limited by tribal governmental resources, resources that are further limited by the fact that the lack of economic development, high unemployment, and high poverty rates reduce a tribe's tax base, bringing down the resources available to increase that economic development and perpetuating the same problems. When the Ponca Tribe begins a new business, it has reverberating effects for everyone, especially because of the Tribe's unique situation of being located throughout the state. The Ponca Tribe is also a local employer. When they hire people, they stay in our state. The Tribe is hopeful that the exemptions in LB291 will allow those small businesses to start up in tribal jurisdictions and help improve the economies of both the state, the tribes themselves. The Tribe is particularly supportive of the bill's provision for sales tax compacts between tribes and the state. One of the barriers to the Ponca Tribe's economic development is the economic uncertainty in handling state taxes, especially when they may interfere with tribal taxes or result in taxation by both jurisdictions. This slows down the tribe's economic development and that hinders employment and reduces the tribe's resources to fund its own government and infrastructure. It also means the spillover of the tribe's economic activity to cities and states goes down or even disappears. But this bill allows the tribe to finally enter into an agreement with the state. Right now the handling of sales tax is murky. Handling issues of state sales tax can be complex and difficult, generally requiring particular legal expertise. The issues are difficult enough that the tribe has to spend great effort and money dealing with retail operations. But a sales tax agreement will provide certainty and clarification with sales tax in tribal jurisdictions. Overall, LB291 provides one of the first opportunities for tribes in the state of Nebraska to work together towards economic development. And I will stop there, the red light is on. But they have presented extensive testimony that I will leave with you to share with the members that are present today. And I think so often tribes are asked...it seems like there's a fear that we're going to be successful and I hope you don't feel fearful. And as far as gaming goes, the state of Nebraska does not allow for Class III gaming. Therefore, don't be fearful. We can't have it unless we compact with the state. Some of our tribes have gaming in Iowa, because that state allows for Indian gaming. So I think overall we should commend Senator Larson. And I hope that this year this can get out of committee and onto the floor and we can all celebrate. So I'd be happy to answer questions, but as I stated in my testimony, this is very complex. I am not an attorney, so I would defer some of those questions to the tribes. We Bthu Huh. [LB291]

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SENATOR SMITH: All right. Thank you, Ms. gaiashkibos, for your testimony and thank you for reminding us of the rich Native American history in our state, especially on this statehood day. So thank you for reminding us of that. Questions from the committee. I see none. Thank you. [LB291]

JUDI gaiashkibos: Thank you so much. [LB291]

SENATOR SMITH: Next proponent of LB291. Seeing no additional proponents, we move to opponents, those wishing to testify in opposition to LB291. Opposition? [LB291]

NATHAN HABEL: Yeah. [LB291]

SENATOR SMITH: Welcome. [LB291]

NATHAN HABEL: My name is Nathan Habel, N-a-t-h-a-n H-a-b-e-l. I'm a bit of a novice. I had left work to be here at this meeting. A little background, what brings me out is I think that the taxes have become onerous. And my exclusion from the process I don't think is helping, so this is me contributing what I can to try and bring our tax burden down that I think is overbearing. I don't know anything about this bill, to be honest with you. Today was my first introduction to it or the fact of its knowledge to me, but I oppose it on just principle. Should any of my facts be wrong, I would reevaluate my assessment. One thing that was exempted from Tyson's introduction was what the bill costs. Can I ask somebody that? What is the fee... [LB291]

SENATOR SMITH: We can share that with you afterwards. [LB291]

NATHAN HABEL: Oh. Just my statement, right? Okay. The principles on why I oppose it: I think government has gotten away from its original structure and intention and it seems to get its paws into more things than I think are necessitated by constitution and origination. I'm a big fan of minding my own business. And I think that this bill would compromise that by getting in the middle of the reservations' autonomy to make their own decisions and go with their own faith. It is apparent to me that from listening that I might be unaware of other ways that Nebraska is in the pockets of the reservation. And should that be the case, I would exhort Nebraska to pull their pockets out and let the reservation do their own thing, enjoy...make their own decisions. If they want to game, let them game. This is the...I think a founding principle that has been out of favor as of late. The fear that I have is that this bill would be a...would affect Nebraska taxes going up in some form or fashion, in either lost revenue or it might be a premise to create infrastructure that we may not otherwise be responsible for. I also think that some of these past bills...that LB1104 is another bill that I don't know anything about, but if these things are so successful why

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are we back at the table looking to solve more problems? The plight of the tribes is understandable and I think there has been a terrible history that America has. And I'm aware of Andrew Jackson and the damage that he's done. But I think that we have a responsibility to stand on our own. And I think both peoples will be substantially happier serving independently of each other and allowing freedom to do the same. Based on these principles, once again should I be wrong in any form or fashion, I would like to reevaluate. But I'm afraid that the price is too high. I'm afraid that we can further relations better by allowing more autonomy and by staying out of each other's pockets, so to speak. With that, I am ready for your questions. [LB291]

SENATOR SMITH: Thank you, Mr. Habel, for your testimony. Do we have questions from the committee? I do appreciate your patience with us, us not being able to respond back to you. But you can either check with Senator Larson or come by my office and meet with the Revenue staff, we'd be more than happy to share the fiscal information with you on this bill. [LB291]

NATHAN HABEL: Sure. [LB291]

SENATOR SMITH: All right. Thank you for testifying today. Additional opponents of LB291. Seeing none, those wishing to testify in a...opposition? Okay, come on. Are you wanting to testify? Please come up. Welcome. [LB291]

CATHERINE COOK: Do I need to fill this out first? [LB291]

SENATOR SMITH: You can fill that out afterwards and provide it, but go ahead and... [LB291]

CATHERINE COOK: Okay. My name is Catherine Cook, C-a-t-h-e-r-i-n-e, last name, Cook, C-o-o-k. I was not prepared to oppose this bill, but I do oppose it based on the previous gentleman's statements. We are already a very high tax state. I agree with you that the Native Americans, it is a rich ancestry, especially on today, but we have people of all colors and creeds. And I don't think that based on what the Native Americans already get from the government, the kind of funds they already receive and then they become tax exempt, that means our taxes will increase and we continue to fund them. And it's a continual rising burden on Nebraskans. I am a native Nebraskan. I've lived in other states. I returned to Nebraska because it's home, but I am contemplating leaving again. I am tired of increases everywhere and we've been fighting property tax increases in Omaha. We've gone to Douglas County meetings, we've been here at the state, our evaluations are going up, that means taxes are going to increase again and it is ridiculous. I am retired and there's no reason for me to stay in this state and I am tired of all the exemptions of whoever thinks they deserve a break from taxes. We all should be paying taxes to support our state and our government. [LB291]

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SENATOR SMITH: Thank you, Ms. Cook. [LB291]

CATHERINE COOK: Thank you. [LB291]

SENATOR SMITH: (Exhibit 3) I see no questions from the committee. Thank you. And if you would complete that and turn it in to the clerk, we'd appreciate it. Anyone else wishing to testify in opposition? Anyone wishing to testify in a neutral capacity, neutral? We do have one letter for the record in a neutral capacity from Nebraska Investment Finance Authority, NIFA, Mr. Timothy Kenney, with that organization. And we invite Senator Larson back to close on LB291. [LB291]

SENATOR LARSON: Thank you, Chairman Smith. First of all, I think a few things need to be clarified. This bill does not affect Natives or Native businesses. Natives and Native businesses are already tax exempt. So in the sense of specifically the previous testifier saying that we shouldn't offer them any more exemptions, they don't pay income taxes or the sales tax nor do their businesses. So as we heard from Mr. LaRose, Ho-Chunk doesn't because they are a Native-owned company. What this bill does is, it focused on non-Native businesses. So those businesses that are not Native owned, i.e., mainly white businesses or people that aren't of Native descent, which would be everybody on this committee and a majority of Nebraska. Senator Schumacher talked about, would it have unlimited income tax, any non-Native business, because a Native business already doesn't pay income tax. So any non-Native business inside the special economic zone, it would be unlimited exemptions on income tax, but there are very few non-Native businesses anyway right now. And that's why the fiscal note is so low and I'll touch on that fiscal note. Senator Schumacher talked about the tribe would institute such a low sales tax. Now, one thing that is clear in this is they still use the state sales tax unless there is a tribal revenue sharing agreement. And it wouldn't make sense for the tribe to have such a .0001 percent sales tax because they're going to be taking 80 percent of those funds. And having discussed this with every one of the tribes, they view this as a reason to institute a sales tax and use those funds to benefit their tribes even more. And that's where the fiscal note gets a little sketchy for me and I'm happy and I was happy to work with the Revenue Department, but this is where we had that dynamic versus static modeling. They estimated that we lose \$121,000 in sales tax but that if we entered into one of these agreements...but they can't calculate the 20 percent that we'd get back because we would start collecting sales tax on the Natives as well. We'd get 20 percent of any sales tax that the Natives that isn't collected now. So I understand why the fiscal note is negative, but I think that in the end it would be a positive fiscal note because right now there is zero sales tax collected. And lastly, just to clarify it again, Senator Schumacher, I don't know if you quite understood it. Essentially, it just says a business couldn't get these income exemptions if they engaged in Class III gaming. So the Natives, their businesses, again, they're already exempt. It just says a non-Native essentially couldn't build a casino and get the tax benefits. And that was very clear working over the summer, working with Senator Brasch, because I understand that

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that would be a concern of a non-Native going and building a casino and then getting the income tax benefits and whatnot. We're not saying that people can't engage in Class III gaming. We're just saying that if a non-Native builds a Class III gaming facility on the reservation--should Class III gaming eventually become legal in Nebraska--they will not be able to receive the tax benefits of the special economic zone. So in terms of the lost revenue to the state or adding an extra benefit for these individuals, that's not what we're doing. We're trying to spur economic growth. And as I said, the fiscal note is so low because it affects no businesses right now. And I think we would actually bring in more money in the end. Thank you. [LB291]

SENATOR SMITH: Thank you, Senator Larson. Senator Brasch. [LB291]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Senator Larson, for your introduction. I do have a question. We are not speaking of just reservation land, are we? [LB291]

SENATOR LARSON: Yes. This would have to be reservation land or, specifically, with the Ponca it would have to be land in trust. [LB291]

SENATOR BRASCH: It would also include land in trust? [LB291]

SENATOR LARSON: Just for the Ponca... [LB291]

SENATOR BRASCH: Just for the Ponca, but not on the reservation... [LB291]

SENATOR LARSON: ...because the Ponca doesn't have a reservation. [LB291]

SENATOR BRASCH: There is land in Indian land--I don't know what tribe--in downtown Lincoln here. [LB291]

SENATOR LARSON: That's Ponca. [LB291]

SENATOR BRASCH: That is Ponca? [LB291]

SENATOR LARSON: That's Ponca. So the three tribes that have reservations, which would be the Winnebago, Santee Sioux, and Omaha, they cannot have land in trust outside of their reservation, because they have the reservation. The Ponca can have land in trust, because they do not have a reservation. So I believe...I'd have to talk to either Judi or I know the Ponca have a lobbyist here today. I think they have what's called a 13-county service area in which, in those 13

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counties they can put any land in trust. And it would affect the land in trust, but the Ponca government...but to put land in trust is a very difficult thing to do. They have to go through Bureau of Indian Affairs, the city has to approve it, it is a... [LB291]

SENATOR BRASCH: Okay. So you're saying the land in trust here in Lincoln would qualify for a business, whether it's non-Native or a Native to open a business and not owe any income tax or sales tax? [LB291]

SENATOR LARSON: A Native can do it right now on the land in trust. A non-Native cannot. [LB291]

SENATOR BRASCH: Does...is there any business currently sitting there? [LB291]

SENATOR LARSON: I think the Ponca, they might have their Smoke Signals. They have a smoking shop. Have you ever seen the billboards? I think the Ponca have a tribally owned...but I don't know if that's on tribal land or not, I'd have to ask the Ponca. [LB291]

SENATOR BRASCH: Because I could understand this if it was in a rural area, but I would think you'd want an exclusion for a metropolitan or a first-class city where business is very competitive. I mean, prime time, there is no economic...you know. [LB291]

SENATOR LARSON: A Native can do it in any land in trust right now for the Poncas. I think...and that's something that we can discuss, like any land moving forward, because one thing to put land in trust, as I said, is a very cumbersome process. The cities get involved, the county gets involved. [LB291]

SENATOR BRASCH: Right. [LB291]

SENATOR LARSON: And so maybe if that's a compromise that... [LB291]

SENATOR BRASCH: And its tax status changes when it goes into trust? [LB291]

SENATOR LARSON: It does, but I believe that the Ponca actually pay in lieu of taxes on almost all of their land that is in trust because they want to continue to have the services that are offered in that. [LB291]

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SENATOR BRASCH: And then I also share Senator Schumacher's concern where you go to downtown...and not just Bancroft. We barely have a business hanging on. Maybe we need to make those communities more attractive. [LB291]

SENATOR LARSON: I don't disagree with you. Maybe we...I think this is a good...we operate best in terms of this could be a solid idea to see how it works, see the petri dish, watch the petri dish flourish, and then our future lawmakers can say, you know what, that really worked, this is something we can create more special economic zones. But until we do it once...and these are...and the beauty about using reservations and land in trust is, they're very clearly defined and easily defined areas. Once we start digging into, well, should it be a second-class city or should it be a village and less than median income. That's very difficult... [LB291]

SENATOR BRASCH: It's easy to define a village. I mean, a village, you know, just... [LB291]

SENATOR LARSON: Well, but what constitutes a growing village or...these are very easy places to define so I think we start here and then we build further from that. [LB291]

SENATOR BRASCH: I have no other questions. Thank you, Chairman. [LB291]

SENATOR SMITH: Senator Lindstrom. [LB291]

SENATOR LINDSTROM: I just have one quick question, more of a clarification. So what we're talking about here, Santee, Omaha, Winnebago, Ponca trust land. I think it is accurate that potentially they could build something over there or anybody else could. [LB291]

SENATOR LARSON: As defined, the Ponca could build...you could...businesses on Ponca trust land could be involved, yes. [LB291]

SENATOR LINDSTROM: Right. But somebody from the outside, say in all cases, say a Walmart or a Target could potentially build on Indian land that's specified in here and individuals would not pay sales on goods purchased at the store as long as it's on the land, correct? [LB291]

SENATOR LARSON: Not necessarily. So if Walmart built on, let's say---we'll just use an example--in Winnebago. [LB291]

SENATOR LINDSTROM: Sure. [LB291]



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SENATOR LARSON: There was a Walmart built in Winnebago. If the Winnebago had a...first of all, that Walmart, just that location wouldn't pay income tax...the income they earn on that location, just period. Any other location would, they'd still have to, but any income there they wouldn't. And then on the sales tax, if the Winnebago had entered into a revenue sharing agreement with the state, whether that's at 5.5 percent or 5 percent or whatever... [LB291]

SENATOR LINDSTROM: Up to 5.5 (percent). [LB291]

SENATOR LARSON: Up to 5...it has to be equal to or less than what the state's is. If they'd entered into a revenue sharing agreement, everybody would still pay sales tax but the state...but the tribe would get 80 percent of that sales tax and the state would get 20 percent. And honestly, I can't think of a better thing in terms of if we look at this fiscal note they're saying that the \$120,000 that they're estimating in losses...loss of sales tax, but in the end I'd make the argument that once the tribal members start paying sales tax and non-Natives are paying sales tax and added businesses such as a Walmart or anything like that, that that \$120,000, even if we're just taking 20 percent we'll actually be far more money ahead. And we heard from both of the opponents that we should stay out of or that we should give more sovereignty to the tribes. There is nothing more sovereign than letting them institute their own sales tax and take control of those types of things instead of the state imposing ours on them. [LB291]

SENATOR LINDSTROM: Appreciate it. I just wanted a real-life example, more of a visual for me. So thank you. [LB291]

SENATOR LARSON: I appreciate it. Thank you, Senator Lindstrom. [LB291]

SENATOR SMITH: Thank you, Senator Larson. I see no further questions. [LB291]

SENATOR LARSON: Thank you. [LB291]

SENATOR SMITH: And that concludes our hearing on LB291 and we move our attention to LB322, to be introduced by Senator Craighead. It relates to changing the Tax Equalization and Review Commission Act. Welcome. [LB291 LB322]

SENATOR CRAIGHEAD: (Exhibit 1) Thank you. Good morning, Chairman Smith and Revenue Committee members. My name is Joni Craighead, J-o-n-i C-r-a-i-g-h-e-a-d, representing Legislative District 6 in Omaha. Today I come before you to introduce LB322 to address and improve certain issues within the Tax Equalization Review Committee (sic: Tax Equalization and Review Commission) TERC Act. And I have for the pages, too, thank you. LB322 is a

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culmination of several meetings with Douglas County staff, Douglas County Commissioners and elected officials, city of Omaha staff, and city of Omaha elected officials that was driven by many constituents reaching out asking me to help them after the TERC ordered "agrarious" (phonetic) increases and decreases on real property in Douglas County. For those not familiar with recent events in eastern Nebraska related to property valuations, the TERC ordered a blanket 7 percent property valuation increase in two subclasses of property in west Omaha and an 8 percent property valuation decrease in one subclass of property in northeast Omaha. While the TERC is tasked with a difficult job to make sure there is uniformity within a county and that assessments are within that acceptable range, many constituents provided examples of inaccuracies on their assessments and other issues with TERC. LB322 works to address many of these issues. There are three main concerns addressed in LB322: The length of the appeal process with TERC; the filing process; and the flexibility when making decisions. There is a significant backlog with TERC appeal cases with some cases dragging on for years. Currently, cases can stack up at the commission for several months to years before being granted a hearing. During that time, some valuation issues for property can continue to stack up as subsequent assessments are issued. As currently resourced, it may be a difficult task for the commission to meet the needs of property owners under current standards. LB322 establishes an 18-month time period for TERC hearing appeals. TERC would also be required to provide a decision within 30 days after the hearing. If meeting these time requirements is not possible with current resources we would be unopposed to providing the commission the resources needed to meet this standard. LB322 would require the affirmation or statement from a property owner and would change the filing fee to \$50 or one-thirtieth of 1 percent of the assessed value of the property, whichever is greater. It was pointed out that the filing fee could be too excessive for high-value properties and the parties involved agree it is best to place a cap on the filing fees. I am aware of concern that the fees may reach too high of an amount on high-value properties, such as commercial valuations, and am willing to look at a way to put a fair cap on those appeal fees. The increase of the fee from \$25 to \$50 is designed to reduce caseloads from those property taxpayers who simply appeal to cause the county assessor/attorney additional work in the hopes of a settlement. There is a provision requiring the return of an acknowledgment form from the taxpayer 30 days prior to hearing is also aimed at addressing the issue of appeals being filed just to file them. If the acknowledgment form is not filed with the TERC, it will constitute a withdraw of the appeal and a dismissal of the case by TERC, thus cutting down the number of no-show applicants. With respect to statewide equalization LB322 is designed to provide more flexibility with TERC decisions. LB322 requires that qualitative standards be met before the condition orders or percentage change to a class or subclass of property that go beyond a median level of value. Those standards are aimed at ensuring that the median is a reliable barometer of the level of value for that class or subclass before percentage adjustment is ordered. The International Association of Assessing Officers, the think tank for mass appraisal states, in its standard on ratio studies that where the measures of reliability are wide then the measures of severed tendency, such as the median level of value may be unreliable. So an adjustment made based on

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the median could be unreliable, too. The purpose of this portion of the legislation is to ensure a more reliable median before such a percentage adjustment is ordered. LB322 also provides that where the qualitative standards in the bill are not met, the TERC has the ability to order a reappraisal rather than a percentage increase or decrease. Again, if there are issues with the reliability of the data, a reappraisal would be a better way to operate from a mass appraisal standpoint than would a percentage increase that would do nothing to remedy a lack of uniformity and proportionality within a class or subclass, the main failing of percentage adjustments. Per the IAAO standard on ratio studies, Section 5.6, such vertical inequities should be addressed by reappraisals. LB322 would require a rehearing on an equalization order requiring a percentage adjustment if additional evidence comes to light that was not presented at the initial hearing. Typically, there is a fairly short window to prepare for a show cause hearing. A county may learn something after the show cause hearing that might make a difference in whether the percentage change is appropriate. This is not an unreasonable requirement when you contemplate the adjustment to value for hundreds of thousands of properties. Lastly, LB322 would require that at least one commissioner shall have been employed as a licensed real estate broker for at least ten years and shall be currently licensed under a broker under the Nebraska Real Estate License Act. Additionally, I am introducing an amendment to the bill today on behalf of Senator John McCollister. This amendment changes the dates for the notice of preliminary valuation sent pursuant to Section 77-1301 from June 1 to May 1 and changes the dates of when the county assessor shall notify the owner of the record from May 20 to April 20 of every item of real property which has assessed at a value different than in the previous year. This amendment also includes a section new to statute requiring the county assessors to submit a report to the Property Tax Administrator on a form prescribed and furnished by the Property Tax Administrator describing the methodology and procedures used to determine the preliminary valuations provided to real property owners under subdivision (2)(a) of this section. The county assessor shall submit the report to the Property Tax Administrator on or before January 15 of each year. The amendment from Senator McCollister is newly received and conceived as of late Monday. I am happy to introduce it, but would like to ask the committee review and research the date changes involved to ensure that they do not create a domino effect deeper in statute. In closing, I appreciate all the feedback on LB322 and acknowledge there could be practical or technical concerns with some aspects and I am committed to working through those issues with interested parties and the committee. I will try to take any questions and I do have expert testimony behind me. [LB322]

SENATOR SMITH: Thank you, Senator Craighead, for that opening. Senator Brasch. [LB322]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you for your introduction of this bill, Senator Craighead. The one area that I find troubling--and it's not just this bill--is if you're increasing a fee so individuals do not come forward or are less hesitant to. I think if we look at where the problem truly comes from is at the local assessment area, that if we get that problem

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or situation more in line with reasonable ability to pay or look at that, you fix it down here, you don't just fix it by increasing the fee and making people less able to come forward. And I do know we're across the board, across the state the counties are working very hard. We're looking at solutions on valuating real property, ag land property that we look at methodology rather than slowing it down by increasing a fee. Your thoughts? [LB322]

SENATOR CRAIGHEAD: Okay. Well, first of all, I'm sure you're very aware of the upheaval in Douglas County right now. [LB322]

SENATOR BRASCH: Yes, absolutely. [LB322]

SENATOR CRAIGHEAD: Okay. And also, some people will protest their taxes just to protest their taxes. There's really not a need. The reason we increased the fee was, one, it will increase the work on TERC, which we understand. It will increase...it creates \$788 million. If we increase from \$25 to \$50, there would be about \$250,000 for two additional attorneys and an administrative assistant. But we would be increasing the revenue for the state of Nebraska by about \$.5 million on this. [LB322]

SENATOR BRASCH: Okay, I have no other questions. Thank you. [LB322]

SENATOR CRAIGHEAD: Thank you. [LB322]

SENATOR SMITH: I see no other questions. Senator Craighead, thank you again for the opening on LB322. [LB322]

SENATOR CRAIGHEAD: Thank you. [LB322]

SENATOR SMITH: We now move to proponents of LB322. Welcome, Councilman. [LB322]

BEN GRAY: Thank you. Mr. Chairman, members of the committee, my name is Ben Gray, I live in Omaha, Nebraska, my address is 4942 Nebraska Avenue, Omaha, Nebraska, 68104. I'm currently president of the Omaha City Council. The city council agreed with me that if we could put together some legislation similar to what Senator Craighead is talking about, that the council would be supportive of that if something were introduced. I would like to thank, first of all, Senator Craighead for introducing this legislation. I would also like to thank her for being in several meetings with me and calming me down, because my initial thoughts about the TERC board was to eliminate it altogether. My reasons for that are because I saw, when I looked at what they did in terms of western Omaha and then what they did, specifically, in my district in

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northeast Omaha where they reduced the property valuations by 7 percent, that was one of the most discriminatory things I'd ever seen a body do, quite frankly. What it has caused is a significant problem, especially among seniors in my district. We have already predatory individuals in our community that go door to door, knocking on doors, asking individuals-- especially seniors--if they want to sell their home. And what the TERC board did was give these predatory individuals an additional tool to work with. When they knock on the door and they ask some of these seniors...and some of these are senior females who live by themselves. I have anecdotal information about that as well as information that I've gotten in writing from several individuals about that, that I want to share with you, that I will share with you at a later time. But the fact of the matter is, is that we've had a number of individuals who have when the door gets knocked on and the question gets asked they also say to them that, well, it would be good for you to sell now because what the state did was reduce your valuation, so your property is going to be worth less now than it would be a while ago. And it's going to continue to go down. Your property values are going to go down. Individuals who want to take out a second mortgage on their homes are going to have a difficult time in my district doing that because of the valuation decrease. I think what LB322 does I think, first of all, it provides for a process of giving people a good opportunity to appeal. It professionalizes the board, which I think is something that is necessary. But, again, my concern...and the other thing, and having watched this over the years and watching the TERC board operate, there has been another time when the TERC board operated when Douglas County did not do the job that they should have been doing in the assessor's office. And they did increase property values across the board in Douglas County, but they phased it in over a period of time. They did not sock the taxpayer with a 7 percent increase across the board, nor did they discriminate against the taxpayer who lives in northeast Omaha by reducing their property values by 7 percent. I think this is good legislation. I think this is a good first step. And if there are dollars that it is going to take to professionalize this board and to address the problems of individuals who want to appeal, I think it's worth it because in the end I think we're going to make money as opposed to loose money as a result of these evaluation changes. And I think there also needs to be a little bit more...let's say we ought to have the...there ought to be a closer look at some of the assessors across the state, especially in Douglas County, where there have been concerns in the past. And I'm not saying that there are any concerns now with this particular assessor, but I'm saying we've had this issue in the past and we've addressed it in various ways. But in no way did we ever really make the taxpayer pay because the assessor was not operating or functioning in a manner that he or she should have been functioning in. We did increase the property valuations several years ago, but we did it in an incremental fashion. We did not sock the taxpayer with a 7 percent increase across the board right away, which can result in literally thousands, if not hundreds of thousands of dollars that taxpayers are going to have to pay. This bill I think is a remedy for part of that and as the president of the Omaha City Council, I support this legislation. Thank you. [LB322]

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SENATOR SMITH: Thank you, Councilman Gray, for your testimony. Questions from the committee. Senator Brasch. [LB322]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Councilman Gray, for coming forward. You had mentioned that impacted was the elderly. Is that correct? [LB322]

BEN GRAY: In my district it...well, I would probably say across the city to some extent. But in my district, because of the fact that you reduced the valuations and there are...we have property that...we have mostly affordable housing. And when that affordable housing gets downgraded, it becomes easier for predators to come in and especially address seniors who may not know much about what the tax code really is or what they're supposed to be paying. And in many instances, some of them are exempt. But they are still told by these predators that you probably need to sell your house because it's losing value. [LB322]

SENATOR BRASCH: And that explains a little bit more, because I was thinking if they're elderly they'd probably have a homestead exemption. [LB322]

BEN GRAY: They have a homestead exemption. [LB322]

SENATOR BRASCH: But it's just a fear of tax. [LB322]

BEN GRAY: It's just a fear of the tax, first of all, because they're afraid that there is going to be a tax. They're afraid that the tax is going to go up. But more importantly, Senator, they're afraid that their property values are going to go down. And if they, for example, want to deed it to their children or whatever the case may be, they don't want to deed them a piece of property that is deteriorating in value, whether that's actual and factual or not. [LB322]

SENATOR BRASCH: Very good. You clarified something for me. [LB322]

BEN GRAY: Okay. [LB322]

SENATOR BRASCH: I have no other questions. Thank you. [LB322]

SENATOR SMITH: I see no further questions. Thank you again for being with us today. [LB322]

BEN GRAY: Thank you, Senator, appreciate it. [LB322]

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SENATOR SMITH: Good to see you. Next proponent of LB322. Welcome. [LB322]

SHAKIL MALIK: Good morning, Senators. My name is Shakil Malik, S-h-a-k-i-l, last name, M-a-l-i-k, I'm here testifying in support of this bill on behalf of the Nebraska County Attorneys Association. A quick bit about me, I am the attorney for Douglas County that handles all TERC cases for Douglas County as well as cases that go on to the Court of Appeals and Supreme Court. I speak in support of this bill because I think it helps move some things along with the TERC and improve some things. I do believe the commissioners at TERC--who are all present today and I do appreciate that they came to attend--I know they do the best they can, but there are some just facts at the TERC that have really made it inefficient for both counties and taxpayers. Right now the TERC...we have currently still been handling 2014 cases, so we're about three years behind right now. So imagine, your property values get changed, you file an appeal...and it's not good for the county or the taxpayer because we have to go back three years and try to figure out evidence and it's really a mess. A couple of changes I want to talk about in this bill that I think are helpful for that. One, it was talked about how there has to be this confirmation statement. We do get, unfortunately, people who file TERC appeals just because it's cheap and it's something they can figure, hey, I'm going to cause the county or whoever to do all this extra work. By the time the hearing comes around three years later, they either don't show up at all and...the worst ones are when we all have to drive down to Lincoln and then nobody shows up and we have to waste half our day or at the single-commissioner hearings in Omaha nobody shows up or the ones where the night before the hearing they'll get dismissed. So this...what happens normally is once a case is filed sometimes you won't hear anything from the TERC for two or three years so they say, oh, here's your hearing date. And a lot of times the properties themselves, people have moved, so it's not even just malicious. What this does is requires the TERC to send out a form to somebody saying, hey, ready for your hearing, do you still want it? Sign and send it back. So that would help eliminate a lot of that wasted docket time that happens because either malicious or nonmalicious no-shows. Another thing it does that I think is helpful is...while I know the TERC tries to do as much as they can, these more informal, single-commissioner hearings they do to try to...on the lower value, under a million dollar properties, to speed things along, it requires that the hearing be held in the same district court or judicial district as where the property is. And that's helpful, because somebody all the way in western Nebraska shouldn't have to head all the way to Lincoln to have their hearing if it's a simple \$100,000 house and they're wanting to dispute the value. So this mandates that and it makes it...reduces costs for both the counties and for the taxpayers to not have to take off work for a whole day and drive halfway across the state just to have their case heard. Another thing I think is quite helpful is the...it requires that the appeal be filed and signed or at least have affirmation by the owner of the property. Unfortunately, what's happened in the past and currently is we'll have these tax representatives who are used to representing people for federal tax, whatnot, which allows nonlawyers to represent. That's not as big of an issue as we have sometimes where people will just file on behalf of other owners, other entities, and the person who owns the

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property sometimes doesn't even realize that this appeal and this protest has been filed for them. I've had hearings where literally the owner will show up to do their case and then a tax rep will show up and they're like, why are you here? They're not even talking. This kind of helps make sure the owner stays involved in the process. I've had even larger commercial entities where somebody will call us up, our office, county attorney, or call up the assessor's office say they're representing...the representative will call and then a week later we'll hear from the property owner also calling. They don't even realize because sometimes they talk to one person they think, oh...the reps say, oh, yeah, I'll represent you and they start filing all this paperwork and the owner doesn't even know what's going on. So that's to eliminate some of those issues we've had with that. And I guess with that...I just want to touch upon the kind of what I see as the high points on this. I think it's a bill...it doesn't address every issue, but I think it certainly helps. On the statewide equalization issue, yeah, I think it will help give the TERC also some more tools, rather than these blanket percentage increases. I have to be careful what I say on it, though, because I'm the attorney going against the TERC at the Supreme Court right now so I'll restrict my comments on them. But I think this will give the TERC some more tools. And with that, I'd certainly entertain any questions this committee might have. [LB322]

SENATOR SMITH: Thank you, Mr. Malik, for your testimony. Questions from the committee. I see none. Thank you. [LB322]

SHAKIL MALIK: Thank you. [LB322]

SENATOR SMITH: Next proponent of LB322. Welcome, Mr. Kagan. [LB322]

DOUG KAGAN: (Exhibit 2) Good morning. My name is Doug Kagan, D-o-u-g K-a-g-a-n, 416 South 130 Street, Omaha, representing Nebraska Taxpayers for Freedom. The Nebraska property valuation system is a source of great contention, especially in Douglas County. We believe that the Legislature should completely revamp the valuation system. However, in the meantime, LB322 offers important reforms. As a side note, a lot of our members complain they don't receive notices when their valuations have gone up and they have no knowledge that they've even gone up. Also, as far as extra work goes, extra work for the TERC, recall that there is also extra work for the homeowners. To prove their case they have to get appraisals, take pictures of their homes, do a comparative market analysis of their neighborhoods. Our members complain that Tax Equalization Review Commission commissioners lack real estate experience, the needed expertise to analyze valuation challenges, that TERC hearings and decisions take so long to set and receive, that sometimes our homeowner members file new challenges before one or two of their previous challenges have been resolved. LB322 provisions alleviate these concerns. Because of the 2016 unwelcome surprise that saw many city of Omaha residents receive a 7 percent additional valuation hikes or 8 percent valuation drops, we believe the counties have the



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right to appeal such decisions if additional evidence is forthcoming. This bill also would offer convenience for challengers who would not have to travel to Lincoln to receive a hearing by a single TERC commissioner. Furthermore, we believe that the standard of uniformity provision would give the TERC a necessary option to freeze valuation spikes and order revaluations if found that the standard of uniformity in a county was out of line. Please advance LB322 to the full Legislature. Thank you. [LB322]

SENATOR SMITH: Thank you, Mr. Kagan. Questions for Mr. Kagan? I see none. Next proponent of LB322. Welcome. [LB322]

SEAN KELLEY: Thank you, Chairman Smith. Members of the Revenue Committee, my name is Sean Kelley, S-e-a-n K-e-l-l-e-y, appearing today as a registered lobbyist for the Douglas County Board of Commissioners in support of LB322. I think the testifiers before me provided good information as to the reasons for this bill, to decrease the caseload, to speed up the appeal process, and to offer TERC some more flexibility. Additionally, this would require TERC to grant a rehearing upon an order of increasing or decreasing a class or subclass of property. And that's an important aspect of the bill that the board supports. As a Board of Equalization, Douglas County has taxpayers routinely complaining, constituents complaining about the process, so that's really what has brought us here today. To give you an idea of the TERC caseload on an annual basis, 2016 was 480 cases; 2015 was 830; and 2014 was 634. And that's out of 200,000 parcels in Douglas County. But nonetheless, while it's a small percentage, that's still quite the caseload. So with that, I'd be happy to answer any questions. [LB322]

SENATOR SMITH: Thank you, Mr. Kelley. Questions from the committee? I see none. [LB322]

SEAN KELLEY: Thanks. [LB322]

SENATOR SMITH: Thank you. Next proponent of LB322. Welcome. [LB322]

JIM SAZAMA: (Exhibit 3) Thank you. Good morning, Chairman and members. I assume everybody watched TV last night and watched our President speak a little bit. Pretty informative, wasn't it? I have a deal here. I'm a proponent...I'm for this bill here because... [LB322]

SENATOR SMITH: I'm going to interrupt you here for a moment. If you could just state and spell your name for us. [LB322]

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JIM SAZAMA: You bet. I was going to do that. Sorry about that. James, spelled J-a-m-e-s, E., last name, S-a-z-a-m-a. Address, 9161 Charles Street in Omaha, Nebraska. My lovely bride and I have been there for four-some decades now. [LB322]

SENATOR SMITH: How do you pronounce your last name for us? [LB322]

JIM SAZAMA: Sazma (phonetically), sir. [LB322]

SENATOR SMITH: Sazma (phonetically). [LB322]

JIM SAZAMA: Sazma (phonetically), it's Bohemian-American. [LB322]

SENATOR SMITH: All right. Thank you. [LB322]

JIM SAZAMA: You bet. We, in Douglas County, need to fix some things. And you people here are as responsible for this disconnect and malfunction as anybody. It was nice of the question you had earlier, Brasch, what this is about here, because you could almost be a part of the problem we have here. I've been down to the county commissioners' meeting for the last month. People come in by the droves complaining about their valuations. Some of them are a \$100,000-dollar house and all of a sudden it's valued at \$400,000. A \$400,000 house is now valued at \$800,000. And it goes the other direction also. Maybe you've watched some of that on TV, because it's disgraceful. Now we're talking about raising the fee to appeal this? Well, some of the people who have spoke ahead of me have discussed this and I'm not going to sit here and regurgitate all this stuff, because you people are intelligent people, but we have a disconnect. Our county assessor, Diane Battiato, I've talked to her. I've talked to Pete Ricketts about this stuff. We need to fix it. We can talk and talk and talk and talk about this, but until somebody sits down at the table, both sides of the fence, and fixes this, it's going to continue to go on and on and on. It's almost...you guys have heard the phrase "we're being taxed to death," that's a fact. That's a fact. My little bride and I have been in our house 40-some years. We've paid for that four times, just for the rent we pay the county. We're renting that house, have been now for the last 16 years. And I raise heck with the county equalization board all the time. Stop raising my rent. Those are taxes for you that don't realize that. Now the future of this is, we need to stop the spending. I'm a retired inspector, pilot type, and we need to stop the spending and it starts right here, right here. And you guys are aware of that. If I can help in any way, please let me know. It's to the point where it's...I'm going to use the term "dysfunctional," just simple, downright dysfunctional. I've talked to Diane, Diane is regurgitating...Battiato, our county assessor, on what method she's using here. I guess when you're dysfunctional you don't realize that you're dysfunctional. But when you get thousands of people, thousands of people that are upset over this issue and they say, well, the state requires us to do this, the state requires us to do this. Well, we're now here

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talking to the state. Now if you guys have any input to help fix this situation, I hope you take the initiative to put some input and fix this. Thank you. Do you have any questions of me? [LB322]

SENATOR SMITH: Any questions for Mr. Sazama? Thank you. [LB322]

JIM SAZAMA: I see no questions. Thank you for your time, sir. [LB322]

SENATOR SMITH: You bet. Next proponent of LB322. Welcome back. [LB322]

CATHERINE COOK: Thank you for hearing me again. My name is Catherine Cook, I live in Douglas County in Omaha, 12143 Franklin Circle, Omaha, Nebraska, 68154. I am going to regurgitate, because I also attended all four Douglas County board meetings and I heard nightmare stories. The commissioners have been bombarded, bombarded, with telephone calls and e-mails. They have worked weekends looking at properties. I heard nightmare stories, examples of people who moved and bought their property last summer, their valuation went up \$20,000, \$30,000. I heard stories of how land valuations went from \$30,000 to \$280,000. Diane Battiato is incompetent. The valuations are all over the place. They are inconsistent and inaccurate. And at all four meetings people were lined up to complain and they had their facts in their hands. The meeting started at 9:00, they generally lasted till 1:00 or 2:00 in the afternoon, that's how many people were there complaining. I also agree that the cost should not be increased to \$50. These people took time off work--I'm retired, I could go--these people took time off work, they took time out of their day and because of the length of the meeting they were gone three or four hours just to try to get ahold of this. That doesn't count the people who don't even know how bad their valuations went up if their taxes are escrowed. My taxes are escrowed into my mortgage. Wait till they get the surprise, because Diane Battiato has made mistakes all over the place and I don't think the taxpayer should be penalized. They already have to take time off work and take time out of their day to get this mess straightened out. If they don't get it straightened out at that level, then they have to go to the state level. It's one burden after another on the taxpayer and it is not fair. Thank you. Questions? [LB322]

SENATOR SMITH: Thank you, Ms. Cook, for your testimony. So you oppose any type of an increase in a filing fee? [LB322]

CATHERINE COOK: I support the bill, but I oppose the increase from \$25 to \$50. [LB322]

SENATOR SMITH: Okay. All right. Further questions? I see none. Thank you. [LB322]

CATHERINE COOK: Thank you. [LB322]

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SENATOR SMITH: Next proponent of LB322. Seeing no additional...proponent? Welcome.  
[LB322]

TOM PLACZEK: Good morning, Chairman Smith and members of the Revenue Committee. My name is Tom Placzek, T-o-m P-l-a-c-z-e-k, I am the Platte County Assessor and I represent Nebraska assessors to NACO. There are...my support for this bill is for a few items listed in here that I think are very good ideas and I think need to be approved. I believe the increase in the fee is a good idea. Based on the number of cases that I personally have had to attend and no one shows up, I believe this could be a factor. There are a lot of cases that are filed for no other reason than they think taxes are high. They don't protest this on a valuations basis, it's more of a tax basis; two totally different ideas. I will state one little caveat to this increase, though. I believe the one-thirtieth of 1 percent could get a bit overbearing. You get a million dollar piece of property and now you're talking about \$2,600. That's a big fee. Fifty dollars, I have no problem with that. And when I ratchet it up to some degree, I think that could be worked on. I believe the acknowledgment form is a good idea. I think it holds people accountable. I had one just this last year where they didn't show up twice for different things, so that was tough. I think the 18-month time frame is a good idea. I believe the 30-day time frame for the decision, while that isn't on me as an assessor, I believe that could cause problems for TERC. Part of the reason for the delay in this is because of the vast number of cases. And the TERC members won't complain about it, but they have a lot of cases they have to hear and a little bit of time to do it and they get spread out all over the state and it is very difficult. So those are some of the things I support. There are some issues with this bill that I don't like at all. I don't like the reconstitution of the board itself. I don't believe a broker adds anything to this group. I think the current...the way it's set up now works very well. I think by adding a certified general appraiser--who really works fee side, they don't really work mass appraisal, they have little to no knowledge of mass appraisal--adding a broker to that with little to no knowledge of mass appraisal is a step in the wrong direction. And then the thing that I am most against on this is the COD. I don't think we want to put that into statute whatsoever. I believe you would have then a median level, then a COD level and they could fight each other. There are so many instances. For instance, when ag land values were just going up like crazy, it was impossible to stay within a 20 percent ag land COD. It was impossible. I believe the same thing is happening in Douglas County in various areas that have regenerated themselves. Dundee would be an area that over the years it all of a sudden has exploded with growth, lots of older homes, lots of changes, those situations in areas that are in transition are very difficult to stay within that 15 percent COD. I'm not saying it can't be done, but I'm saying it's very difficult. As an assessor, we don't have this data. Frequently when remodel is going on, nothing is going on on the outside. You can't see it and if you think that taxpayer is letting us in right and left, you are sadly mistaken. We do not get this data readily. So I really don't want to see the COD go into statute. I think it's going to cause a huge problem. So I will end my testimony on that note and take any questions that the board might have. [LB322]

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SENATOR SMITH: Thank you, Mr. Placzek, for your kind of itemization of some of the issues you have with the bill, but your general support. Quick question for you on the filing fee. [LB322]

TOM PLACZEK: Yes. [LB322]

SENATOR SMITH: Any particular thoughts on that as whether that's necessary to increase that? [LB322]

TOM PLACZEK: I think it's a good idea. If it's just to 50 bucks, I think that's fine. I would actually encourage it going to \$50 and then anything, say, a million and over, \$100, just to keep out some of the...let's put it this way. When you get into million dollar properties, you're talking substantial taxes. I think people will take the time and effort to take it seriously. And especially you're getting in some would say office buildings in say Omaha or things, a Woodmen of the World, for instance, or whatever, a UP. They wanted to do that, \$100 certainly isn't going to stop them. And will the average person want to go from \$25 to \$50? Based on what I have seen in my experience, that would remove a number of people that don't take this seriously and it's just a protest of the system. And so many people do not have information available, even at the TERC cases, that support their case. They are against taxes. And that's where most of them are and I would bet most of the TERC members would say that there's a lot of tax protests, not valuation protests. [LB322]

SENATOR SMITH: Very good. Thank you, Mr. Placzek. Senator Groene. [LB322]

SENATOR GROENE: Thank you, Chairman. The \$50 goes to the state? The \$25 goes to the state? [LB322]

TOM PLACZEK: I believe it supports the commission, the budget of the commission. I don't know that for sure. We don't get any of it. [LB322]

SENATOR GROENE: You don't get any of it? [LB322]

TOM PLACZEK: No, none of it. [LB322]

SENATOR GROENE: That's what...I was looking at the fiscal note. So you...the county hears it first, the county commissioners. [LB322]

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TOM PLACZEK: Yeah, at the board of equalization hearing. [LB322]

SENATOR GROENE: And they can make decisions there, right? [LB322]

TOM PLACZEK: Correct. [LB322]

SENATOR GROENE: What percentage of them go from there to the state? [LB322]

TOM PLACZEK: I can only speak for Platte County, but in Platte County it's probably...we probably average, say, in the last several years maybe 175. This past year we had 13, so what is that, 8 percent. [LB322]

SENATOR GROENE: So the county has all the expense and all the time for the other 70 percent, 87 percent, but the fee goes to the state? [LB322]

TOM PLACZEK: The fee doesn't happen until they actually take the next step and file with the TERC. [LB322]

SENATOR GROENE: All right. There's no fee to do it... [LB322]

TOM PLACZEK: There's no fee to the county at all. [LB322]

SENATOR GROENE: So the person who wants to protest, he still doesn't have a cost to his county commissioner. He can still do that. [LB322]

TOM PLACZEK: Correct. And, Senator, I would like to add one thing. In a number of cases we will have the protest, they won't even show up at the county board of equalization hearing, then they'll file to TERC. And so we have to put together this case again and go into even greater detail. And then they don't show up again. And it is a classic waste of time and energy. [LB322]

SENATOR GROENE: So then you have to go down to Lincoln to be there... [LB322]

TOM PLACZEK: Yes. [LB322]

SENATOR GROENE: ...and you get none of the fee. [LB322]

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TOM PLACZEK: And we get none of the fee. And that's fine. I have no problem with that, really. [LB322]

SENATOR GROENE: Well, I do as a local property taxpayer. (Inaudible) mandate to the county. [LB322]

TOM PLACZEK: Yeah, we do spend time. And sometimes we have to involve...in larger cases we involve one of our deputy county attorneys, their time, on more complicated issues. [LB322]

SENATOR GROENE: And so the protestor of his taxes is correct and the TERC rules in his favor, does he get his \$25 back? [LB322]

TOM PLACZEK: I doubt it. I don't know on that. I would guess not. [LB322]

SENATOR GROENE: All right, thank you. [LB322]

SENATOR SMITH: Very good. Thank you for your testimony. We appreciate it. [LB322]

TOM PLACZEK: Thank you. [LB322]

SENATOR SMITH: Next proponent of LB322. Seeing no additional proponents, we'll move to opponents, those wishing to testify in opposition to LB322. Opposition. Welcome. [LB322]

BILL PETERS: Thank you, Mr. Chairman, members of the Revenue Committee. My name is Bill Peters, B-i-l-l P-e-t-e-r-s. I am here representing myself. My background is property tax. My first job out of law school in '74 was counsel to the Tax Commissioner. I'm appearing in opposition to LB322. Because of the time of the day the technical questions I see I'll brief the staff with. There's several points, though, policywise that I'm concerned about. But before identifying those, we're talking about two entirely different types of procedures. We're talking about individual appeals. That's one where people don't show up and that's where there's volume. That's why I know most of the guys that have to do the work in Douglas County, because we file a lot of appeals in Douglas County. Keep in mind that it's a parcel count. It's not a property. You can have an apartment house and that's 20, 30 parcels. A \$25 fee does add up. I would be opposed to any increase in the fee, also because of its ramifications. It'll be viewed as a property tax out there by the taxpayers that don't understand the system to start with. The other function of TERC, the historical function is that of intercounty equalization. Then in the '90s we moved to intracounty equalization. That's the percentage increase on classes. Now it's very important that we be equalized within the county and between counties, because of the jurisdictions that are

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doing the taxing. Douglas County is an excellent example. That property tax levy applies to any number of...it crosses the county lines where a number of districts. And if you're not equalized at some level, and one side is paying too much and the other side is paying too little. The last point on Douglas County is that it takes people to do appraisals. It takes people to run the office. You don't hear the clamor from Lincoln. At least three or four years ago Lincoln had more...Lancaster County had more staff on the appraisal side on a per parcel basis than Douglas County. Now generally you look at a taxpayer coming in from Douglas County, some of them it will just be horrible the errors that were made. But most of the time the honest thing to do is to tell them to go home and work harder. It's not the county assessor's problem, it's a problem of spending money and that that's what's causing the problem. The qualifications I think should remain the same for the TERC members. That's not any of a problems, even though people may disagree. And most of the time I disagree with her findings in my cases. But the qualifications are fair, reasonable, and should remain the same. The other question point, there's a thing that...one of the points I'll discuss with staff is the unauthorized practice of law, which gets involved with appeals to TERC. And with that, for once I wouldn't run the clock out. [LB322]

SENATOR SMITH: With time to spare. Thank you, Mr. Peters. Questions for Mr. Peters? I see none. We really appreciate your...you have a lot of knowledge and we look forward to having further conversation with you. [LB322]

BILL PETERS: Thank you. [LB322]

SENATOR SMITH: Next opponent of LB322. Anyone wishing to testify in a neutral capacity on LB322? Welcome. [LB322]

ROB HOTZ: Thank you. Good morning, Chairman Smith and members of the Revenue Committee. Thank you for the opportunity to allow the commission to testify this morning. My name is Rob Hotz, R-o-b H-o-t-z, and I am one of the three commissioners with the Tax Equalization and Review Commission and I'm testifying on behalf of the commission this morning. As someone has noted, all three commissioners are here this morning. We'll try to answer questions. I know we're on a tight time frame. There are multiple, multiple provisions in this bill that would affect the commission substantially. The fiscal note that we were asked to prepare, someone mentioned earlier that it would involve a very significant amount of dollars. The commission's budget would effectively be increased by 50 percent if all these provisions were put into place. The cash fund revenue, someone asked earlier. The cash fund revenue, the filing fee goes directly to the commission's cash fund. And currently, at current levels of filings, taking the average of the last three years that's about \$40,000 in cash fund revenue. This bill would generate hundreds of thousands, I think \$788,000, based on the fee structure as proposed. Just going section by section as quickly as I could through the bill, the changes to the



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qualifications of the commissioners has been addressed by many people this morning. The current requirements are that there be three commissioners on the commission. One is required to be an attorney; one is required to have the qualifications to hold a appraisal license, but not necessarily hold an appraisal license; and the third commissioner has no specific requirement. That gives the Governor a lot of flexibility I believe that when there's a resignation or a changeover that there's some flexibility as to who is on the commission. The commission does...we are a quasi-judicial function. We function like a court but we're in the executive branch of state government. We do appeals. They involve evidence that's presented to us. And we need some lawyers around to be involved in the hearings so that when evidence is presented and objections are made on an evidentiary basis, we need lawyers around on staff to help the commissioners who are nonlawyers as well. What has worked for well over ten years is that at least two of the commissioners be attorneys. About five years ago we were reduced from four commissioners to three commissioners. We think that with the current qualifications that would work well. If you remember that the commissioners are on staggered terms, six-year terms, and each comes from a Congressional district. When one resigns or leaves office whatever qualifications that commissioner brought, it might be a required qualification and that would limit the Governor as to who would be able to be appointed. So leaving it at a requirement for one, though we're going to always advocate that there be two lawyers on the commission so that we can do the panel hearings and have someone preside over them and rule on evidence and so on and deal with all the motions that we receive, not just continuances but a lot of other motions that involve legal judgment and so on. So the commission would recommend that...we'd strongly recommend that the qualification requirements in current statute be maintained. In Section 2 of the bill regarding the filing fee I mentioned that based on a three-year average of actual filings to the commission the \$25 filing fee, which has been in place for some time, this is an issue that I'll testify to later on LB555. The current filing fee generates about \$39,000 or \$40,000 per year. The filing fee has been around for about 20 years, so it has some regressivity to it in that...it has a lack of being kept up with inflationary standards, if you would. It's been \$25 that entire time. The filing fee may have some regressivity to it in that regardless the value of the property the filing fee is \$25. It doesn't matter if it's a very small, low-dollar property or a very complex, high-dollar property, the filing fee is \$25. The commission would advocate for some change to that to deal with the regressivity and some change perhaps to deal with the...over time, keeping up with time. In LB322 the proposed change as I mentioned would generate about \$788,000, based on a three-year average. That's a very, very large amount of money to add to the commission' budget or perhaps to offset General Fund. The other thing I didn't mention about the filing fee is that currently the user of the process, if you would, the user pay percentage is 4 percent. The General Fund taxpayer picks up 96 percent of the overall costs of the commission. The proposal in this bill would change the user pay percentage to 90 percent. The proposal made in LB555, the commission asked Senator Smith to introduce, would change that user percentage to 5 percent to 6 percent. It would change it, but not drastically. Section 3 of the bill deals with the filing process, this post-filing acknowledgment that's been mentioned. There are issues with

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no-shows, we call them. But bear in mind that these taxpayers have a right to do something and we afford them that right. And they paid the filing fee and they have a right to come and effectively they have a right not to come. And there is cost to that. There are multiple ways to deal with that. One is to stay in contact with the county and with the taxpayer and we do that. We maintain by telephone, our staff, trying to make sure that we know which hearings are going to happen and which are not. We do require that taxpayers send us something in writing when they want to dismiss. Senator Smith, I'm nowhere near going to cover all the provisions of the bill within the red light. [LB322]

SENATOR SMITH: Yeah. If you could take a couple more minutes and just try to cut through those as quickly as you can, but I think it's worth hearing just your general comments on those sections. All right? [LB322]

ROB HOTZ: And thank you very much. The proposed change would require what the bill calls a post-filing acknowledgment form. The commission already sends out, like courts do, a notice of hearing. Now it is true that there are some cases where the taxpayer and the county have requested continuances or they've requested for some reason or another to combine cases for multiple years for the same parcel. We do have a number of those. I do think that there are some mischaracterizations that I've heard today in terms of just what I would consider misinformation. We don't have a large boatload of backlog. We often have, when the county requests, whether it be the county assessor's office or county attorney's office, we like to try to settle these. We'd like to have the time to be able to do that. We do have a fair number of those. There are some 2014 tax year cases right now that have not been resolved for that reason, but the commission is not years behind. It's helpful to note that the effective date for all ad valorem tax is January 1 of that tax year. The taxpayer doesn't get notice until June 30. That's already half a year. The protest proceedings happen in July or so in 91 counties. Those have to be brought...an appeal filed by August 25. And in the large two counties, those appeals have to be filed by September 10. When we receive all of the appeals for a whole tax year, we're already nine months beyond January 1. So to say that we're nine months behind at that point is kind of an unreasonable expectation. We can only hear one case at a time and do one hearing at a time. The requirement that this post-filing acknowledgment would add some burden to the commission, not a substantial burden, we would send out acknowledge form, there would be some postage, there would be some administrative costs to that. The commission would recommend not adding the additional burden to the individual taxpayer or this additional administrative cost to the General Fund taxpayers. Section 3 of the bill also current law dealing with the schedule requirement, current law does not require the commission to schedule hearings under any specific time frame. All appeals are filed with the commission by August 25 and September 10, as I mentioned, unlike judicial branch courts where the appeals are filed throughout the year. So they receive them and they begin scheduling them and working out the progression of things. We don't get everything until August 25 or September 10 and then it's all on the table to be taken care of. The commission routinely

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schedules outstate hearings. There's been some misinformation today, to be frank. The commission routinely goes outstate. We go to...and I'll address this in the other section, but outstate hearings where we travel in the summer and fall, to multiple cities throughout Nebraska. The larger counties routinely request significant time to negotiate with taxpayers before the commission schedules hearings. And this has efficiencies all around. It's efficient for the county, it's efficient for the taxpayers, and it's efficient for the commission. If people can negotiate a settlement while the commission has jurisdiction, this also provides for certainty for both the parties. They know what they're going to get if they can negotiate a settlement. [LB322]

SENATOR SMITH: Maybe just hit a couple of the high points remaining so we have time for maybe some questions for you. [LB322]

ROB HOTZ: I'll do that, Senator, thank you. The commission currently travels to Scottsbluff, Ogallala, North Platte, Kearney, Hastings, Grand Island, Aurora, Columbus, and Norfolk. We look for bundling a bunch of cases and we have a day of hearings, maybe a week of hearings, and we schedule it that way. To require us to go to all 12 judicial court judicial districts would be very inefficient. We'd be going out for one hearing here and two hearings there and so on. It wouldn't be a good use of resources, in our opinion. We'd recommend not adding that requirement. On the appeal form, the current appeal form already includes an oath. The language in the bill in Section 5 would make a change there. The language in the appeal form already would comply with either the current statute or that language change. We wouldn't take a position on that one way or the other. On the order issuance deadline, to require the commission to issue all orders within 30 days after hearing, one, no party would ever be able to brief a matter after an appeal. Secondly, we probably right now--I don't have the exact data--but a very large percentage of the cases we issue orders within 30 days. But to require us in the ones that have a lot of complexity or where the parties are requesting time to brief the matter after the hearing, to require us to take those few cases and compress them into a time frame of 30 days would create poorer orders, frankly. I think it would be very hard to write good orders and to do it well. To treat the taxpayers and the county officials like we should treat them, the commission would recommend not incorporating that requirement. We already meet that requirement largely. There are multiple requirements in Section 7 regarding statewide equalization. I would say that, as quickly as I can, that, for one, I cannot talk about a pending matter. The case that's been discussed, folks from Douglas County and Omaha are talking about a pending matter that's before the Nebraska Supreme Court. I can't comment on the case. The commission is a party to the appeal and it could come back to us on remand by the court, so I'm not going to make comments on that. I will say that there are specific time frames and the commission has to complete statewide equalization by May 15 and have all orders issued. We issue an order regarding every class and every subclass of every...all 93 counties in statewide equalization. We get the reports and opinions on April 8 from the Property Tax Administrator. If we're going...and the counties know what's in that report and opinion. There's a liaison from the Property Tax

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Administrator's Office who works with the county assessor. They know what's in that report and opinion before April 8. When it is published on April 8, if the statistics looking at appraisal standards and the statistics involved, if something is outside of the acceptable range we look at it. Usually the Property Tax Administrator makes a recommendation for an adjustment. And I would emphasize that that recommendation is a nonbinding recommendation. This bill would make the Property Tax Administrator's recommendation effectively binding. We would just be required to do it. If she recommends it, we have to do it. I don't think that would be a good way to do statewide equalization. [LB322]

SENATOR SMITH: Let's leave some time for questions here. [LB322]

ROB HOTZ: Yes, sir. [LB322]

SENATOR SMITH: Do we have questions from the committee? Senator Groene. [LB322]

SENATOR GROENE: Thank you, Mr. Chairman. There's three commissioners? [LB322]

ROB HOTZ: Yes, sir. [LB322]

SENATOR GROENE: And you said two of them are attorneys? [LB322]

ROB HOTZ: Yes. At least two commissioners have been attorneys for I think the last 14 years. [LB322]

SENATOR GROENE: But that's not in statute though. [LB322]

ROB HOTZ: No, one is required. Yes, sir. [LB322]

SENATOR GROENE: Oh, and which position do you fill? [LB322]

ROB HOTZ: Well, when I was appointed I was the third attorney of a commission of four... [LB322]

SENATOR GROENE: So have two attorneys now? [LB322]

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ROB HOTZ: ...and then after the commission was restructured in 2011, I was the only attorney for a while and then a second attorney was appointed. [LB322]

SENATOR GROENE: So you fill the attorney position as in present law. [LB322]

ROB HOTZ: Either I do or Commissioner Keetle, because we're both attorneys. [LB322]

SENATOR GROENE: One time you did when you were only one. At one time you did. [LB322]

ROB HOTZ: Yes. In July of 2011 I was the only one. [LB322]

SENATOR GROENE: And you're on the payroll. You're a full-time employee of the state? [LB322]

ROB HOTZ: We are. [LB322]

SENATOR GROENE: What do you do for the other nine months before you get the appeals after June and July? You said you're only doing all...the appeals come to you in September. I'm just curious what you guys do for that rest of the year. [LB322]

ROB HOTZ: Well, okay, so the appeals are filed in August and September and we're already conducting hearings around the calendar. So we schedule the calendar nearly full around the entire year. And so we're working on the appeals that we're processing when the new appeals are coming in. I don't recall a time that we ever were waiting for appeals to... [LB322]

SENATOR GROENE: Well, I'm just wondering, because you said everything has to be done by January 1. [LB322]

ROB HOTZ: No, sir. I'm sorry, I may have misspoken. The effective date for taxes for each tax year is January 1, so the value of the property is the value as of January 1. And so when the taxpayer gets notice in June, it's the January 1 value of six months ago that's effective for that tax year. [LB322]

SENATOR GROENE: So some appeals you don't rule on before January 1, because you're working on them in the next year? [LB322]

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ROB HOTZ: Oh, we don't even see them until August 25 or September 10 for the January 1 that's already passed. We don't even see the appeal for nine months after the effective date. [LB322]

SENATOR GROENE: So you're filling the whole calendar year. [LB322]

ROB HOTZ: Yes, sir. [LB322]

SENATOR GROENE: And how much staff do you have? [LB322]

ROB HOTZ: We have five administrative staff, we have two lawyers, we try to hire a law student, and then we have three commissioners. [LB322]

SENATOR GROENE: What's your average cases that you can cover a year? [LB322]

ROB HOTZ: The average in the last three years of the number of appeals filed is about 1,600. We had a spike in '11 and '12 of 2,200 and 2,300 appeals. This year we're down to 1,200, believe it or not. [LB322]

SENATOR GROENE: Were they all farmers? [LB322]

ROB HOTZ: Oh, no. Actually, ag land is our least appealed classification of land. Mom and pop residential a lot, Douglas County and Lancaster County a fair amount. Douglas County is our lion's share, by far. Even per capita or per parcel it would be our lion's share. [LB322]

SENATOR GROENE: But ag appeals per capita of farmers, though. [LB322]

ROB HOTZ: Ag appeals would be our lowest. Commercial and residential, but residential would be our highest on average. [LB322]

SENATOR GROENE: Thank you. [LB322]

ROB HOTZ: You're welcome. [LB322]

SENATOR SMITH: Senator Schumacher. [LB322]

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SENATOR SCHUMACHER: Thank you, Senator Smith. And thank you for your testimony. Is the operations of the commission, is that entirely funded off of fees or do you have a budget request and receive money through the appropriations process? [LB322]

ROB HOTZ: As I mentioned earlier, right now based on the last three years of actual filings, 4 percent of the commission's budget is paid from the filing fees and the cash fund related to those filing fees. Ninety-six percent is General Fund. [LB322]

SENATOR SCHUMACHER: And were you one of the operations that were affected by the recent request to roll back your funding request from the General Fund? [LB322]

ROB HOTZ: Yes. LB22, the Governor's recommendation, we complied with and testified two months ago now, I guess, that we would be able to do that. And part of the reason we were able to do that is because we had some vacancy savings when a commissioner left and a lawyer left in late 2015. Those funds, the vacancy savings were reappropriated into the current biennium and so we had a little bit of cushion, if you would. And so we let the Appropriations Committee know that we would be able to make it on the Governor's recommendation under LB22, up until this July 1. [LB322]

SENATOR SCHUMACHER: Okay. And is that...will you have those resources available then year after year or is it a one-time bite at the apple. [LB322]

ROB HOTZ: Those vacancy savings will go away at the end of this biennium. [LB322]

SENATOR SCHUMACHER: Okay. So what we're having here is a rollback on what you're asking from the General Fund and an increase in fees to offset that. [LB322]

ROB HOTZ: The committee could look at that one of two ways I guess. Is if we want to keep the overall commission's costs flat, then LB322 would say, let's pay 90 percent of that with cash fund with the filing fees and 10 percent General Fund. Currently, it's 96 (percent), 4 (percent). And LB555, the bill we've requested, would be 95 percent, 5 percent. Does that answer your question? [LB322]

SENATOR SCHUMACHER: Yeah, it looks basically a shift from General Fund and general taxation as a method as part of your funding, to a fee-base system. [LB322]

ROB HOTZ: The more that you rely upon the filing fee, it would be more of a fee-based system. Yes. [LB322]

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SENATOR SCHUMACHER: And as contemplated here your net overall expenditures are, regardless of source of funding, going up or down? [LB322]

ROB HOTZ: With LB322? [LB322]

SENATOR SCHUMACHER: Yes. [LB322]

ROB HOTZ: LB322 would increase our overall expenditures by about 50 percent. We're an \$800,000 or \$900,000 state agency. LB322 would raise new revenues of \$788,000 through the filing fee. [LB322]

SENATOR SCHUMACHER: And yet you went along with the cut requested by the Governor, even though you need more money? [LB322]

ROB HOTZ: We went along with the cut because for the current fiscal year we were able to make it because of those vacancy savings that were reappropriated. [LB322]

SENATOR SCHUMACHER: Thank you. [LB322]

ROB HOTZ: Thank you. [LB322]

SENATOR SMITH: And, Mr. Hotz, just for clarification, in your early testimony in neutral you did not appear to been keen on the increase in fees. That's the way I interpreted it, that it might be a hindrance to people that wanted to appeal. But you're just recognizing that this would have an increase in cost or burden to the commission. Did I interpret that correctly? [LB322]

ROB HOTZ: The other requirements of LB322 would add on the expenditure side about \$300,000 for additional staff to do things within tighter time frames, do more within a tighter time frame. [LB322]

SENATOR SMITH: But your position on the fees, what was your position on the fees? [LB322]

ROB HOTZ: On the fees our position would be what LB555 would do, that we would recommend that the committee look at the regressivity, the cost-of-living issues. Over time the filing fee has been the same. And it is true that for some taxpayers a \$25 filing fee is low enough that it doesn't discourage them. [LB322]



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SENATOR SMITH: Right. Well, I thought I heard that from you. I thought I heard that correctly. Senator Larson, you have a question? [LB322]

SENATOR LARSON: Real quick. The only reason that you're...LB322 specifically requires more resources, correct? [LB322]

ROB HOTZ: It does. [LB322]

SENATOR LARSON: So that's, in the sense of you're not asking for more resources...what was your budget request? Did you request more resources in your budget request to the Legislature? [LB322]

ROB HOTZ: In our budget request that's currently before the Appropriations Committee, the preliminary budget would give us a little bit more than what the Governor recommended... [LB322]

SENATOR LARSON: A little bit more. Okay. [LB322]

ROB HOTZ: ...and less than what we requested. [LB322]

SENATOR LARSON: Less than what you requested. [LB322]

ROB HOTZ: Yes. And I would add that in the preliminary budget of the Appropriations Committee, they take out almost all of our travel appropriation for going outstate for hearings. LB322 would require us to go to 12 judicial districts for outstate hearings. [LB322]

SENATOR LARSON: I guess...and that's kind of what my point was, is you're...because it felt like Senator Schumacher was asking or trying to say, you're requesting more money in LB322. But that's just part of the fiscal note process. [LB322]

ROB HOTZ: LB322 isn't our bill. Okay? No. [LB322]

SENATOR LARSON: Exactly. And I guess that's my point. That's just the fiscal note. You are giving us the fiscal note of what LB322 would do. [LB322]

ROB HOTZ: When LB322 was introduced, we were requested by the Fiscal Office to provide a (inaudible)... [LB322]

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SENATOR LARSON: Exactly. So it's not like you're...the reappropriation processes of LB322, you're not...that has nothing to do necessarily... [LB322]

ROB HOTZ: No, sir. No relationship. Correct. Correct. [LB322]

SENATOR SMITH: Thank you, Senator Larson. That was the point I was trying to get at as well. Okay. Further questions? [LB322]

ROB HOTZ: I'm sorry, Senator Smith. I didn't understand the nuance there apparently. [LB322]

SENATOR SMITH: All right. Further questions from the committee? I see none. All right, thank you very much. [LB322]

ROB HOTZ: Thank you. [LB322]

SENATOR SMITH: Thank you for your testimony. Anyone else wishing to testify in a neutral capacity on LB322. Welcome back. [LB322]

NATHAN HABEL: Yeah, good to be back. So I think this is the issue that brings me out here. Currently, at my salary it takes me two months to pay my property tax bill and I'm here because I want my life back. I mean, I love working and all, but I also love my kids and would like to spend some time with them. As far as measure LB322, I think... [LB322]

SENATOR SMITH: I'm sorry, I'm going to need you to spell your name again for us for the record. [LB322]

NATHAN HABEL: Oh, sure. Nathan Habel, N-a-t-h-a-n H-a-b-e-l. [LB322]

SENATOR SMITH: Thank you. [LB322]

NATHAN HABEL: Yeah. As far as measure LB322 goes, I think a lot of it you guys have brought on yourself. For example, a relative of mine in Utah purchased a \$450,000 house. Their tax bill is approximately \$2,500. Here the tax bill would be much greater. And because the rate is so high, you have a lot of protests. People don't want to pay more than they have to. But if you had a more reasonable rate, do you think people would come out to protest and have such a problem with the process? They would...my brother-in-law, he's not going to go through all the hoops to worry about a 10 percent increase or a decrease. If he feels it's off 10 percent or 20

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percent, he's not going to go through all these hoops to try and correct that because the rate is reasonable. So I think LB322 does nothing for affecting the actual problem of what's bringing all of your "guys's" backlog and inefficiencies and other things that cause us to nibble around the edges of the issue. I'm thoroughly against any fees for protesting an assessment. I think that at the current rate I should be able to blivate as long as I want to somebody in authority over tax issues, just out of courtesy. You shouldn't charge me extra, because if you charge me something I'm going to want something in return. If you just listen to me calm and rationally, perhaps I don't get my way, but at least the system has been served. So I'm thoroughly against any fees for any type of appeals. I am all for any parts of the system that make it more nimble. Why is there a very short window to protest? Why isn't it a year-long process? Why isn't it fluid? Why can't it be adjustable, beginning of the year, end of the year, or when a sale is made, or for whatever reason, renovations, things like that? Right now, it's a behemoth. And to try and recoup any of your losses or to have it adjusted to your need, there's no reason that we can't accommodate any of those features. Another thing is it's inherently corrupt, I think. There's no mechanisms in place. Should an assessment be wrong and you lose a lot of money on the sale or for whatever reason, there's no way to recoup a faulty assessment, a bad judgment. So without any mechanisms of recuperation and process, people are on edge. Why would we pay one more dollar than is due, because we can't get any of it back if you guys prove to be wrong. So an assessor's opinion is essentially an assessor's opinion and the market will actually dictate the price. Further, it's misleading, your numbers, taxing us on the full cash value. Meanwhile, the things that you have to do to fix your house in a negotiation and the process of realtors' fees dramatically improve the cash that you get back from a sale. Why are we paying the full tax amount for money that we never see? It's inherently corrupt. And I think that a lot of your issues would be alleviated if there were a move towards transparency, flexibility, honesty, and the fact that we have some type of redress. I will protest just to protest, because that's the only mechanism I have at my disposal. You guys set the rate. You guys set the amount. I have no other lever of control. So as I grasp for that control I will protest just to protest because I can and it should be sacrosanct. Once again, all of these features would be ameliorated should that rate be more reasonable, should the system be more responsive, and should there be some accountability if problems were wrong. LB322 does nothing to address these. I do appreciate the features that lean towards these principles that I am for. And I am against any of these features that complicate or empower you guys in stepping over the taxation limits that I think are reasonable. Any questions? [LB322]

SENATOR SMITH: Thank you, Mr. Habel. Questions from the committee? Senator Groene.  
[LB322]

SENATOR GROENE: You know that every single tax dollar...property tax dollar that is collected is spent locally? [LB322]

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NATHAN HABEL: Okay, yeah. [LB322]

SENATOR GROENE: So I'm on your side, but if you don't pay them, who's going to pay them? [LB322]

NATHAN HABEL: Well, that is a good question. I think there are mechanisms in place. In visiting the state of Utah, while I am not familiar with everything in their state, their schools didn't have dirt floors. They seemed quite modern, perhaps maybe not as nice. The fact that if we don't, nobody will, I think is a misnomer. I think that we have to innovate. And the fact is, the old ways aren't getting it done. So here we are. I mean, how many more people have to show up once they do the math and say, I'm working so long to pay my property taxes, there's a point where it doesn't become worth it. Now, full disclosure, I am going to move the moment my parents-in-law pass away because of the onerous taxes. I don't like it here. My wife's family is integral to her and everything about the way that our family operates, so I'm stuck. This is me reaching out an olive branch, so to speak, to try and fix the broken system. So, yeah, let's innovate, let's figure it out. But to say that if I don't pay them, who will? We'll figure it out. [LB322]

SENATOR GROENE: By the way, Utah is about two-thirds per student spending--and they have very good schools--than Nebraska does. [LB322]

NATHAN HABEL: Exactly my point. [LB322]

SENATOR GROENE: I'm just agreeing with you. [LB322]

NATHAN HABEL: The point is that LB322 I think does not meet the measures inasmuch as what I've described. But, you know, sure, let's do something. [LB322]

SENATOR SMITH: Very good. Thank you, Mr. Habel. [LB322]

NATHAN HABEL: Okay. Thanks. Yeah. [LB322]

SENATOR SMITH: Others wishing to testify in a neutral capacity. I see no one else. Senator Craighead, you're invited to close on LB322. [LB322]

SENATOR CRAIGHEAD: Thank you, Mr. Chairman. Thank you to all of you for listening this morning to LB322 and thank you to all of the testifiers. Again, LB322 is a culmination of several meetings with Douglas County staff, Douglas County commissioners and elected officials, city

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of Omaha staff and the city of Omaha elected officials that was driven by many constituents reaching out asking me to help them after the TERC ordered "egregious" (phonetic) increases and decreases on real property in Douglas County. And actually we started these meetings last May. While people want it, they resist it at the same time. But it is time for TERC to change. It's time for TERC to be modified. Now, as someone who has been a real estate broker for almost 15 years, I'm going to again reiterate that there should be a broker on the TERC as another perspective. We do not need three attorneys. We do not need two attorneys. I believe that we need a broker, we need an appraiser, and we need one attorney. Three years is too long for an appeal, in my opinion, for the TERC. Eighteen months is even too long. Here's an example. In Douglas County, as I mentioned to you, there was the arbitrary decrease of 8 percent in northeast Omaha and an arbitrary increase 7 percent in west Omaha. Now let me tell you, because Councilman Gray talked a little bit about this, many of the people who live in north Omaha--and we're not...we're talking areas like Minne Lusa and Florence and just older areas but very nice, very respectable--some of these people have been paying mortgages for 20 years. Their valuations went down. They lost money. This may be the only asset that they have. They did not want their valuations decreased by 8 percent. Why it happened, I don't know. The same on the flip side. Why was a certain area of west Omaha decided to have a 7 percent increase? So if we have three years for a valuation and let's take the city of Omaha for last year or Douglas County. In 2015, property values increased tremendously. In 2016, the land values increased tremendously, which you've talked about. Some have increased from like \$20,000 to \$300,000. Okay, this is in basically a one-year period. So what happens if we do not have a hearing for three years? Things can change again. Eighteen months is even too long, but that would be a very good compromise to do this. Fifty dollars for a fee is actually really in my opinion not too much. It would increase...it would raise \$788 million of which about \$500,000 of that is profit. I agree that people do have the right to protest, just to protest because it's their right as a Nebraskan, as an American citizen, but it does take valuable time away from the TERC. And I think that this is something that we really...this is one way...\$50 is not really going to break anyone. And if there is a problem, I would be very happy to pay the \$50 personally for someone who is going through a protest. Again, I want to thank you. I hope you'll give this some good thought. We will continue to work on this. But, again, we decided that something needed to be done with the TERC, so this is our first attempt at it. Do you have any final questions for me? [LB322]

SENATOR SMITH: Senator Larson then Senator Groene. [LB322]

SENATOR LARSON: Real quick on the \$50. And I understand any individual, as you said, that doesn't want to pay the \$50...but it's my understanding that TERC is a quasi-judicial forum and just like any...to use the judiciary...our regular judiciary, it takes a fee because you are filing a formal protest. It's not like you're going to talk to the county board or us. [LB322]

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SENATOR CRAIGHEAD: Yes. [LB322]

SENATOR LARSON: Because it's judicial, it does take a fee and that's why that fee has to be there. Correct? [LB322]

SENATOR CRAIGHEAD: Yes. That is my understanding. And also I believe that with the fee, if people just want to protest for the heck of protesting and then not show up--which is a waste of time and energy and money--it will decrease the no-shows. [LB322]

SENATOR LARSON: And as Chairman of the General Affairs I find the same with the Liquor Control Commission and dealt with this of those that are protesting liquor licenses. Their protests could result in legal action, therefore it does take a fee. So thank you. [LB322]

SENATOR CRAIGHEAD: Thank you. [LB322]

SENATOR SMITH: Senator Groene. [LB322]

SENATOR GROENE: Thank you, Chairman. So I'm living in North Platte and I see that Douglas County is under valued quite a bit. The TERC board just looks at facts, comparable sales. And they come back and said, your county assessor is not doing their job. So if you're 7 percent or 8 percent less, me, as a taxpayer in North Platte says, I'm giving a lot of money to state aid to schools because you guys are undervalued. Looks to me like you got a county assessor problem. We got hit in one part of my county for 17 percent increase. We all knew it was undervalued. The county assessor knew that there was a problem there. We accepted it, because we knew that those homes in that area were worth more than what they were assessed. Every home I've sold--I've moved five or six times--I never looked at what the assessed value at the county was when I valued my home. I knew what the market was, I set a price on it, and I sold it. I don't think the assessed value has anything to do with when you put a price on your house, I really don't. But anyway, you've got a county assessor problem, it sounds to me like. [LB322]

SENATOR CRAIGHEAD: I would agree that there are several problems here, yes. I would agree with that. I also agree that the TERC needs to be modified. And as a real estate professional I'm going to disagree with you as far as looking at the assessed value. The first thing that a realtor will do is go into the county assessor Web site and look at the assessed value. And the reason that they do that is because every potential client goes in and looks at the assessed value. And that is one thing that they use as far as negotiation. I'm going to disagree with you on that one. [LB322]

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SENATOR GROENE: So if we put a professional person in there, then the way they put a price on a house when they recommend to sell it is going by what the county assessor says, not what the value is. [LB322]

SENATOR CRAIGHEAD: No, you do a competitive market analysis. [LB322]

SENATOR GROENE: Yeah, that's what I meant, a market analysis. [LB322]

SENATOR CRAIGHEAD: Yeah, you do a CMA. Yes. You do a CMA. But again, like I say, if there was an attorney, an appraiser, and a broker, it would be a very well-rounded TERC board, in my opinion. [LB322]

SENATOR GROENE: Thank you. It's just while you're here, we have a property tax problem in the state everywhere. Thank you. [LB322]

SENATOR SMITH: Very good. Thank you, Senator Craighead, for your closing on LB322. And that concludes our hearing on LB322. [LB322]

SENATOR CRAIGHEAD: Thank you. [LB322]

SENATOR SMITH: So we have two more bills ahead of us and we do have some time constraints before we have our ceremonies today. Can I see a show of hands of people that are going to testify on Senator Lindstrom's bill in either direction? Okay. And then how many will be testifying on my bill in either direction? Okay. So we don't have that many testifying, but I do want us to be conscious of the time mix so everyone has a chance to speak that needs to speak. All right, so Senator Lindstrom is going to introduce LB385 and welcome. [LB322]

SENATOR LINDSTROM: Good morning, Senator Smith and members of the Revenue Committee. I am Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, representing District 18 out of northwest Omaha and I'm bringing LB385 today for your consideration. Property tax and property valuations have been hot topics this year, especially in my Omaha district. We have received numerous phone calls and e-mails from property owners whose valuations have skyrocketed from the last year. There have been groups of unhappy property owners voicing their frustrations to their county boards and preparing to file appeals. After a property owner appeals to the county Board of Equalization, the next step is to appeal to the Tax Equalization and Review Commission or TERC. TERC was established in 1996 to give property owners an avenue to challenge the counties' property rulings without going through the court system. TERC was set up to be a neutral body to settle disputes that is more accessible to taxpayers than the

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district court. There are different opinions as to whether TERC currently operates in the manner it was originally intended. Multiple changes have been made to TERC since 1996 and I am here today to add two more changes. First, LB385 places the burden on the county Board of Equalization to prove by a preponderance of evidence that the property valuation is proper when assessed value of a property jumps by more than 5 percent over the previous tax year. Second, LB385 allows those with the power to execute an appeal on behalf of a taxpayer, a person with a power of attorney or durable power of attorney and a person who is a trustee of an estate can sign the TERC appeal. This is helpful to taxpayers, businesses, and landowners who own more than one parcel of land and allows nonlawyers to be able to file on behalf of the property owner they represent. The changes proposed in LB385 help our taxpayers navigate the property valuation appeals system in a more beneficial and friendly manner. With that, I'll be happy to take any questions you have. [LB385]

SENATOR SMITH: Thank you, Senator Lindstrom, for your opening on LB385. Questions? I see none. Thank you. [LB385]

SENATOR LINDSTROM: Thank you. [LB385]

SENATOR SMITH: Proponent of LB385. Welcome. [LB385]

VANESSA SILKE: (Exhibit 1) Thank you. Good morning, still. My name is Vanessa Silke, my name is spelled V-a-n-e-s-s-a S-i-l-k-e, I'm an attorney with Baird Holm and I'm here today on behalf of the Nebraska Association of Commercial Property Owners. We worked directly with Senator Lindstrom on this bill and we appreciate his effort to identify a couple of simple ways that we can make the process better for taxpayers in Nebraska. My colleague, David Levy, is actually on the board for the association. And so if you have any questions on this and I'm not able to answer them, I'll defer you to him. I'm going to make sure that he follows up. The goal of LB385 is to be fairer to taxpayers who face significant procedural and substantive hurdles and burdens under the current law for their appeals that they file with TERC. And the bill does this in two ways: One, it facilitates due process for taxpayers in Nebraska by clarifying and confirming in statute specifically who can file on behalf of a taxpayer. There are some general references to other folks who are able to file on behalf of a taxpayer in current rules and regs and some authority for the commission to possibly grant this. But we want to clarify specifically that when you have a contractual relationship with a property manager or through a durable power of attorney, those types of examples that are set out in statute, that those folks are able to file a timely appeal on your behalf. The second way that LB385 meets this goal is by requiring the county Board of Equalization to carry the burden of proof for appeals in specific instances where the assessed value has increased by 5 percent or more. And this actually tracks what we see in other states. Specifically, in the state of Missouri the assessor does not have any...there's no



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deference to the assessor's opinion at all. The county Board of Equalization, under other local authority in the state of Missouri has to show up at a hearing and carry a burden of proof under all circumstances. What's proposed in LB385 tracks more closely with what we see in Indiana that has the same language. Above that threshold of 5 percent or more, the county Board of Equalization does have to meet a burden of proof at the hearing. As it stands right now, property owners that file an appeal have the entire burden of proof to show that this valuation was incorrect at the hearing. And when it's increased by this much, we do think that the county board should come and meet that burden. So with that, I'm happy to answer any questions that you might have. [LB385]

SENATOR SMITH: Thank you, Ms. Silke. Questions from the committee? I see none. Thank you. [LB385]

VANESSA SILKE: Thank you. [LB385]

SENATOR SMITH: (Exhibit 2) Next proponent of LB385. Seeing no additional proponents of LB...proponent? Okay. We do have one letter for the record in support of LB385, Shaun Michelle James of Smith Slusky Pohren and Rogers, LLP, sent a letter in for the record in support of LB385. We now move to opponents of LB385. Welcome. [LB385]

SHAKIL MALIK: Thank you again. I'll be brief. I know the committee is on a time crunch now. Shakil Malik, S-h-a-k-i-l, last name Malik, M-a-l-i-k, testifying in opposition of the bill on behalf of the Nebraska County Attorneys Association. Once again, I'm a deputy Douglas County attorney. I handle the TERC appeals for Douglas County and the subsequent court actions. Two things I'll talk about. First of all, the expansion or the delineation of who can file a TERC appeal. There's never been any question that attorneys can file and sign TERC appeals at TERC. They've been doing it for years, Baird Holm included, I have cases with them. That's never been a question or an issue. Really where my concern is, what I talked about on the previous bill, you have these tax reps who come in and they can file the protest at the board of equalization level, but the TERC has stopped them from filing actual TERC appeals because it's not something that Nebraska regulates. If we did want to go down this route, Texas actually does regulation of these property tax representatives. They're not under any code of ethics or licensing or exam. And like I talked about before, a lot of confusion can ensue where we've had it where some were either on contingency or pay a fee to a tax rep to help them at the board of equalization level and then do we really have them expanding to the full quasi-judicial hearing at the TERC level? And I think there's, and I mentioned before, some unauthorized practice of law issues. I think certain parts of the expansion are fine, like the trustee, power of attorney. That stuff...I think that's common sense and TERCs normally let those in. That's not been an issue. Really it's this whole person who has a contract. Even property managers have been given some deference and been able to participate

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during these hearings, but when you just have this person who has no relationship other than, hey, hire me, I'll lower your property taxes. I think that becomes a concern. And also a concern about who can authorize settlements, who can authorize...because it's not just who can sign the appeal, it's who can actually participate. So do we go to the rep for settling the case, because I'll tell you and TERC will confirm this, many, many, many TERC cases, much more than actually go to hearing are actually settled well before a hearing. How does that happen? How do you make sure you're dealing with the right party? I think there are some concerns there. The next piece is this 5 percent threshold for shifting the burden of proof. Now, from the attorneys' perspective, yes, if you put the burden of proof over to the counties it's going to increase for county attorneys statewide. Really though, the biggest issue is how do you make this work? So let me give you an example of what we talked about. And no, it's not misinformation. The TERC does have cases where they're three years behind. You can look on their calendar on their Web site, [terc.ne.gov](http://terc.ne.gov). And, yes, multiple years do get often consolidated, where you have a 2014, 2015, and 2016 case for the same property heard at the exact same time. So under this 5 percent, let's say a property in 2012 was at \$100,000, they didn't appeal. Next year the assessor raises it to \$106,000. Well, that's a 6 percent increase. So now the burden of proof is on the county. (In) 2014 they kept it at \$106,000 and 2015 they kept it at \$106,000, but all three years got appealed. So how do we handle that then? So for 2013, the burden is on the county. But technically for '14 and '15, since the value stayed the same, it's on the taxpayer. But how do you do that all in one hearing? It's going to get really messy. So I think there's a lot of technical aspects that...well, I can understand the premise and I'm not per se saying it's a bad premise, in execution it would really be a nightmare. What happens if one value is up, one value is down or does it...and for multiple years the TERC have to right there at the hearing decide what one value is going to be and then look at, okay, what does that mean for a percentage change for the next year? And you literally...I don't even know if we'd be able to have consolidated hearings anymore, which would once again increase the amount of docket time and the amount of burden on the TERC. I really see some concerns there. And then lastly, just touching in on the no-shows, if you have the burden of proof on the county, right now if we show up and nobody else is there, it's a default judgment. Taxpayer didn't come, didn't present a case, do we still have to come and put on our full case, put on our evidence because the burden of proof is on us? So it's not like we can have default judgment as the responding party. How does that even work then at that point? Do we make that situation even worse where now a taxpayer who's just mad about something but doesn't want to actually put on a case files, we have to go down to Lincoln or maybe we do a single-commission in Omaha. I have to have the assessor appraisers there and put on a full case when there's nobody even on the other side because the burden of proof is on us. So just some things that I wanted to make the committee aware of there are some potential issues here. With that I'd entertain certainly any questions the committee might have. [LB385]

SENATOR SMITH: Thank you, Mr. Malik. Senator Schumacher. [LB385]

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SENATOR SCHUMACHER: Thank you, Chairman Smith. And thank you for your testimony. One of the things that appears in the bill as language, a person who is a trustee of an estate. Should that be personal representative of an estate? [LB385]

SHAKIL MALIK: If we want to keep it consistent with the probate code, I think so. In probate court oftentimes trustees, even nonattorneys are allowed to do some stuff, but then there's a certain threshold where you do have to have an attorney. I think you could certainly go with personal representative to make it more expansive, because that could be a lot of different things. [LB385]

SENATOR SCHUMACHER: Okay. And now, you raised a point of negotiating a settlement: who does the county deal with? Generally, someone with just a power of attorney, a regular attorney-in-fact, or a durable power of attorney--I guess that's the same thing as an attorney-in-fact--they don't carry malpractice insurance. And in the event they make a mistake in the proceedings that costs the taxpayer a lot of money, there may or may not be recourse or any standard of care that they have to deal with. [LB385]

SHAKIL MALIK: Correct. And, Senator, if I may respond, I tried to touch on this with talking about the tax reps but it applies generally. I'm not a private attorney. I'm not here to carry water and say, I'm trying to get more business for attorneys. I have the job regardless. In general though, yeah, there's not malpractice insurance, there's not code of ethics, there's not a supreme court looking over your shoulder and make sure you're not causing people issues. Now, in federal tax court you can have tax reps and whatnot, but really if the state wants to go down that route allowing nonattorney like reps of some sort to be in these types of hearings, then I think you might really have to look at doing a licensing, regulation, oversight, something to make sure taxpayers are protected, because Commissioner Hotz had talked about this, how they worked with the counties heavily to make sure there are no-shows, whatnot. We often act as an intermediary, especially when they don't have an attorney or a rep or they have something that's weird that's going on because the board of equalization, we're not the ones that originally set the value. We just...the assessor sets a value. If they protest, it goes to a referee and the referee hears the assessor and the taxpayer and then forwards it on to the board. And the board basically just signs off what the referee says. And we have to come and say, oh, here's...you know, so we don't really have per se a heavy dog in the fight. So a lot of times, yeah, we are in the position where somebody has been at the board of equalization level where they were being assisted by a tax rep and now they're up at the TERC. They don't know what's going on and we try to do our best to facilitate those. We even have issues where somebody will have...somebody helped them like file a protest, like maybe they just signed off on it and now three years later they don't want to do a hearing. They don't even know how to like file a dismissal or whatnot. Sometimes we'll even given them like a draft form like, here, if you want, to try to help them because...and I think this would just make that worse where you'd have these nonattorneys or nonlegal professionals don't

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have this knowledge work on these cases and potentially financially endangering their client.  
[LB385]

SENATOR SCHUMACHER: Well, in other states sometimes the bar does zealously defend its right to represent folks before these commissions on the theory that a lawyer who is obligated ethically to your interest, you may believe him a little bit more once in a while. And they may be able to tell you, look, you're wasting your time doing this. Or you've got an issue doing this. And actually reduce the workload of the administrative hearing folks. [LB385]

SHAKIL MALIK: And that certainly does happen. We do have a number...at least in Omaha we have several...probably five or ten practitioners who regularly do TERC hearings, attorneys. And the way those flow generally is quite a bit more efficiently, because they're not afraid to tell their client, look, I know you're mad about the increase, but you don't really have a case here or vice versa. They will sometimes help where they can bring the right evidence. So people don't realize--I can briefly add this--when I go to TERC I cannot settle a case unless--and this is according to TERC's rules--unless the county assessor signs off on it. So sometimes I actually need--even if I think, oh, maybe the taxpayer has a good case--I actually have to have the assistance of the taxpayer or their attorney to get me the right evidence I need to convince the assessor to sign off on the approval. People don't realize the board of equalization actually has limited power at the TERC. We cannot settle any case unless the assessor says, yeah, I'm okay with that, settle it--on an evaluation case. So, yes, they can actually assist us, too, when we have competent counsel on the other side. [LB385]

SENATOR SCHUMACHER: Thank you. [LB385]

SENATOR SMITH: I see no further questions. Thank you, Mr. Malik, for your testimony.  
[LB385]

SHAKIL MALIK: Thank you. [LB385]

SENATOR SMITH: Proponent. Opponent. Opponent? Okay. [LB385]

TOM PLACZEK: You stopped me there for a second. [LB385]

SENATOR SMITH: Welcome. [LB385]

TOM PLACZEK: I guess it's good afternoon, Chairman Smith and Revenue Committee members. My name is Tom Placzek, T-o-m P-l-a-c-z-e-k, I'm the Platte County Assessor,

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representing Nebraska Association of Assessors, NACO. I am opposed to this bill. I believe this bill and the previous bill we just heard are both in response to the 2016 changes implemented by Douglas County and later adjusted by the TERC. TERC, in my opinion, was well within their rights to make the adjustments. This was done statewide, but the Douglas County board, in my opinion, went crazy and got political and called all kinds of attention to a situation that occurs throughout the state. Douglas County should be held to the same standard as the rest of the state and the board should not have intervened. Because of the just stated brouhaha we have this bill which shows a blatant misunderstanding of mass assessment. Most counties, when doing a reassessment of a neighborhood, typically are only doing it because we have fallen below the 92 percent threshold. Most of us shoot for 92 percent or the midway point between 92 percent and 100 percent when we do a revaluation so it isn't done the next year. We don't like to do these year in and year out. And just to give you an idea, if we had fallen to 90 percent, it takes a 7 percent increase to get to 96 percent. So typically when we do this we try to get to that 96 (percent) so we're not doing a change every year. And taxpayers don't like yearly changes and neither do we. I believe changing the current standard of changing the burden of proof would undo 100 years of court decisions and statute. This change would lead to many more protests and more TERC cases. This change presumes the assessor is wrong, which in fact they are the most qualified to set the value versus a homeowner who is motivated solely by personal gain and most of the time is unaware of the current market values. The current standard was adopted by the courts because they knew that the determination of actual value is not a precise science. They acknowledged the idea that value is a range with no exact number for value. And that is correct. Value is a matter of opinion. The court's also acknowledge that when a county does a mass appraisal--emphasis on mass--it is concerned with not only the value placed on an individual property, but also how that value fits into the class or subclass in order to meet the constitutional burden of uniform and proportional. The current system is not broken. Assessors work with liaisons from the property tax department to set values and stay within the 92 percent to 100 percent range. If we as assessors fail to meet this qualification, we will have a show cause hearing with TERC in which we can make our case as to why we are not within those guidelines and why the TERC should not make a change. The TERC would then make the decision whether to leave it the same or make the change. Sometimes there are extenuating circumstances and the reason why a neighborhood might not be within those boundaries and we make our case to the TERC and they can decide whether they believe us or not. If they decide to make a change, we follow and make the change. I'm going to give you an example for this year. Platte County has adjusted six residential neighborhoods. And when I say neighborhood, a neighborhood consists of several additions, it may be several hundred houses or 1,500 houses, something like that. In all cases we gave more than a 5 percent increase to get within our 92 percent to 100 percent criteria. There's also one other question. This 5 percent, what...how does...when we make reassessments we don't revalue every property the same. We don't. And, generally, when I do it we look at all the properties, we look at any changes that have been made. So some may go up 5 percent, some may go down 3 percent based on conditions, some may go up 15 percent because of things that

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they have done. You could have two neighbors and one maybe went up by 5.5 percent and one maybe only went up 4.5 percent, so the burden switches between the two. I'm not sure that that's a fair basis of working with this. So I'm opposed to this bill. I don't think that this is workable. And I think the issues with the TERC are overexaggerated and primarily a one-county problem. And I would entertain any questions that there might be. [LB385]

SENATOR SMITH: Thank you, Mr. Placzek. Senator Groene. [LB385]

SENATOR GROENE: When somebody protests locally... [LB385]

TOM PLACZEK: Yes. [LB385]

SENATOR GROENE: ...you're there, right? [LB385]

TOM PLACZEK: Yes. [LB385]

SENATOR GROENE: And they protest and they say, I checked my neighbors and my house is less square footage and there was a house sold down the street. What information do you come to that meeting with to dispute the taxpayer to say it's...tell the county commissioners the valuation is correct or the taxpayer is correct? [LB385]

TOM PLACZEK: Excellent question. I actually go to every protest. I look at that property, go inside and out and check on conditions. Usually our problems are conditional. They've either done or not done something on the inside that we can't see from the outside when we set our values. I do have a knowledge of a lot of the sales that have occurred in the neighborhood because we do sales reviews. And so I will put together my notes from my visit and then any sales that have occurred in that neighborhood, particularly that are immediate neighborhood. And I will also grab the neighboring houses to show them if there are differences how these differences work out in the value. [LB385]

SENATOR GROENE: Have you ever showed up and said, we were wrong? [LB385]

TOM PLACZEK: Oh, yeah. I've made a lot of changes. [LB385]

SENATOR GROENE: Right there at the protest? [LB385]

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TOM PLACZEK: Yeah. I would tell...what I do is, let's say, Mr. Jones, I can see we have an issue here. I promise you I'm going to make an adjustment on this. And frequently I get their number, give them a call later after we've made the adjustment and said, okay, you were at \$110,000, I think we probably should...\$99,000 is a closer number. I give him a call, he'd say, oh, that's fine. I'm not even going to come in then. I present that to the board and that's how that works in Platte County. [LB385]

SENATOR GROENE: Thank you. [LB385]

SENATOR SMITH: Very good. Thank you for your testimony. [LB385]

TOM PLACZEK: Thank you. [LB385]

SENATOR SMITH: Next opponent of LB385. Seeing none, do we have anyone wishing to testify in a neutral capacity on LB385? Welcome back, Commissioner. [LB385]

ROB HOTZ: Thank you. Chairman Smith and members of the Revenue Committee, thank you. My name is Rob Hotz, R-o-b H-o-t-z, I'm one of the three commissioners with the Tax Equalization and Revenue Commission. And there are basically two things that LB385 would do and I'll just speak briefly to those. They're both just cautionary concerns about what the bill would do. Currently, the people who may execute an appeal, those who may sign the appeal, those who may come into the hearing room and prosecute the appeal, either the taxpayer, the owner of the property, or some representative of the taxpayer. Currently, the list is pretty lengthy: The owner of the property; a taxpayer who...actually a taxpayer...if another property has been lowered by the county board a taxpayer in the county may come in and protest and appeal that; any party to the appeal would include directors of corporations; officers of corporations; full-time employees of the owner of the property; members of LLCs; managers of LLCs; anyone authorized by the governing documents of the legal entity; anyone authorized by law to act on behalf of the legal entity. That's a fairly long list. Those who are authorized by law to execute an appeal on behalf of the owner might include, as Senator Schumacher mentioned: under a power of attorney or a durable power of attorney and an attorney-in-fact; trustee of a trust; personal representative of an estate; a bankruptcy trustee; a receiver; any person appointed by a court; also, any person directly affected by the outcome of an appeal, which would include someone who is a renter of the property. A lot of times in commercial properties you see triple net leases where someone has the obligation to pay the property tax, even though they're not the owner of the property. And then as Mr. Malik mentioned, always legal counsel for a party may represent the taxpayer and execute the appeal. LB385 would broaden that list a bit, first of all by including also a trustee of an estate. And, Senator Schumacher, personal representative, my understanding would be that the decedent has died. The personal representative has some obligation to do

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something. The trust of an estate, the person hasn't died. There's someone who functions in a trustee roll regarding an estate that could act on behalf, I think is what the bill would be getting at. The second, what has been talked about more, is a person or entity with a contract executed by the taxpayer or a legal representative that includes the power to execute an appeal on behalf of the taxpayer. The two caveats have been mentioned. One is, that in many of these instances where we have someone coming in other than the taxpayer, there's a fiduciary duty or there may be some ethics provisions that govern the way that this person would behave or there may be some malpractice...the lack of malpractice or malpractice issues related there. The caveat would be that what the bill would add is someone who is just simply under a bear contractual obligation to do something. Just a contract, you're contracted to do it, but there are not necessarily fiduciary duties and others that are currently covering other people who do this now. The second caveat would be in regard to the unauthorized practice of law. If the decision order of the commission is appealed to the Nebraska Court of Appeals, those who may represent the interests of the owner of the property becomes narrowed. We've had at least one recent case where a cotrustee of a trust was able to come before the commission and execute the appeal. But when that same person, the cotrustee of the trust went before the Nebraska Court of Appeals they were not allowed to go forward and the matter was dismissed at the Court of Appeals. So we would recommend some caution. The second part of the bill deals with the burden of proof. I think we would agree that there's a long-standing settled law on presumptions in favor of assessors, presumptions in favor of county boards of equalization. This bill would really tip differently the burden of persuasion significantly. The proposed change would be that when the county board determination of assessed value is more than a 5 percent increase from the prior year's taxable value, their burden of proof switches to the county board and would require a showing of a preponderance of the evidence that the county board determination is at actual value. The shifting of the burden would not be applicable if the increased valuation had been due to improvements being added to the property during that tax year. Assessed value under Nebraska law has the same meaning as taxable value. Nebraska courts have consistently ruled that since assessed values for real property may be different from year to year, dependent upon the circumstance, a prior year's assessment is not relevant to the subsequent year's valuation. It should be noted--and this would be applicable in some of the things that were said earlier as well--if you have with residential property a two-year window and you're looking at the sales and using the sales comparison approach, if you're using 2015 and 2016 sales for 2017...for January 1 of '17, those two years of sales are going to be applicable. You go one more year forward, the 2015 sales fall off and are no longer used and now '16 and '17 are used. So from the prior year the value, the actual value of the property based upon sales in the market that are used as proxies for the unsold property could be substantially different. And, of course, in a lot of jurisdictions right now we're seeing that. We're...if you read the papers I think sales are up in a lot of places. So we would encourage caution. As there would be any shifting of the burden, in the cases that we've had where we apply the standard, arbitrary, or unreasonable by clear and convincing evidence, not preponderance. In those case, I would say I could count on one hand when there was clear and



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convincing evidence, but I had to scratch my head where there had been a preponderance. So in terms of applying the burden, maybe not so difficult. But shifting the burden raises some issues that I would exercise caution [LB385]

SENATOR SMITH: Thank you, Mr. Hotz. I see no questions from the committee. Thank you. [LB385]

ROB HOTZ: Thank you. [LB385]

SENATOR SMITH: Anyone else wishing to testify in a neutral capacity? [LB385]

NATHAN HABEL: Getting good at this. Nathan Habel, N-a-t-h-a-n H-a-b-e-l. LB385 I think is a good step in the right measure. It's...I think it's a little downstream and I'd like the committee to think upstream. I think a lot of the issues that bring the disputes to the TERC could be avoided prematurely before it got there with a little more flexibility in the way that we handled some of those things. I just wanted to take umbrage a little but with the fact that homeowners are motivated by money and assessors are the most qualified. In my recent tax appointment, my assessor was respectful, kind, and I don't have anything bad to say about the experience. But also the decision happening around my kitchen table is swimming or soccer. We're not in a position where we can cover both. We have a daughter that has a propensity for gymnastics. Those are things that we can't afford. It's not in the budget. And so these are the discussions that we're having. And at some point it's not just money that homeowners are motivated by. We're motivated by life. We want to see quality of life. We want to see families together. We want to see everybody happy and healthy. So I don't think that LB385 would be detrimental. It is marginally nice that you guys would bring the burden of proof to the assessors, which I think is a good step. Thank you. [LB385]

SENATOR SMITH: Thank you, Mr. Habel. Others wishing to testify in a neutral capacity. Seeing none, Senator Lindstrom, you're invited to close on LB385. [LB385]

SENATOR LINDSTROM: Thank you, Chairman Smith, members of the committee. I want to just talk to you on a few things, I'll keep this brief. One was, it was talked about putting a high level of evidence...clear and convincing evidence is a higher level than a preponderance of evidence in this bill, so 50.1 (percent) or majority of evidence. As far as the...if we were to put...we could put a default statement there that if someone doesn't show up for the appeals process that they default the right to do so. Going back to what Mr. Habel said as far as personal gain, this might be between paying your property tax or living your life or feeding your family, so I appreciate his comments on that. There was a mix up I believe with what one of the gentlemen said as far as the improvements. If there is improvement on a piece of property that

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does not apply or shall not is how it's stated in the statute. And then on page 3 at the top, when we talk about, also may execute an appeal, the intent is just the filing process of that. So if there's any mix up there, the intent is just to file. Just making sure I covered all my...and really the clarification on the durable power of attorney, power of attorney is just a clarification on the contractual obligation with a written contract of a third party. So we'd we be happy to work with the committee, but those are some of the things I'd just like to point out. And in the interest of time I will end my comments there. Thank you, Chairman. [LB385]

SENATOR SMITH: Thank you, Senator Lindstrom, for your closing on LB385. Any questions remaining for Senator Lindstrom? I see none. Thank you. And that closes the hearing on LB385. I'm going to turn control of the committee over to Senator Lindstrom as I introduce LB555. [LB385 LB555]

SENATOR LINDSTROM: All right. We will open the hearing on LB555, introduced by Senator Smith. [LB555]

SENATOR SMITH: Thank you. And good afternoon, Senator Lindstrom and members of the Revenue Committee. For the record, my name is Jim Smith, J-i-m S-m-i-t-h, and I represent the 14th Legislative District in Sarpy County and I'm here today to introduce LB555. And I do introduce LB555 on behalf of the Tax Equalization and Review Commission. As you know, the commission is comprised of three commissioners appointed by the Governor, representing each Congressional district. For some members, particularly the member from the Third District, commuting to Lincoln to carry out their duties gets costly. And LB555 as written would provide that any commissioner that resides more than 50 miles from the State Office Building shall be reimbursed for one round trip per week and be paid per diem at the federal rate, which is currently at \$91. Commissioners residing within 50 miles of the State Office Building will be reimbursed for actual round-trip travel as provided in Section 81-1176. In addition, the appeal filing is increased under LB555. Currently, the fee for all appeals is \$25. The bill would raise that fee to \$50 for appeals on parcels with taxable value of \$1 million or less and \$100 for parcels with a value of more than \$1 million. The funds generated from the filing fee of course goes to the TERC cash fund, as we heard earlier in testimony. Those are the basics of LB555 and I'm going to defer to the commissioners to make the case for the components of the legislation. I guess in concept, for me, I do believe that there...we do want to make certain that the commissioners are compensated for any additional costs, particularly those that are outstate. I think that's very important that we have their perspective...their representation, but I believe there could be some discussion around that. And then also, I do appreciate the comments that had been made earlier that we do want to move away from a regressive structure on the fees. I think there's some discussion to be had there, whether what is proposed in this bill or not is the right approach. I'm going to let the commissioners have that discussion with you. And I think this is

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probably something we can have further discussion in the committee on. So that's all I have to discuss on LB555. Thank you. [LB555]

SENATOR LINDSTROM: Thank you, Chairman Smith. Any questions from the committee? [LB555]

SENATOR GROENE: Just one. [LB555]

SENATOR LINDSTROM: Senator Groene. [LB555]

SENATOR GROENE: Do you know what their compensation is now? [LB555]

SENATOR SMITH: I will let them direct that to you. I have a general idea, but I cannot tell you with certainty. I prefer them to tell you. [LB555]

SENATOR GROENE: Thank you. [LB555]

SENATOR LINDSTROM: Senator Brasch. [LB555]

SENATOR BRASCH: Thank you, Vice Chair...not Vice Chair, but acting Chair. I do know what the compensation is, but are you also aware that as state employees that they have full benefits of healthcare and other items as employees? And saying that, so what about other state employees who live more than 50 miles? Should they also have a per diem (inaudible)? [LB555]

SENATOR SMITH: Senator Brasch, you're not going to get an argument out of me on this one. [LB555]

SENATOR BRASCH: Okay. [LB555]

SENATOR SMITH: As I said, as a courtesy, I brought this bill for the TERC. [LB555]

SENATOR BRASCH: A courtesy. Okay. [LB555]

SENATOR SMITH: And I want to make certain that they are kept whole, but I think you raise very good points. [LB555]

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SENATOR BRASCH: Okay. I have no other questions or comments. Thank you. [LB555]

SENATOR LINDSTROM: Thank you. Thank you, Senator Smith. We will now have proponents. Good afternoon. [LB555]

ROB HOTZ: (Exhibit 1) Good afternoon this time. Thank you. Senator Lindstrom and members of the Revenue Committee, my name is Rob Hotz, for the record, R-o-b H-o-t-z. I am one of commissioners with the Tax Equalization and Review Commission. And thank you, Senator Smith, for bringing this bill on behalf of the Commission. LB555 does basically three things. The first is the easiest of the three and that is that some years ago there was a provision put in statute regarding necessary parties. It's a fairly complex legal principle, but you want to make sure that you have everybody who would be affected by the outcome of the litigation present at the appeal, have a right to due process, and so on. There is currently in civil law...civil procedural law a provision that's adequate. The commission had a provision that was very specific put in that put us in a spot where once in a while the burden was put on the commission to know who the necessary parties were. And we don't know who the necessary parties are until sometimes even after we get all the evidence and they brief the matter. So we would request that that provision of statute be outright repealed and the general rule would apply, that the parties would be required to bring the necessary parties into the matter and we would go forward from there. For the sake of time, I've given you--and I won't read what I've given. I would like to say, however, that with...when comparing the commission's fee structure, if you go to the district courts in Nebraska where these appeals used to go 20 years ago, right now currently the most comparable civil district court on a civil matter would be an \$84 filing fee. I'm not advocating for \$84, but just as a comparable. Right now, the fee structure is \$25, regardless of the value of the parcel. The commission is asking the committee to consider addressing regressivity issues and inviting the committee to consider that, as well as adjustments based on time. The filing fee has been \$25 for 20 years. And then as in contrast to LB322 which has a \$50 fee for the lower end of the properties, what was discussed earlier today is just that \$50. That fee structure actually goes up; every dollar of value that fee will go up. And if you're in the millions of dollars range, that fee is several hundred dollars or more. This would have just a two-tiered approach. And we would encourage the committee to consider probably a two-tiered approach. Don't know the dollar amounts, but some would advocate for keeping it at \$25 for the lower-end-valued properties and then having another tier at some dollar amount. Right now, the way the bill is written it would be \$50 for the low end and \$100 for the high end, \$1 million being the threshold. I would also emphasize that in this context and in other contexts today, it should be emphasized that the commission doesn't set values. We don't--someone earlier testified about real estate brokers and so on--the commission only determines the evidence before the commission. It's a de novo proceeding. The parties can bring in whatever they want, but that evidence is what the commission considers. We can't make up a number. We can't make up a value. It's the evidence before us. And that can't be emphasized enough. In terms of the questions

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that have been asked, Senator Brasch asked about the rationale for the per diem structure. The commissioners and our staff and any other state employee, if somebody chooses to live and are not required to live somewhere, when they choose to live somewhere--and we have several staff who do live 50 miles from the commission's offices--there's no payment for any kind of mileage. But in the case of the commissioners, particularly giving the Governor flexibility regarding the Third Congressional District commissioner, if we're going to be able to entice and motivate qualified people from outstate Nebraska to come all the way to Lincoln every day for hearings or to travel throughout the district as we do now...Commissioner Salmon travels from the Aurora area. When she comes to the commission's offices she drives in all the way to Lincoln, she doesn't get a dime for that. She's required to live in the Third Congressional District to serve on the commission. That would be the rationale, Senator, for the difference. If I'm an employee of the state and I have been in the past, if I choose to live in Beatrice or Omaha or Fremont...we have a lawyer right now who lives in Fremont. We don't give any reimbursement for mileage. That's a personal choice, it's an employment decision that someone would make. In this case, the commissioners are required to reside, to domicile in each of the Congressional districts. For the sake of time, I'll just leave it at that. If you have any questions, I'd be happy to try to answer them. [LB555]

SENATOR LINDSTROM: Thank you, Commissioner Hotz. Any questions? Senator Schumacher. [LB555]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. Thank you for your testimony. You mentioned that you basically make your determination on the basis of the evidence as submitted to you. Do you ever take judicial notice of any...on your own motion, basically? [LB555]

ROB HOTZ: We have in our rules and regulations, there are a number of appraisal principle literature, laws, statutes, court decisions. We take notice of all of that. The party doesn't have to bring that in as evidence. We are required by statute to have so many hours of appraisal classwork that we do. I've taken 180 hours I think in the near ten years I've been on the commission where we study the appraisal principles and then apply those appraisal principles. So, yes, sir, we do take notice of those materials and part of that is what by rule and reg we're required to. But the terms of the evidence regarding the value of the property or equalization concerns, both parties can bring in whatever they want to the commission's hearing. They're not constrained by what happened at the county board level or what they've talked about with the assessor. [LB555]

SENATOR SCHUMACHER: The 180 hours, just out of curiosity, do you get continuing legal education credit for that or does... [LB555]

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ROB HOTZ: Not for the pure appraisal coursework. There are other requirements in statute of what we need to do to maintain our competence and I do double dip on that. I go to a conference where they pay for it and I get both the legal CLE and the statutory requirements. So if we can double or triple dip on that sort of thing, we absolutely do. [LB555]

SENATOR SCHUMACHER: So does everybody else. Thank you. [LB555]

ROB HOTZ: Yeah, right. [LB555]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Senator Brasch. [LB555]

SENATOR BRASCH: Thank you, Senator. And thank you again. We've had a conversation, but again I did want to clarify is that although there's a requirement to be in the Third District, it is open for anyone in that district. And it is very good compensation, wouldn't you say and the state benefits are awesome? [LB555]

ROB HOTZ: Yes. [LB555]

SENATOR BRASCH: I think it's 100 percent match on retirement and it's... [LB555]

ROB HOTZ: Retirement is the same as every state employee that \$1.56 on every dollar and the insurance. [LB555]

SENATOR BRASCH: Yeah, all state employees. But it is, yes. So you don't think that's enough to attract someone to want to serve on the commission? That there is...I was a former state employee. I was in Revenue; excellent benefits. The retirement plan, their match, the...you know, you name it. And even driving for that kind of a salary, should we open it to other...all state employees who choose to maybe work in an agency at an area and they drive or does that take place? Say, someone...I guess I'm not certain...maybe Agriculture Director Ibach, maybe his commute is two hours. So do we include mileage on a post other than having...there's no state vehicles involved for...but when you go to the outstate Nebraska there is a state car available that you can commute. [LB555]

ROB HOTZ: When we travel or our employees travel to do hearings we get reimbursed for mileage like any state employees would. And our employees would as well if they...either we use a state vehicle, which we haven't done in a while, or we use our personal vehicle and get mileage

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reimbursement. That's different. We already have that and every state employee has that when they travel for business purposes. [LB555]

SENATOR BRASCH: Right. And so are you asking for what above and beyond? The per diem? [LB555]

ROB HOTZ: What I'm...what we're asking...and this would not...I live in Lincoln so there's not much in this. And that's why I'm the one talking about this is, I have a colleague who I've worked with for ten years and she drives 80 miles each direction each day and she's required to live in the Third Congressional District. We get paid the same, we get the same insurance, we get the same retirement, but she has the added cost of driving in and the time and the change in her lifestyle and so on. [LB555]

SENATOR BRASCH: But she chose....they chose to take that opportunity. We have people who... [LB555]

ROB HOTZ: She chose to accept the appointment. [LB555]

SENATOR BRASCH: ...in Bancroft who would like to live and work...not live, they want to live in Bancroft, yet they commute to Omaha because of the wages or benefits or whatever, so that choice is made by others in private enterprise as well. And I'm just questioning, is there truly a need to add in this per diem when it's an excellent job with excellent benefits and other taxpayers, as well, they make the same commute but not reimbursed. [LB555]

ROB HOTZ: The proof will be in the pudding when the Governor is looking for a replacement for the Third District commissioner. And knowing how hard or...you may be right. My sense is that it will narrow the pool quite a bit if a person isn't going to be compensated for all those extra expenses. [LB555]

SENATOR BRASCH: Very good. I have no other questions. Thank you. [LB555]

ROB HOTZ: Thank you. [LB555]

SENATOR LINDSTROM: Thank you. Thank you very much. [LB555]

ROB HOTZ: Thank you. [LB555]

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SENATOR LINDSTROM: Next proponent. Seeing none, we'll now move to opponents. Also seeing none, neutral testifiers. Anyone wishing to testify in a neutral capacity? [LB555]

NATHAN HABEL: If I just have a question? [LB555]

SENATOR LINDSTROM: We can't do that. You can ask a question later after the hearing. But unless you want to testify in a neutral capacity, thank you. [LB555]

NATHAN HABEL: (Inaudible) ask my question? [LB555]

SENATOR BRASCH: We still can't answer questions. [LB555]

SENATOR LINDSTROM: No, we only ask the questions, I apologize. But after the hearing is done you can, thank you. Any other neutral testifiers? Seeing none, Senator Smith, you're welcome to close. Senator Smith waives closing. And that will end the hearing on LB555. Thank you very much. [LB555]