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Revenue Committee
February 20, 2008

[LB777 LB1008 LB1039 LB1110 LB1111 LB1118]

The Committee on Revenue met at 1:30 p.m. on Wednesday, February 20, 2008, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1118, LB777, LB1008, LB1039, LB1111, and LB1110. Senators present: Merton "Cap" Dierks, Vice Chairperson; Carroll Burling; Abbie Cornett; Chris Langemeier; Don Preister; Ron Raikes; and Tom White. Senators absent: Ray Janssen, Chairperson. []

SENATOR RAIKES: Good afternoon. Welcome to this hearing of the Revenue Committee of the Nebraska Legislature. The committee is improperly lit at the moment. Our Chair, Ray Janssen, is sick today I believe, and Senator "Cap" Dierks, who is the Vice Chair, is otherwise occupied. So you're stuck with me and let me go through the routine. To my far left over there is: Bill Lock, the committee's research analyst; next to him is Senator Don Preister from Omaha; next to him is Senator Carroll Burling from Kenesaw, Nebraska; Senator Abbie Cornett from Bellevue I think will be along; when Senator "Cap" Dierks arrives, he will sit in that spot. Senator Ray Janssen from Nickerson won't be here today. This is George Kilpatrick, the committee's legal counsel. I'm Ron Raikes, District 25; Senator Chris Langemeier from Schuyler; and Senator Tom White from Omaha; Erma James, the committee's clerk; and Dwite...oh, no (laugh). So we will proceed with the usual fashion. We will hear the bills in the order that they are listed on the outside of the committee room door. As you come to testify, please state your name and spell it for us. We'll have proponents, opponents, neutral, followed by a close by the introducer. Turn off your cell phones and we're ready to go. Senator Pedersen here to introduce LB1118. []

SENATOR PEDERSEN: Thank you, Senator Raikes and colleagues on the Revenue Committee. For the record, I am Senator Dwite Pedersen. I represent District 39 and I'm here today to introduce LB1118. This bill was brought to me by one of my constituents, Jerry Ravensborg, who you will be hearing from next, will testify and knows more about this bill than I do, be quite honest with you. I think he brings a valid concern to the committee and LB1118 is an effort to address it in some fashion. It is my understanding that current law requires each governing body to file and certify a budget statement which sets out the amount of tax required to fund the adopted budget, setting out separately the amount to be levied for the payment of principal or interest on bonds issued and the amount to be levied for all other purposes. LB1118 requires in addition to this information, the governing body shall file with the levying board or boards and the author a statement of the amount that would be raised from a levy of tax so certified on the taxable value certified under Section 13-509 in the prior year. An example of the frustration that my constituency has expressed is reflected in a recent World-Herald article where in the Millard Public Schools indicated that they would be spending more on operations in the next year to accommodate growing enrollment and a bigger teaching staff. Even though the General Fund budget was increased by \$11.5 million,

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they were able to lower the mill levy from \$1.28 per \$100 of valuation to \$1.21 per \$100 of valuation. The report indicated that this was the fourth straight year that Millard had cut its property tax rate. What our people are saying is that this is deceitful because even though the mill levy went down, the budget certainly didn't. The intent is to put in the budget document a figure that indicates to the public what a hold the line to zero budget would have been based on the previous year's valuation. I am pleased to be able to introduce this bill on Mr. Ravensborg's behalf and I ask you to have as many questions as possible. He has studied this very well and has lots of examples and answers for you. I will not be closing as I have a bill in another committee immediately. If you have any questions of me, I would try and answer them for you. [LB1118]

SENATOR RAIKES: Thank you, Senator Pedersen. Questions for Dwite? I don't see any. Thank you, Dwite. [LB1118]

SENATOR PEDERSEN: Thank you. [LB1118]

SENATOR RAIKES: Proponents LB1118? [LB1118]

JERRY RAVNSBORG: (Exhibit 1) I'm Jerry Ravensborg, R-a-v-n-s-b-o-r-g, and I'm here to hopefully further explain the reason why we need to address this issue. And I do have an example that I will pass out at an appropriate time here as soon as we get into a little detail. [LB1118]

SENATOR RAIKES: You can hand it to the page over there and they will disperse at your signal. [LB1118]

JERRY RAVNSBORG: Well, the reason for bringing the bill to Mr. Dwite Pedersen's attention is that if you look at the system, I believe there's a flaw in the system. And that being, the state of Nebraska requires valuations to be 95 to 100 percent of what the true valuation of the property is. But there's no correlation between that valuation and how it impacts local taxes. Local taxes are based on a mill levy, property levy, which is obtained by having the budget approved by the taxing authority go through a process where the amount of dollars in that budget is basically levied against the property and that taxing authority. Okay? So in all reality, the public looks at this and says, okay, we get a valuation increase, and now all of a sudden our taxes go up. Well, that is an outward sign of what happens. You know, they say if it looks like a duck, it walks like a duck, it is a duck. In this case it's a goose. And so the reason that happens is because the valuation goes up but the mill levy doesn't go down accordingly so that budget stays at a zero dollar. You could go ahead and pass that example out. You have them. Okay. And the reason I did this example is because let's say we start out in line 1 where we have property valued at \$200,000, and there's say, a \$2 tax levy against that property. Say the budget is \$1 million. The real estate tax would be \$4,000. Okay? Now, let's say that in that same year, usually by midyear or such, the property value goes to \$230,000,

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which 15 percent I'm showing here is about an average of what happened recently. Okay? And then in turn that 15 percent increase will cause the taxes that you pay to go to \$4,600. Now, if the valuation on line 3 would be \$230,000 and the budget would be held at the amount that it was originally planned for, then there would be a zero dollar increase, but the mill levy would go to \$1.74. So let's say in the next year we have a property value established and it doesn't go up at say, \$230,000, then maybe the budget does go up by 5 percent, which would be \$1,050,000. And then the taxes would be \$4,200 or a \$200 increase. And then maybe in the next year you may have another 5 percent increase in your budget. So then in turn, the taxes would go up to \$4,410 and the mill levy would go up from \$1.83 to \$1.92, which is reasonable. But I will challenge you that, in the last memory that I can remember, I do not know of a time when we've had a mill levy decrease. Always whenever the valuation goes up, the taxes go up accordingly because it's basically a windfall, a 15 percent windfall basically. So I think it's the budgeting committee of the taxing authority has a fiscal responsibility to be, I guess, fiscally sound to do the right thing for their constituents, and they should adjust the mill levy accordingly. I made a couple, three, four statements down here. One I think that I can back up by the fact that it's true statement has been made by public officials that there has not been a tax increase in eight years. Technically that is true because of tax levy has not increased, but the overall tax amount has gone up dramatically. So I'm not sure that this bill will address all the issues concerning this, but there's no correlation between valuation and the budgeting and levy mill process. So I'm open to the committee's suggestions as to how we may be able to improve this. But it has been very irritable to people that get these property valuation increases and then in turn have a huge tax increase. And most people don't understand the system and they try to change the valuation and that's not the problem. The valuation isn't the problem. The system is basically not fiscally responsible from one system to the other. [LB1118]

SENATOR RAIKES: Okay. Thank you, Jerry. Are there questions for Jerry? I may not be up with you here. But is what you're suggesting is that taxpayers should be notified of what the levy would be if the subdivisions had a zero change in budget from the prior year? [LB1118]

JERRY RAVNSBORG: Yes, because really the taxing authority has the right to budget whatever they want at whatever time they... [LB1118]

SENATOR RAIKES: Well, not quite. They mostly operate under budget lids. [LB1118]

JERRY RAVNSBORG: True. [LB1118]

SENATOR RAIKES: Yeah. [LB1118]

JERRY RAVNSBORG: But my last statement on here, you know, when your valuation goes up, your budget lids go up with it. So that will cause the tax to go up as well.

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[LB1118]

SENATOR RAIKES: Okay. Any other questions for Jerry? I don't see any. Thanks for being here, Jerry. [LB1118]

JERRY RAVNSBORG: Thank you. [LB1118]

SENATOR RAIKES: Are there other proponents, LB1118? Are there opponents? Is there neutral testimony? Senator Pedersen has waived his close, so that will close the hearing on LB1118. And we'll move to LB777, Senator Hudkins. Senator, welcome. Tell us about LB777. [LB1118]

SENATOR HUDKINS: (Exhibit 2) I will be glad to. Senator Raikes and members of the Revenue Committee, for the record, I am Senator Carol Hudkins, C-a-r-o-l H-u-d-k-i-n-s, and I represent the 21st Legislative District. I'm here today to introduce for your consideration LB777. In 2006, this Legislature passed LB808, which actually was an amendment of three other bills into LB808. In that bill, one little word was inserted that at least in Lancaster County and in Saunders County and some more counties besides, that has resulted in a massive change in assessment practices by the county assessors. My review of the legislative history doesn't reveal that the introducer of that particular part of LB808, Senator Raikes, nor this committee, consciously decided that the method for determining agricultural or horticultural land should be dramatically changed. However, that is what has happened, and there are several people here who will provide you their viewpoints on the process that was used. For my purposes I introduce this bill, LB777, to make it clear that when determining whether or not a piece of land is being placed into use as horticultural or agricultural land that the process should be the same as it was prior to LB808. The inclusion of the word "primary" in that legislation has brought a level of uncertainty to the process, and quite honestly, a level of subjective assessment rather than objective assessment. If we're going to value land based upon use, which the assessors seem to want to do, then LB777 sets up a clear and equitable system for doing so. It creates a classification of multiuse parcel so that the land contained in the parcel is valued based upon its use. Under the current law when the assessor is required to determine primary use, there's too much room for disagreement as to the primary use of the total parcel. Is the primary use determined upon income derived from that land? Is it determined by the value of the buildings constructed upon the land? Some combination of the two or something entirely different? The current law fails to create any mechanism for determining priority use when the land is put to multiple purposes. The current process would be fine if all land was taxed at its full market value. However, when you have some land taxed at 75 percent of its market value based upon its use, and other land taxed at 100 percent of its market value, then having a system that directs the assessor and the county board and the Tax Equalization and Review Commission as to how to determine primary use is very important to have a fair and equitable property tax system statewide. This is not

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a difficult process for assessors. Under the current law, if they determine that a parcel is primarily used for agricultural purposes but it has a residence on the parcel or some other type of building, then the portion of the property containing the residence is valued and taxed at 100 percent of market value. And the rest of the parcel is taxed at 75 percent of its market value. I would urge this committee to move this bill to the floor for debate. This issue is too important an issue and impacts too many of our citizens for the debate to be limited to this hearing. Whether the local county officials in our more rural counties want to admit it or not, the way the law is currently being interpreted, they're interpreting that all parcels that are being used for more than just agricultural or horticultural use must be looked at to determine that the primary use is agricultural. The law is not limited to small parcels but to every parcel throughout the state. I'm going to read an excerpt from an e-mail that I received from a family at Raymond. And they say, land near a city is worth more because of its development/acreage potential. The market value increases far higher than the agricultural value, and the taxes on the land go up in accord with the market value. Farmers cannot afford the taxes and have no choice but to sell out to the developers. Lancaster County and many others have a greenbelt exemption for land being used for agricultural purposes. This exemption limits the property taxes to its agricultural value. And a person qualifies for the exemption by demonstrating income from the land. Last year...well, this was in 2007 so, yes, last year, the Legislature made sweeping changes and recommendations to reevaluate the use of the greenbelt exemptions to capture more taxes, in large part a response to pleasure acreages that were benefiting by claiming ag use by having a few pleasure horses, for example, or raising turkeys for hunting. Based on the notice that this particular family got, Lancaster County had decided that anything under 20 acres is not agricultural land because supposedly anything less than that would/could only provide incidental income when you count the ditch and the roads and those things are counted. Given the economics of farming organic produce and eggs as we do, we're doubtful that we could continue farming here if we lost our agricultural exemption. We would be taxed off the farm. Obviously we're using the land for ag, pretty much every inch of it, whether it's cow grazing, chicken grazing, veggies, chicken feed, storing supplies, you get the idea. We wouldn't be the first farm to get taxed out of production nor the last. But we feel that with community support to show that we are an agricultural enterprise and not a hobby farm or a pleasure acreage, we have a good chance of continuing our exemption. So what I am trying to say is the language in the current bill is not completely clear to the assessors or however the assessors are interpreting it. And therefore, anybody who has 20 acres or less, they're arbitrarily saying you're not raising the bulk of your income from this parcel of land. So therefore we're going to take away your agricultural exemption and you're going to be taxed on the full value. We think that's wrong. These people were told that they would get a special ag valuation, and now it's been taken away from them. So I would be open for questions. [LB777]

SENATOR RAIKES: Thank you, Senator Hudkins. Questions for Senator Hudkins?
Senator Langemeier has one. [LB777]

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SENATOR LANGEMEIER: Thank you, Senator Raikes, Senator Hudkins. In this multiuse definition, as I read through it and since you're kind of going down a new embarking path with multiuse, you got 20 acres, how are we going to determine how much is for the house and how much is for your horticultural products? I know of 20 acres that's got an autogate and other than that, the horses and the cattle run right up to the house. So are you going to exempt out the spot the house sits on? [LB777]

SENATOR HUDKINS: Right now if you...let's just say it's 20 acres. You have a house sitting on that and I believe that they automatically take out one acre for that house. That house and underlying land is taxed at 100 percent of market value. If the remaining 19 or 18.5, whatever it happens to be, is used for agricultural or horticultural purposes--in other words, they're receiving income from that production--then they should be able to get the special ag land valuation. Now, if it's all grass and the kids have their horses out there and they have a couple of hills over here and the bigger kids are riding their motorcycles on it, no, that's not agricultural. That is pleasure. But if they are growing a crop, selling a crop, and are they going to get lots of income every year? Good grief no, because even as a farmer with considerably more acres than 20, we don't necessarily make a profit every year. You are at the whims of nature. You are at the whims of the marketplace. And how many of farmers in your area that are full-time farmers also have a job in town, full time or part time? So did I answer your question? [LB777]

SENATOR LANGEMEIER: No (laugh). [LB777]

SENATOR HUDKINS: No. [LB777]

SENATOR LANGEMEIER: Back to my question, and I asked it poorly. I have 20 acres. [LB777]

SENATOR HUDKINS: Yeah. [LB777]

SENATOR LANGEMEIER: And I'm going to use your examples, I have a house, my kids have a dirt bike and they ride around on ten acres of it, and on four acres of it--if you have more than four acres of horticulture, you're in a different world than most--and I have three greenhouses and I produce a lot of horticulture out of three greenhouses that take up three acres. So I got three acres under horticulture. [LB777]

SENATOR HUDKINS: Um-hum. [LB777]

SENATOR LANGEMEIER: I have one acre under my house. What are you going to do with the rest? [LB777]

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SENATOR HUDKINS: It would be taxed at full market value. You would get the special valuation for the three acres that are used for horticultural purposes. [LB777]

SENATOR LANGEMEIER: So we're going to make the assessor go out and verify those three acres this year and four acres next year and two acres the next year? [LB777]

SENATOR HUDKINS: Farm Service Agency? Yeah, he gets to testify later. But a simple answer, yes. But it's not that difficult. They know what the full parcel is, 20 acres. They know how much is taken out with the house, one acre. The landowner has requested an agricultural exemption. And do they put in the amount of acres they want for the exemption? Just tell me yes or no. Okay, you're right. The assessors already have GIS. All they got to do is look at the map. They can tell what's on that ground. They can tell whether it's a dirt bike track or if it's grass for the horses or if they're growing corn or fruit trees or grapes. It's not that big of deal. It's not that difficult. [LB777]

SENATOR LANGEMEIER: Okay. Thanks. [LB777]

SENATOR RAIKES: Senator Preister has a question. [LB777]

SENATOR PREISTER: Thank you, Senator Raikes. Senator Hudkins, my understanding...and from your testimony too, this came from some of the changes that the assessors were trying to make with some of the greenbelt acres like the constituent that wrote to you and what you're attempting to do is address those valuation concerns. Your method is to have it subdivided so it allows some flexibility so that the assessors can separate the house. So if it's a nice trophy house out in a little country area, that gets the full 100 percent valuation, correct? [LB777]

SENATOR HUDKINS: Exactly. [LB777]

SENATOR PREISTER: And then that portion you're looking at actual use of the land. [LB777]

SENATOR HUDKINS: Yes. [LB777]

SENATOR PREISTER: And if it's used for agricultural, horticultural purposes, then that can be valued at the greenbelt valuation. [LB777]

SENATOR HUDKINS: Exactly, and what the language is...what the assessors are doing is valuing that entire 20 acres based upon their interpretation of what is the primary use. There's a \$200,000 house sitting out there. Aha, that's a residence. Never mind the fact that 18 acres are being used to grow rather high dollar crops. And so what we want to do with this bill is on page 3, line 5, agricultural land and horticultural land means a parcel--and this is the new language--or multiple use parcel of land. And so that's pretty

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much it. So if the house is valued at full market value, there's the dirt track out there and the pasture for the horses and they got four acres, then each of those would be valued as to its use. The house, the dirt track, the pasture, full market value. The three acres or four, whatever the greenhouse is doing, that is your agricultural part of that multiuse parcel. So that four acres would be then valued at that lower rate, the agricultural rate. [LB777]

SENATOR PREISTER: Okay. You're trying to add some flexibility in here. So it isn't the assessor saying all or nothing. You either get the greenbelt status or you're not a farm and you have to pay the full rate. And for the producer, like the person that e-mailed you, that can mean the difference between whether they can stay in business and stay on their land or whether they're out of business and have to sell. [LB777]

SENATOR HUDKINS: Yes, and they still may want to continue raising the organic chickens and eggs and whatever else they were growing. But because of the arbitrary method of valuing their farm, their 20 acres...which some assessors are saying, well, 20 acres isn't a viable farm. Well, yes it is if you have the crops. Now, it might not be your entire income. As I said before, you might be working in town or your spouse working in town. But that is producing an agricultural product and we want those people out there doing that. If they have 20 acres and they let it all grow up in grass or weeds, what good does that do anybody? [LB777]

SENATOR PREISTER: Sure. I know you said this was a problem in Lancaster County but I know we in... [LB777]

SENATOR HUDKINS: Saunders also. [LB777]

SENATOR PREISTER: ...northern Douglas County... [LB777]

SENATOR HUDKINS: Douglas County. [LB777]

SENATOR PREISTER: ...and in Washington County I know it's been a problem as well. [LB777]

SENATOR HUDKINS: Pretty much anywhere you have a larger city and, you know, that could be North Platte, Grand Island, Kearney, and you've got on the outskirts the acreages. But the...well, I won't go there. But that's where it is in the more urbanized rural areas. [LB777]

SENATOR PREISTER: Sure. Thank you, Senator. [LB777]

SENATOR RAIKES: Any other questions for Senator Hudkins? Senator, when you first began you mentioned the issue of confusion about how you determine the primary

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purpose, and the direction you've taken is to define multiple use parcels. Couldn't you instead make rules or put in statute rules that clarify how you determine the primary purpose? [LB777]

SENATOR HUDKINS: Well, I suppose we could. But then all of those rules are open to interpretation. How many times are we accused as senators of doing thus and so and then we find out well, it's the agency that was involved, the rules and regulations that they made. So all we're doing is trying to clarify...it's for everyone's benefit. It's going to make it much easier for the assessor. They don't have the, well, is this agriculture, is it not. They just value the parcels according to how they're used. [LB777]

SENATOR RAIKES: You mentioned 20 acres and the house out of 20 acres, what if it's less than 20 acres? [LB777]

SENATOR HUDKINS: It's still an acreage and I think some counties, the minimum is 20 acres, in others it's different. But I'm just using the demonstration... [LB777]

SENATOR RAIKES: Suppose we get down to five. [LB777]

SENATOR HUDKINS: If three acres of that is used for grapes--and that's a lot of grapes and a lot of work--and two acres for the house, then three acres are agriculturally valued. [LB777]

SENATOR RAIKES: Two acres (laugh). [LB777]

SENATOR HUDKINS: Whatever. One acre. I don't care. Whatever is being used for agriculture. [LB777]

SENATOR RAIKES: Senator Langemeier. [LB777]

SENATOR LANGEMEIER: One more question on that. As an appraiser, would not three acres of well developed grapes be worth much, much, much more than three acres of dry land farm ground? [LB777]

SENATOR HUDKINS: Oh, yeah. Depending if it's irrigate...well, you said dry land, so... [LB777]

SENATOR LANGEMEIER: I mean a well established three acres of grapes could be worth \$60,000-\$70,000. [LB777]

SENATOR HUDKINS: Yeah. [LB777]

SENATOR LANGEMEIER: Okay. [LB777]

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SENATOR HUDKINS: But this would clarify. [LB777]

SENATOR RAIKES: I don't see any more questions. Thank you, Senator. [LB777]

SENATOR HUDKINS: Thank you. [LB777]

SENATOR RAIKES: Are you going to stick around? [LB777]

SENATOR HUDKINS: Yes, I do have a bill in another committee later, but I'll just play it by ear. [LB777]

SENATOR RAIKES: Okay. Let's check here. How many do we have to testify as proponents on LB777? One, two, three, four, five, six, seven, eight. Okay. Let's go ahead and begin with the first proponent and I would encourage you to condense your testimony and try to tell us something we haven't heard before. Welcome, sir. [LB777]

GENE WHITE: Thank you, Mr. Chairman and members of the Revenue Committee. My name is Gene White, that's G-e-n-e W-h-i-t-e, and I'm here this afternoon to speak on behalf of LB777. My wife and my son and I own a quarter section of land west of Branched Oak Lake. It's in Seward County. And property is deeded to the three of us are on our deed, and the land is used for pasture and a few acres in conservation reserve program. Our son Keith (phonetic) wanted to build a house on the property in order to provide him a place to live and to get to financing on the property we deeded him 20 acres. That's what they wanted. So we deeded him 20 acres which was surveyed off and put in his name. So he selected where he wanted to build a house, how he wanted it situated on the lot and so forth. The surveyors come out and picked out 20 acres. They started at the road and provided access to the road on the south and so they surveyed 20 acres. And these 20 acres are not fenced off. They're part of the operation. Within this 20 acres is the barn that was on the place. There was not a house on the farm when we bought it. The well is on there. We use the old barn for equipment shed and so forth, and the well is the only reliable source of water for the cattle that are pastured on this property, on the rest of the about 120 acres. And the 20 acres is just part of the farm operation. Well, the house is...our son got out with his tape measure and there's about 17,000 square feet in the area that the house is set on, which is just a about a quarter of an acre. The county assessor has picked this 20 acres as identified as rather than part of a farm as an acreage. The assessor is using LB808 to justify this decision. When we ask how much this will increase the taxes, we've been told that they don't know how much it will increase it. So it makes it very difficult to plan a budget or anything in that regard because the 20 acres is essentially, all of it but the quarter acre, is used as part of the farm. We appealed this and went before the county board and our appeal was denied. We were then told that we could file with the Tax Equalization and Review Commission, which we have done and we are now waiting for this hearing. At

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this time we do not know how much the 20 acres is being considered on an acreage rather than part of the farm will increase the tax on the farm unit. It is my understanding that the original bill, LB808, did not define primary use very well, and landowners now have to spend a considerable amount of time to protect their taxes from increasing in this type of situation. We have appealed this decision and are now waiting to hear what the taxes will be on the property if the appeal is denied. I don't know how many hours we've spent trying to justify that this 20 acres is part of the farm. Just because Keith (phonetic) built a house, which will increase the taxes for the farm and the taxes paid on the property, we now have to try to protect the tax increase on the rest of the 20 acres, which would be about 19 acres or so left. Could it be that this kind of activities is part of the reason that we're decreasing the number of family farms in Nebraska? I don't know, but it's something to consider. Thank you very much for the opportunity to present this information in support of LB777. [LB777]

SENATOR RAIKES: Thank you, Gene. Are there questions for Gene? Senator Langemeier has one. [LB777]

SENATOR LANGEMEIER: Thank you. You did a great job. [LB777]

GENE WHITE: Thank you. [LB777]

SENATOR LANGEMEIER: On your 20 acres when you gave it to your son, did you put a value on that when you deeded it to him? [LB777]

GENE WHITE: No, sir. [LB777]

SENATOR LANGEMEIER: Okay. [LB777]

GENE WHITE: We just...you know how parents do, we just...and I don't know what the value would be. [LB777]

SENATOR LANGEMEIER: My parents wouldn't, but I understand (laughter). Thank you very much. [LB777]

GENE WHITE: Thank you. [LB777]

SENATOR RAIKES: He's available for adoption, by the way (laughter). Let me ask you, would it have been possible for your son to build a house without subdividing it? [LB777]

GENE WHITE: According to the people that he was getting the loan from, it was not. Now, they could have put a lien on the entire 160, but we didn't want that. So you know, but they wanted a lien on the property they built the house on, which if we hadn't of deeded to him I guess they'd have put it on the whole 160. [LB777]

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SENATOR RAIKES: Okay. Thank you. Don't see any other questions. Thank you for being here, Gene. [LB777]

GENE WHITE: Thank you. [LB777]

SENATOR RAIKES: Bill. [LB777]

BILL PETERS: Mr. Chairman, members of the committee, my name is Bill Peters, address Suite 320, 411 South 13th, Lincoln, Nebraska. I'm appearing here today in support of LB777 in my individual capacity, but with some heavy involvement in the issue. Specifically I'm not representing the Lancaster County Board of Equalization before this committee. I'm representing them most of the time otherwise. My involvement in this issue intensified when I had a request to make a proposal to the county board to represent them on appeals of the assessor of the county board's decision. At which time I really got studying this issue. These were appeals to TERC. There are approximately 180 of them, of the appeals to TERC from the County Board of Equalization's action. In addition, there were 20-some--(laugh) when you're having fun, numbers sort of slip away--of taxpayer appeals, which for a while I represented the county board, but then withdrew because of what I considered to be a conflict. So that's the involvement with the implementation of LB808. And as I have continued to advise the county board, if LB808 and the amendments made by LB808 are constitutional, then the Lancaster County Assessor's approach was correct. And to keep in mind, this is not a greenbelt issue at all. Greenbelt just happens to be the mechanism of getting there because they were small operations. The LB808 amendments are to agricultural land, agricultural and horticultural land. So you have to get past agricultural and horticultural land to get the greenbelt. Then once you get by that, of course, then it's just an issue of value, and that's not what we're involved in, whether it's 75 percent of market or 75 percent of special value. That's where we get into the greenbelt. So this is an agricultural issue. I wanted to share with the committee two constitutional concerns that I have. I think several of the provisions of 77-1359, which I think is reprinted as subsection 2 of 777, first is a violation of due process. Under due process, the statute must be sufficiently specific that persons of ordinary language must not have to guess at its meaning. And then the statute must contain ascertainable standards by which it may be applied. The second is the uniformity clause and I'll come to that later. Within this area, I see four or five problems. The first is primarily used in the definition of parcel. A parcel is not a fixed term. It is defined by the statute, common ownership, same taxing district, not to exceed and in the same section. But it doesn't say how many parcels may be within a section of common ownership. And I would urge you to think seriously about using, the parcel is a--I view it--as an accounting shorthand mechanism and it's vital in the County Assessor's Office. When we refer to a parcel number, even though it may look long--10, 12 digits--it's sure better than a metes and bounds legal description. And when we'd refer to a parcel in property tax, the assessor and I are

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talking the same language, we know where that is. And we know what's there because the parcel includes a certain definition. Then the issue of primarily used, that becomes a problem in defining what is the standard to use. Do you count the number of acres in a 30-acre tract that has 6 acres of a church and 24 acres of alfalfa? Or do you count the contributed value of each sector? Or do you consider, which is another factor which was identified in TERC proceedings, as is this the primary source of income of the owner? While TERC did make the statement that the statutes were not ambiguous...in the first test cases we had, TERC did go ahead to define the words, what entered into primary factors and commercial production. And the primary factors were somewhat conflicting but they were what to be considered. So first I would say that a flaw--and I'll be exploring this, by the way--four cases have now been appealed to the intermediate appellate court raising these constitutional issues. Secondly is the issue of uniformity. The constitution provides, the Legislature may provide that agricultural land and horticultural land as defined by the Legislature shall constitute a separate and distinct class of property for purposes of taxation. And may provide for a different method of taxing agricultural land and horticultural land which results in values that are not uniform and proportionate with all other real property and franchises, but which results in values that are uniform and proportionate upon all property within the class of agricultural land and horticultural land. My argument is that whether it's 3 acres of brome--we have one of those cases, 3 acres out of 5 is in brome production--or it's the 24 acres adjacent to a church parking lot. Is that any different than 80 acres of commercial alfalfa? Is 18 acres of soybeans farmed in conjunction with another 18 acres of soybeans any different than a quarter section of soybeans? I suggest that I don't think it is and that's where we have a problem with uniformity. The definition of "commercial" is not addressed in LB777, but it does present some issues. Whether that is an issue of do we use an income tax test, a hobby loss test, which is only federal rules on how you can use a tax shelter and move losses. Another area that becomes a real problem and which is an issue in one of our appeals is that agricultural land shall not include any land associated with a building or structure. Structure does not have to have a roof on it. I would submit is a dairy barn, confined hog feeding, a greenhouse, is that agricultural or horticultural if they're producing those type of products? Is that an unreasonable classification? The next issue is related to farm sites. The definition of "farm site" in the statute is a portion of land contiguous to land actively devoted to agriculture, which includes improvements that are agricultural or horticultural in nature. Referring again to the uniformity clause. You can say that the improvement is horticultural and agricultural in nature, but still not entitled to treatment. Is that compliance with the uniformity clause? I think the last issue that will be...it's not an issue in the present cases yet but will be someday is the definition of a "home site." Now, a home site is defined as not to exceed one acre. Quite honestly I look at the aerial photographs in the cases that I've tried and those home sites cover considerably more than an acre. But by statute you say assessor, you can only evaluate that home site for one acre. I believe property tax would call for a situation where you call it what it is. If it's three acres, if it's four acres, the home site, then you tax it. If it's on half an acre, you tax it. But you don't establish an arbitrary category. We

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don't do it in other areas. One last question I would like to address is under LB777, breaking down the different categories. If that's not done in the property record file at the present time, that assessor I think has got some serious problems. They're able to break down by soil types and by different land classification types all within one parcel. I think this approach of LB777 gets at the main problem without having to change the underlying statute. And with that, I would be happy to answer any questions. [LB777]

SENATOR RAIKES: Okay. Thank you, Bill. Questions for Bill? Run through your numbers for me once just so I understand. You said appeals from the county board to the TERC. Now tell me who is appealing what there? [LB777]

BILL PETERS: There was approximately 180 where the assessor appealed the county board's determination that greenbelt should be granted to the taxpayer... [LB777]

SENATOR RAIKES: So the sequence was... [LB777]

BILL PETERS: ...overruling the assessor's recommendation. [LB777]

SENATOR RAIKES: Okay. The assessor assessed that the taxpayer appealed to the county board. The county board reversed the assessor's decision, and then the assessor in effect appealed it to...okay. [LB777]

BILL PETERS: Appealed to TERC and under our statutes, district court appoints an attorney for the assessor, and the county board if they want to defend the action has to hire an attorney. The county attorney can't represent the county board. [LB777]

SENATOR RAIKES: Okay. Then you had some other taxpayer appeals? [LB777]

BILL PETERS: There were taxpayer appeals, yes. Approximately... [LB777]

SENATOR RAIKES: And those were the county board... [LB777]

BILL PETERS: Agreed with the assessor. [LB777]

SENATOR RAIKES: Agreed with the assessor and so the taxpayer appealed to... [LB777]

BILL PETERS: TERC. [LB777]

SENATOR RAIKES: ...TERC. Okay. So did I miss a category there? [LB777]

BILL PETERS: No. [LB777]

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SENATOR RAIKES: Those were the two categories. [LB777]

BILL PETERS: That's about the only two folks that can appeal. [LB777]

SENATOR RAIKES: Okay. All right. [LB777]

BILL PETERS: There's right around 200 total in Lancaster County. [LB777]

SENATOR RAIKES: Okay. Then you mentioned a number of constitutional or what you pose as constitutional issues. Are these before a court now? [LB777]

BILL PETERS: Yes. On Friday I appealed...there were four cases scheduled and we tried at TERC of these assessor appeals. On Friday, I docketed the appeals with the Court of Appeals. And so as soon as I serve the opposing party, we're there. [LB777]

SENATOR RAIKES: Okay. Senator Langemeier. [LB777]

SENATOR LANGEMEIER: Thank you, Senator Raikes. Bill, you talked about that arbitrary one acre for a home site. Being an appraiser, go to a lot of court houses. Well, a lot of court houses have 1 acre for the house and it's 160 acres and, yes, that farm site is bigger because they've got pens and barns and stuff. Most everyone I've been to also have a category called farm site. [LB777]

BILL PETERS: Yes. [LB777]

SENATOR LANGEMEIER: And they all have the balance of those acres, five to nine or whatever they are, with the trees and the rest of the building called a farm site. [LB777]

BILL PETERS: Right. [LB777]

SENATOR LANGEMEIER: And those are just as high as the home site in most cases evaluation. But there is another category. You said if you got a three-acre farm place, but they're only counting one, there is a method to encompass those other acres in. [LB777]

BILL PETERS: Yes, but there are some where there's only--especially on acreages--where you only have a home site and the rest. [LB777]

SENATOR LANGEMEIER: Acreages are a little different, yes. [LB777]

BILL PETERS: I think the other thing is why does a farm site have to be contiguous? And what does contiguous mean? Across the road? That's just really good for my trade. [LB777]

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SENATOR RAIKES: Well, you don't get to ask the questions. We get to ask the questions (laughter). [LB777]

BILL PETERS: That was a rhetorical, Senator. I'm sorry, I got carried away. [LB777]

SENATOR RAIKES: I missed that. Okay. Any other questions for Bill? I don't see any. Thank you, Bill. [LB777]

BILL PETERS: Thank you. [LB777]

SENATOR RAIKES: Next proponent. Senator Dierks, I'm willing to yield any time you want to... [LB777]

SENATOR DIERKS: You're doing very well. [LB777]

SENATOR RAIKES: I'm sorry to hear that. [LB777]

SENATOR DIERKS: Go ahead and finish this one. [LB777]

SENATOR RAIKES: Welcome. [LB777]

ED WOEPPEL: Thank you. Senator Raikes and members of the Revenue Committee, I'm Ed Woepfel, and that's W-o-e-p-p-e-l. I live on and own property near Firth, Nebraska, in southern Lancaster County. I've lived in the county for nearly 20 years and during that time served in a number of capacities. I've been chair of the Lancaster County Extension Board and I'm currently serving on the board of the Lancaster County zoning appeals. I'm here today to provide you with my opinion, anyway, and some of my neighbors as well concerning how this greenbelt process has worked in Lancaster County for each of us, and probably more appropriately how it hasn't work in our opinion. And quite frankly I think it's been a frustrating experience for a number of us. First off though, I want to thank Senator Hudkins for introducing LB777. So hopefully we can stop this...and I think it's just some foolishness that's going on. As Bill talked about hiring attorneys and doing all this kind of thing, we really need to resolve this and so people can get on with what it is they do for a living. It appears to me that LB777 will solve that interpretation problem that we have concerning acreages and the greenbelt law. Just as a point of reference, and I think this was talked about, as I understand it and how it appears to me, in Lancaster County from a taxing perspective, you currently basically for the most part have the 20 acres, which because of zoning regulations that's the smallest that you could have without going through a rezoning process. But when you have that you're going to have a base tax for that house site, whether it's the acre or three-quarter acres or whatever. And my understanding is that runs about \$30,000 to \$50,000 plus the tax on the house. So I think it's important that we all realize is that that

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property where the house is sitting, the house, it's being taxed just as if it was sitting in town. I mean, there's not a tax break on that and I think that's an understanding that some people perhaps don't have. Certainly myself and my neighbors that are involved in this have no problem with that. If you have a \$300,000 house sitting out in the country, you ought to be taxed on that as well as the land that it sets on. That's fair and no problem. The problem though becomes the balance of that land and we really believe that it ought to be taxed on what it's being used for. If it is just an open prairie and somebody's little secluded getaway out there and, you know, you have a pond out there and you can walk out there, well, that's fine. That's not agricultural usage. However, if it is agricultural usage, we believe that's how it ought to be taxed. This past year, there was six of us in the neighborhood. Each of us was denied the greenbelt status by the County Assessor and as we understood it, it was due to LB808, and the reason being that primary usage language. In our county there was about 900 property owners, I believe, that got that notification that were denied the greenbelt status. About 500 of those folks appealed to the county board and I believe about 300 of those that appealed were overturned by the county board. In each of the cases for our neighborhood, five of the six of the assessor's rulings were overturned. And you know, I think part of the thing that came out of that at that point in time is that the county board was really just a blank check for the property owners and I want to assure you that that was not the case. I sat through the hearings one morning and there was a number of people that came through and they didn't qualify and they were not overturned by the county board. So I think the county board did do diligence on that. But it seems to continue to be an issue with the assessor and I think that's really creating a problem for people as you, again, go through this appeals process. You know, what are we doing? We have the county board hiring outside counsel. We have the assessor hiring outside counsel. You know, and where are we going with this thing and does that really make good sense for us all? I think there's a lot of time and money been spent on this. Myself, I've been at hearings. I was there this summer. I'm again here today on vacation time doing this kind of thing. So I think there's probably got to be a better way for that. I think it's also important that property can indeed have more than one purpose. If a tract is big enough, I think we can all agree on that. You know, I can have a housing site and it can be agriculture. You know, where I grew up as a kid, it had a house on it, but it was a farm. Well, it had two purposes. Now as 160 acres, understand that. But it had two different purposes. I guess I don't see what the difference is at this point in time. From my particular perspective as well as with my neighbors, I can tell you that this is not a hobby business. You know, in this past week, I've sold pigs to eight different families for freezer meat. This morning before...it was dark-30 when I was out and I unthawed two hog waters and it was a bit breezy out there I will tell you. And I wouldn't say that that was a hobby because I think I'd give up that kind of hobby pretty fast on a morning like this. So the point being is I think there's things we can do to resolve this issue. So in the interest of time, I'll end there and if there's any questions that I can respond to, I'd certainly do that. [LB777]

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SENATOR RAIKES: Thank you, Ed. Are there questions? Senator Dierks has one. [LB777]

SENATOR DIERKS: Ed, I'm glad to hear you have some hogs. I'm kind of looking for some hogs to vaccinate. Been a lot of years since I could do that. They've all disappeared in my country. [LB777]

ED WOEPPEL: If you need any practice, you just come on out. [LB777]

SENATOR DIERKS: Why, is this a problem just in Lancaster County or is this a problem across the state? [LB777]

ED WOEPPEL: I am not aware of it. I'm more aware of Lancaster County. So there's probably some other folks that can respond to that better. I've read in the Omaha World-Herald where there's been some issues in other counties and I think Senator Hudkins talked about that earlier on. But I'm more familiar with Lancaster County. [LB777]

SENATOR DIERKS: Thank you. [LB777]

SENATOR RAIKES: Any other questions for Ed? Quickly, you mentioned your house and 19 acres of brome. Okay? And if it's just brome, probably not, suppose I got one pig out there and his name is Arthur. Is that a business? [LB777]

ED WOEPPEL: In my opinion it wouldn't be. [LB777]

SENATOR RAIKES: Two and I don't know their names? (Laugh). [LB777]

ED WOEPPEL: Well, you're starting to get into questionable territory and I know of where you're going. I think one of the things...and I would go back to the process that was used in Lancaster County, if you had FSA numbers, if you had a schedule F that you were filing with IRS, those kinds of documentations, if you were getting government payments, all that kind of stuff, that was figured into that. So I mean, if you're not doing that kind of thing or paying personal property taxes or those kinds of things, that was factored into it. [LB777]

SENATOR RAIKES: Okay. Senator Langemeier. [LB777]

SENATOR LANGEMEIER: If I have a little finishing barn that has 500 head of hogs, I don't have any FSA data on that. [LB777]

ED WOEPPEL: But you're certainly going to have Schedule F. That's what I used and it worked at least with the county commissioners this time around. I don't know where it

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goes next. [LB777]

SENATOR RAIKES: Any other questions? I don't see any. Thank you, Ed. [LB777]

ED WOEPPEL: Thank you. [LB777]

SENATOR RAIKES: Next proponent. Welcome. [LB777]

THOMAS D. KELLER: Thank you. Senator Raikes, members of the committee, my name is Tom Keller. I live on...it's K-e-l-l-e-r. I live over by Malcolm, Nebraska. I do have 20 acres. We, my wife and I, are starting a farm. I grew up in the Sandhills of Nebraska. My grandfather was a rancher, great big ranch. I saw what raising cattle can do for a lifestyle. They can help you along and some years you can make money, some years you don't. We came to Lincoln about 20 years ago. I went to school. Finally we scrounged up enough money to buy our little farm. Obviously anybody who would like to purchase more land and that's our intentions. We will continue to...we raise organic beef, chickens, eggs. We sell a lot of eggs. We will continue to do so until we can afford to purchase more property. We feel that we're just being penalized now that they've taken our farm status away from us saying we're not really a farm. We are. We may not be the biggest farm, but we are a farm. We file our taxes. We have an FSA number. We're trying to do it all and we just feel we're being penalized. [LB777]

SENATOR RAIKES: Okay. Questions? Senator White. [LB777]

SENATOR WHITE: Thank you for your testimony. You are one of the fastest growing sections in the agricultural area, which are small organic farms. And that our law doesn't recognize the economic reality is unfortunate. I appreciate what you've come to tell us. [LB777]

THOMAS D. KELLER: Thank you. [LB777]

SENATOR RAIKES: Senator Preister. [LB777]

SENATOR PREISTER: Thank you, Senator. Are you having any problems marketing your organic produce? [LB777]

THOMAS D. KELLER: No. It sells quite readily. In fact, our eggs, which was quite surprising to me, I was more along the beef line, my wife wanted to start with the eggs, they sell unbelievably fast. [LB777]

SENATOR PREISTER: Especially this time of year when they're hard to get. [LB777]

THOMAS D. KELLER: Year around, year around, and that we will continue to expand,

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to build. The free-range, people just love the free-range chickens. In fact, I can't even hardly keep up raising them. People just want to buy them left and right. And I think it's going to get...you know, the more and more people don't want antibiotics in their food. They don't want...you've all seen the beef recalls where they were cruel and unusual to the beef. People don't want that. People want to just drive out in the country, see a cow out in a pasture, that's what they want and that's what we want to give them. And we're starting at ground level. I didn't have anybody to hand me a farm and say, here, take it over. I would have loved to have done that. Unfortunately my grandfather wanted to see my grandmother was taken care of in her later years, so he sold the ranch. I didn't have any say in that, otherwise I'd still be up in Newport, Nebraska, ranching. [LB777]

SENATOR PREISTER: Thank you. [LB777]

SENATOR RAIKES: Senator Dierks. [LB777]

SENATOR DIERKS: You run roosters with your hens? [LB777]

THOMAS D. KELLER: I'm sorry, what? [LB777]

SENATOR DIERKS: Do you have roosters running with your hens? [LB777]

THOMAS D. KELLER: Do I have roosters? Well, we have a couple of roosters, yes. [LB777]

SENATOR DIERKS: I've been told that eggs that are hatched by hens that have roosters with them, in other words, fertilized eggs are better for you than nonfertilized eggs as far as cholesterol is concerned. [LB777]

THOMAS D. KELLER: I had not heard that. [LB777]

SENATOR DIERKS: That's true. I know several medical doctors that make those eggs available for their patients. You don't have a pig named Arthur, do you? (Laughter). [LB777]

THOMAS D. KELLER: No. We do have a cow the kids have named Norman. [LB777]

SENATOR RAIKES: But you've got some new information for your advertising brochure. [LB777]

THOMAS D. KELLER: I do, I do. [LB777]

SENATOR RAIKES: There you go. Any other questions for Tom? I don't see any. Thanks for being here, Tom. [LB777]

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THOMAS D. KELLER: If I could make one last comment. When we initially bought our place, we contacted the FSA right away. We got our number. We got in line. We had ag status, and then when LB808 came out, that's basically...the assessor said, no, you're not a farm. We did go to the Lancaster County Commissioners and appealed it and they did give us our status back and obviously they've taken it away again. Our house payments just for the taxes went up \$300 a month. Now that's a calf a month to me. That's a lot, that's a lot. [LB777]

SENATOR RAIKES: Okay. [LB777]

THOMAS D. KELLER: Thank you. [LB777]

SENATOR RAIKES: Thank you. Next proponent. Jay. [LB777]

JAY REMPE: Senator Raikes, members of the committee, my name is Jay Rempe, J-a-y R-e-m-p-e, state director of governmental relations for Nebraska Farm Bureau, here today on behalf of Nebraska Farm Bureau in support of LB777. Let me just say a couple of things real quick, we were part of the discussions encompassing LB808 and I think the intent of that bill, at least our intent as we were part of the discussions, was to try to maybe tighten the definition a little bit because there was a feeling that there was some land that wasn't truly being used for ag purposes or ag uses that was being classified as ag land. And then because of that, because it was being defined as ag land, it would lead to maybe possible leading to special use value, but also the 75 percent of ag land or at that time, 80 percent of ag land value. And so I think the purpose of LB808 at the time was to try to tighten that. Unfortunately, as with a lot of things that we seem to do sometimes, there's some unintended consequences and we may have swung the pendulum a little too far, as you've heard from the previous testimony. And so we I guess stand here today willing to work with the committee and others to try to get that, maybe try find that better balance. Our interest is to try to find a way we can define ag land, land that is used for ag purposes is defined as ag land, and that's what we're trying to get at here I think. And I want to reiterate what Bill Peters said, we're talking really about the definition of ag land is what we're getting at. That definition then serves as the gateway to the special use value of the greenbelt that you've heard earlier. But also as I mentioned, as the defining ag land, you receive the preferential treatment or the 75 percent of ag land. So I guess I wanted to make that point that it's not so much about the greenbelt. It's more about getting the proper definition. So with that, we stand ready... [LB777]

SENATOR RAIKES: Thank you, Jay. Questions for Jay? Senator Langemeier. [LB777]

SENATOR LANGEMEIER: Jay, you said that you're willing to work with the committee to send that pendulum back to the right. So are you testifying in support of doing that or

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the bill? [LB777]

JAY REMPE: No. We're testifying in support of the bill and I think the bill provides a mechanism that could try to do that. But I guess I want to leave the door open that if there's some interest in looking at other alternatives, we'd sure be part of that as well. [LB777]

SENATOR LANGEMEIER: But you think this will fix the problem. [LB777]

JAY REMPE: Yeah. [LB777]

SENATOR LANGEMEIER: Okay. Great. Thank you. [LB777]

SENATOR RAIKES: Any other questions for Jay? I don't see any. Thank you, Jay. Next proponent. [LB777]

BOB HACKBARTH: Senators, thanks for the opportunity to say my peace. I'm Bob Hackbarth, H-a-c-k-b-a-r-t-h. I live on one of those 21 acre places we've been talking about near Raymond. I currently have been denied greenbelt status and have a case pending in front of the TERC commission, which is scheduled for tomorrow morning at 9:00 a.m. and I will be representing myself. I have sat in and monitored three of the landowner hearings in front of TERC and read the final decisions on the four, what they're calling test cases, that were represented by legal counsel that are now going to the Court of Appeals. A little bit of background, we own 21 acres by Raymond. We have a house on it and a little garage. I do some...my hobby, which is working on old cars. The rest of it we have in alfalfa and pasture and we board a couple horses. And as one of the others mentioned, when I'm out there at 10:00, 11:00 at night throwing small bales of alfalfa to get them into the barn before the rain, I don't see the difference between me doing that on 21 acres and somebody on 160 or 640 acres doing the same thing. Throwing a bale of hay is throwing a bale of hay and scooping a shovel of manure is scooping a shovel of manure. So I think the intent of Senator Raikes's original bill has gotten taken out of context. And some of the TERC final decisions, the primary criteria used to determine whether the parcel was agriculture or residential was the value of the house on the property versus the value of the agricultural property. And as everybody knows, you have to live somewhere. It would have helped my case, I believe, if I would have lived in town and that would have been 21 acres of just farm ground. But since I have a house on it, that currently counts against you. And with the average price of a house in Lancaster County anyway being in the \$150,000 price range, it's hard to have a house that is valued less than the average parcel, even medium-sized parcel of farm ground. You can get up to 80 acres at agricultural prices and still have an average house be valued at the same or more than the land. So you don't have to have a \$500,000 house sitting on this property in order for it to be worth more than land is worth. And I think the original intent of LB808 was good, but I think the way it's being

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interpreted at least by the TERC commissioners at this point has gotten way off track. I agree the pendulum has kind of gone too far to one side. And I think Senator Hudkins' bill, LB777, addresses that by properly stating that a parcel can have more than one legitimate use and it should be assessed on whatever that use is. And somebody that's got a house and a go cart track or they're running ponies on it for their kids, that's not agricultural. I'll be the first to agree. But if you're boarding livestock, pasturing livestock, if you're raising hay or corn or soy beans, it's as much of a farm as the guy that's doing it on 160 acres. I also believe, and I don't know that anybody else addressed this so I'll make it brief, I don't know that this is actually a revenue issue because out of the approximately 900 in Lancaster County that greenbelt denials that were initially sent out, only approximately 500 appealed that. So right off the bat by not appealing that original denial at the county level, the county raised 400 of those properties from greenbelt to 100 percent valuation. So the county realized a tax increase, property tax increase, on those 500, not counting the other 5 that have appealed it or been reinstated with greenbelt. So with that, I think I will rest my testimony. [LB777]

SENATOR RAIKES: Okay. Thank you, Bob. Questions? Senator Langemeier. [LB777]

BOB HACKBARTH: Yes, sir. [LB777]

SENATOR LANGEMEIER: One comment, Bob. Will you report back to us how your TERC experience goes tomorrow for representing yourself? [LB777]

BOB HACKBARTH: Yes, I will. And one final comment. I got tied up. I do file a Schedule F and I do have farm number, and this year, my 21 acres did better than General Motors or Ford Motor Company. (Laughter). Any other questions? [LB777]

SENATOR RAIKES: Thank you, Bob. [LB777]

BOB HACKBARTH: Okay. Thank you. [LB777]

SENATOR RAIKES: Appreciate your coming. Next proponent. Mr. Commissioner. [LB777]

LARRY HUDKINS: Good afternoon, Chairman Raikes and members of the Revenue Committee. I want to tell you a little bit about...name is Larry Hudkins, H-u-d-k-i-n-s, Malcolm, Nebraska. Just like to say that none of my property or Senator Carol's property was removed from greenbelt status or farmland status. But I went through probably the most perplexing issue in my 20 years on the county board this year with these hearings and with the protests on greenbelt. As was just mentioned to you, we had 501 protests that we actually reviewed and heard. There were other people that didn't realize the procedure that they had to go through. I received more calls and more personal inquiries over this issue than any other issue that I've had in my 20 years as

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Lancaster County Commissioner. And it seems as I would look at it, it seems that LB808 had unintended consequence, and it centers around the word "primary use". And let me just state here for the record, that I think Norm Agena and Rob Ogden, his chief deputy, are probably two of the finest assessors in the state of Nebraska. Our board has had a wonderful relationship with them over the years. We try to give them all the tools that they need. It's a modern office. It has GIS, so they have all the bells and whistles to make determinations that they have. But we found ourself at loggerheads over this issue to the place where personally I tried to discuss this with Norm Agena, and he said I'm simply following the letter of the law and he may be. Consistently over these cases, our board was a five-member board and four of us usually sustain the people that had greenbelt in the past, and one sustain the assessor's decisions. So as we labored through these people, I would just like to read this portion of my testimony. What we found ourself involved in here is the county attorney said that he couldn't represent us because the assessor was an elected official and the county board members were elected officials. The majority of the board said, you know, we need more help on this. And so we sought the property tax administrator at that time, Cathy Lang. Had her come out and do a special workshop for us, and after that, we were told that the county assessor had retained private counsel. So then we hired private counsel and that being Mr. Peters, who was here earlier, and tremendous expense for all the property taxpayers in Lancaster County. We don't know what the bills are going to be. We're just starting through TERC. Three days to do the first 4 and we've got 22 more to go. So there's quite an expense. So what we're asking you is to really take a good hard look at LB777. We think it addresses the problem and we want you to take a look at it. One thing that we found, most people is they would stop me after church or after a county board meeting or anything else that were in the city of Lincoln said, well, it's about time the assessor cracked down on this because when people have 20 acres, they're getting a special break on their luxury homes out there and their farm buildings and they never understood that those buildings were always 100 percent of tax, even when those people had greenbelt. Greenbelt only affected the ag land portion of those acreages. And what's to determine what's an acreage--20 acres, 80 acres, 100 acres? As I asked the assessor, what is a parcel? They say one unit of land under the same ownership. They just happen to make a break on the smaller end of that. So this isn't just a greenbelt issue. This is a statewide ag land issue. The home and the buildings on these parcels do not and have not received preferential agricultural land tax consideration. Only the remaining land on these acreages was eligible for greenbelt status. Over a two-week period we did the assessor's work for him. We personally interviewed or reviewed 501 taxpayers who previously had had greenbelt status, but were denied this year by Assessor Norm Agena and had filed an appeal with us, the County Board of Equalization. We approved 292 of the 501 protests and sustained the assessor on 121. We just didn't take them carte blanche. We gave each person five minutes. We approved 292 protests and, again, sustained the assessor on 121. We meticulously, hour after hour--sometimes we would start at 8:00 in the morning and finish as 6:00 at night--we meticulously gave them five minutes each to hear their case and prove to us

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that they qualified. Most protestors were asked: Do you have a federal Farm Service Agency number? This isn't something they could just go out and get in preparation for this. This is something they had had in the status that they had in previous times. And then they brought in that Farm Service Agency map. We put it up on the ELMO so that we could look and see the size of those fields, what was actually being used. Next question was have you filed a 1040 Schedule F or a commercial form showing farm income or horticultural income on a 1040 schedule showing the rent that was received or the money that you received from the proceeds of produce which you produced on this land? And then the third question that was uniformly asked: Is this parcel primarily used for recreation, a hobby or for agricultural or horticultural production? These people for the most part...as you can see, we've brought you a microcosm of the 500 people here today. As you can see, Mr. Keller is not a banker or a stockbroker. He has roots in agriculture. The applicants had USDA farm status. They had filed federal income tax returns and answered that the property was primarily used for agricultural or horticultural production. We overturned the assessor's recommendation and granted greenbelt status. In my opinion, we did the hard work that was our duty as the Board of Equalization. The commissioners had even called the property tax administrator, Catherine Lang, for a work session on this subject after the assessor refused to have meaningful discussions with us on the subject. Ms. Lang told us that CRP and wasteland could be counted as agricultural land and that the courts have--this is a quote--the courts have generally held that 51 percent or more of a parcel was considered the majority. So in this case, we are looking at land use, and we repeatedly pinned her down on that and this is what she told us. We followed these guidelines to the best of our ability. The really tough appeals were the ones where the farm service acreage map showed 9.8 acres of farmland or a cropland on a 20-acre parcel. We got down to even measuring the ditches to see if they had been purchased by the county or the state or if they were by patent and went to the center of the road to try to determine if the majority of those acres. And so some people had less than that, but this was one of the criteria that we looked at. And the law as written specifies that the primary use of land should be determined as to how it is assessed. If we feel that some hobby farming is done on the side, it is a home. But if the property is a small farm, it is agricultural, horticultural production land. We agreed and found bona fide agricultural and horticultural operations including llama wool production, replacement bucket calves, calving a herd of cows, raising geraniums, and vineyards for commercial wine production. Feeding 29 bucket calves every morning and evening and caring for two acres of grapes is not a hobby. We sustained the assessor on about 24 percent of the appeals. But after thoughtful, reasoned deliberation, we found the rest to indeed be bona fide small farms. In Lancaster County, you need to have 20 acres to build a home in any agriculturally zoned areas. Usually one to three acres is used by the home and the building site and does not receive special valuation; the remaining 17 acres is zoned agricultural and cannot be used for residential or commercial purposes. The only permitted use is agricultural other than recreational. If it was agricultural, we usually granted the greenbelt status. Senators, we need help. I don't want to go through the

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hearings for 2 weeks and have another 500 people. We may have those 500 plus we may have the other 400 that were denied last year coming to us this year wanting this settled. So please take a good hard look at LB777. If it isn't the right language, help us get a definition of "primary use" so we know where we're at in this endeavor. [LB777]

SENATOR RAIKES: Okay. Thank you, Larry. Questions? Senator Dierks has one. [LB777]

SENATOR DIERKS: Larry, of those appeals that you approved, was that the final action or was there further action taken on those? [LB777]

LARRY HUDKINS: The assessor appealed those and took them to TERC. He did not accept our recommendation on the ones where we disagreed with him. [LB777]

SENATOR DIERKS: Okay. Then has TERC dealt with them yet? [LB777]

LARRY HUDKINS: They're in the process of dealing with them. [LB777]

SENATOR DIERKS: And how are they turning out? Do you know anything about that? [LB777]

LARRY HUDKINS: The first four, they found, I would say, in the favor of the assessor saying that his determination of primary use was what the law intended. And so that's what we say we need a better definition of primary use. This is a greenbelt status these people historically took. They just didn't run down to the FSA office and sign up for a farm number. They didn't just file the Schedule F. They had already done that in the previous year. [LB777]

SENATOR DIERKS: Do you know if this is a problem in other counties? [LB777]

LARRY HUDKINS: Yes, it is a problem in the other counties. However, Clare Duda, chairman of the Douglas County Board I believe intended or may have sent you a letter. He couldn't be here today. They had the problem. Sarpy County had the problem. Seward County had the problem. A lot of assessors have just not implemented this yet, but it can be anywhere across the state that would choose to. Farmland valuation is a big issue, and then those of us that have greenbelt, it's even a bigger issue. [LB777]

SENATOR DIERKS: Thank you. [LB777]

SENATOR RAIKES: Any other questions? Senator Langemeier. [LB777]

SENATOR LANGEMEIER: One more. Thank you, Larry, for testifying now, appreciate that. Two questions. [LB777]

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LARRY HUDKINS: Sure. [LB777]

SENATOR LANGEMEIER: Number one, I'm disappointed that you as a board had to ask those questions for the farm number, and I would think the assessor should have evaluated that ahead, long before you ever had to do it. Okay, that wasn't a question. Here's my question then: Is the appeal process broke? If I'm the landowner and the assessor assessed me and I appeal to you and no matter what you do, either the assessor is going to appeal to TERC or I'm going to appeal to TERC or one of us is going to give up is what the results are happening here. You know, you said only 21 went on from the 501. I would bet if you interviewed the rest, they just gave up. [LB777]

LARRY HUDKINS: I think you're absolutely correct and I was surprised first time I'd ever been to TERC, sat there for three days and your comment, is the process broken? I would say so. [LB777]

SENATOR LANGEMEIER: Okay. Thank you. [LB777]

SENATOR RAIKES: Other questions for Larry? I don't see any. Thank you, Larry. Our final proponent I think. Do we have anyone else? Oh, all right. Queue up here. [LB777]

PETE McClymont: Senator Raikes, members of the committee, my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'll make my comments brief. We appreciate Senator Hudkins' effort to give a new definition of "multiuse parcel", and we believe that makes fair and specific assessment. So with that, we would lend our support for LB777. [LB777]

SENATOR RAIKES: Thank you, Pete. Questions for Pete? I don't see any. Thank you. Next proponent. [LB777]

ROBERT J. PRIEL: I think I'm the last. [LB777]

SENATOR RAIKES: Okay. [LB777]

ROBERT J. PRIEL: And by far not the best. [LB777]

SENATOR RAIKES: Oh, well, we'll see. [LB777]

ROBERT J. PRIEL: But I want to first of all thank all of you for listening to this issue. I also want to thank Senator Hudkins; Mr. Agena, I respect you as a person and the task you've taken on is monumental, even what you've had to work with; and the commissioners. I want to thank all of them that played the role of mediator during this process. My name is Robert Priel, P-r-i-e-l. My address is 20895 South 68th Street,

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Hickman, Nebraska. I am one of the unique ones that didn't prior to this point of 21 have a greenbelt exemption. My problem started about three years ago when my taxes kept going up, not on value of my property alone, but on what I saw as an influence of multiple market values. Basically in Lancaster County, there was a moving of homes from Lincoln. The developments were taking place outside of Lincoln because of special assessments on the builders, which were passed onto the buyers. There was an issue of developers basically finding easy pickings outside of the county dome of control by being within the growth use area of small towns. I'm not here to condemn their behaviors. I'm just letting you know that there's multiple factors involved. Market values are very tough to establish when you have so many market pressures. I came from an agricultural background. I left the farm, had no choice. I still have access as a steward of a family farm and I consider it a stewardship. When I look at farming, I don't look at it as an excuse. I look at it as a requirement to take care of the land. Not only the taxpayers depend on me, but also the ecology of the land. And one thing that I decided a long time ago is that one thing that I wanted to do was to leave a heritage of concern for the stewardship of the land. And the best way I thought to do that was to plant trees. I use the USDA ASCS support system review of land types, land humidity issues, rainfall issues, frost issues, just like if I was going to be a vintner. I did this in 1980. I decided on a site that was in Lancaster County that was the home of the first homestead between Lancaster County at that point, between Nebraska City and Denver and it was set up as an orchard. I didn't know this until after I'd move in it about a year. So we're not a unique group of people. The gentlemen and ladies that are married to the gentlemen that have spoken today I think represent a lot of constituency. And I agree with the fact that it's more than just a greenbelt issue. I think it's an ag land issue. And what has been proposed I think is an excellent way to avoid what I would call shuffling of parcel IDs. It takes a real pro to do that and there are a lot of pros that are up for hire to do that. Developers have that option. Most individuals, unless they have a process of trying to make income by selling lots, don't really get into that. They buy it and they set on it. I guess the other thing that I want to bring up is that...I think everything else has pretty much been covered about the value of it. What was broken is still broken. But I see another problem and that is the issue of recapture has been phased out with LB808. This has enhanced the pressure for developers to go obtain land, and prohibits me as a citizen from protesting that. I have no way that I can actually protest somebody else's greenbelt status. That to me is frustrating. I may not be looking at all the possible ways, but the people I've talked to said, well, you can protest your own and compare it with the other comparables. But that doesn't address the issue of what is really that land being used for, and that requires use of technology plus a good questioning and answer process. It's not easy and that's what Norm was saying. It's not easy. I guess at this point I'd open it for questions. [LB777]

SENATOR RAIKES: Okay. Thank you, Robert. Questions for Robert? You mentioned a couple of things, I'm not sure I'm familiar with shuffling parcel IDs. [LB777]

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ROBERT J. PRIEL: One thing I noticed when I was sitting there listening to the appeals of the 501--I didn't attend all of them--but there seemed to be a lot of confusion about people would have more than one ID on an entity of land I call it or a unit of land it's been referred to, something that's geological and can be measured, has boundaries. And there would be more...sometimes there were two, sometimes there were three identities with a few of these. And that's what I see when I see land being purchased and then a homestead being sold off and the remainder split for development of high density or low density or commercial. That's what I mean by shuffling of parcels. [LB777]

SENATOR RAIKES: Okay. [LB777]

ROBERT J. PRIEL: It's my own term. It's a way to kind of do what is attempted by LB777. [LB777]

SENATOR RAIKES: The other thing, you are lamenting the fact that you cannot protest my designation as a greenbelt. [LB777]

ROBERT J. PRIEL: Greenbelt. I am. If you have a way that I can do it, I would gratefully accept the recommendation. [LB777]

SENATOR RAIKES: Okay. All right. Any other questions for Robert? I don't see any. Thank you, Robert for being here. [LB777]

ROBERT J. PRIEL: Thank you. [LB777]

SENATOR RAIKES: Are there any other proponents LB777? Opponents LB777? [LB777]

DAN PITTMAN: Good afternoon, Senators. My name is Dan Pittman, P-i-t-t-m-a-n. I'm the Sarpy County Assessor and I'm speaking on behalf of NACO in opposition to LB777. I'm happy there was a lot of discussion earlier because you got a pretty good cross section of concerns from county board members and from property owners. But now you're hearing from a county assessor, someone who has to administer these programs as they're passed down and they become law. When LB808 was passed into law, the Department of Property Assessment, which was a department at that time, issued regs to us, regulations, that helped guide us in how we carry out the greenbelt issues and how we value land in special circumstances. And each assessor does their very best to interpret those with the help of their county attorneys so they make good decisions as to whether or not special valuation should be granted in each case. And ever since there has been a special valuation, there has been disagreement between assessors, county boards, taxpayers as to what is fair and how these should be carried out. I could tell you now that my county board had different criteria for determining

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whether or not they would grant special valuation than the Lancaster County Board. I'm certain that the Lancaster County Assessor had probably a little different criteria than myself, the Sarpy County Assessor had for determining whether or not they should have special valuation. So this is nothing new, but what my testimony is basically that the system is set up to actually determine whether or not LB808 after its first year of being in effect is workable and if it's legal. Right now I believe over 100 cases in Lancaster County are going before the Tax Equalization and Review Commission. Three cases in my county, Sarpy County, have been appealed by myself when my board overturned me. We're looking for an answer to those, but none of those have gone to hearing yet. But certainly once those are issued and some will get appealed to the next level, which I believe is the Appellate Court, then we're going to find out if the law is workable or if it's constitutional. And then we'll make decisions from there as to how we carry out the law and if it is broken, then hopefully there will be some legislation that will make some corrections. But this is actually normal operation for county assessors right now to be at odds with their county board and to have a lot of difference of opinion, not only between assessors, but between county boards and taxpayers. So NACO takes a position of opposition, and I personally as a county assessor am opposed to LB777. [LB777]

SENATOR RAIKES: Thank you, Dan. Senator Dierks has a question. [LB777]

SENATOR DIERKS: Dan, you mentioned something about going to an appellate court after TERC, is that right? [LB777]

DAN PITTMAN: Yes, correct. [LB777]

SENATOR DIERKS: So the process has been that there's been an appeal, it was heard by the county board, and it was sent to TERC, and it was sent to Appellate Court. It seems like an awful lot of judicial action taking place here. Are we overwhelmed with court action here? What's going on? [LB777]

DAN PITTMAN: Senator Dierks, to answer your question, yes. We're overwhelmed with it and I would be breaking away not only from the greenbelt issue, but I have more TERC appeals in Sarpy County now than ever before, far more; not all of them are greenbelt though. You know, a lot of them...Sarpy County, all this farmland is getting chopped up into smaller pieces, getting to be more and more rooftops, more and more commercial concerns. So we're really bogged down with TERC cases now. But it seems we're always anxious to get a ruling from TERC. Every time we go to TERC and listen to their process, we learn more about what we do and how people that are trained, the attorneys on TERC, how they look at the law. And so it's a learning experience, an expensive one. [LB777]

SENATOR DIERKS: If I ask you in layman's terms, if you have had...how many of your cases that you overturned the county board and gone to TERC have been upheld by

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TERC in your favor? [LB777]

DAN PITTMAN: In greenbelt? [LB777]

SENATOR DIERKS: Yeah. [LB777]

DAN PITTMAN: And none of mine have been heard yet. I have three and they're not even scheduled yet. The only ones I'm aware of right now are the four that have been heard in Lancaster County. And it's my understanding that they upheld the county assessor. [LB777]

SENATOR DIERKS: I guess the thing I'm getting at is the action taken by the county board kind of an exercise in futility? I mean, if TERC is agreeing with you on all these issues, why what's the purpose of having the county board even look at it? [LB777]

DAN PITTMAN: Oh, in my opinion it's necessary for the taxpayers to have that representative to be able to speak to that issue, so they should be able to appeal it to the county board. And I do know in some circumstances, I've talked to other assessors, we always talk about these issues when we have meetings is that sometimes assessors come to terms with their county board in advance and say, hey, this is how we're going to look at it as a county board and as the assessor's office. The assessor says, here's my criteria. The county board either concurs with that or makes adjustments to it and they're unified in their approach to how they look at greenbelt issues. But I don't have that luxury in Sarpy County. [LB777]

SENATOR DIERKS: Evidently that luxury isn't available at all other places either. [LB777]

DAN PITTMAN: I don't believe so, and mainly in the really developing counties, I'm thinking Sarpy, Douglas, and Lancaster and certainly now Seward, Saunders, Washington, places like that. [LB777]

SENATOR DIERKS: Thank you. [LB777]

SENATOR RAIKES: Senator Langemeier. [LB777]

SENATOR LANGEMEIER: Thank you for your testimony. How many cases did you say are going on to TERC now? [LB777]

DAN PITTMAN: In Sarpy County? [LB777]

SENATOR LANGEMEIER: In Sarpy County alone. [LB777]

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DAN PITTMAN: Three when it comes to greenbelt. [LB777]

SENATOR LANGEMEIER: But total, how many total do you have going on to TERC? [LB777]

DAN PITTMAN: Oh, I have probably 60 scheduled right now. [LB777]

SENATOR LANGEMEIER: And how many of those are you pursuing to TERC or the property owners are going to TERC? What percent did you initiate? [LB777]

DAN PITTMAN: Oh, far way as the property owners are going to TERC it would be...they disagreed with their value. Most of them are residential, they disagreed with their value after their June hearings or July hearings and they're going to the next level. [LB777]

SENATOR LANGEMEIER: But on those the board held your position then? [LB777]

DAN PITTMAN: In residential property, yes. We have a wealth of sales, Sarpy County. We're able to really build good models, good appreciation tables and because you have a lot of market data, it helps us do a better job of determining what stuff is really worth. We just have that luxury in Sarpy County because of the great number of sales we have. [LB777]

SENATOR LANGEMEIER: Thanks. [LB777]

SENATOR RAIKES: Senator White. [LB777]

SENATOR WHITE: Thank you. In your experience, if we had a gentleman like this one here, 20 acres, lives on the place, raises organic chicken, cattle and sells them, would that have qualified as a farm in Sarpy County? [LB777]

DAN PITTMAN: Yeah, I can only speak to how I look at it in Sarpy County. We would not be concerned about the total acres. We would be concerned with the land use and that it was a commercial agricultural, horticultural activity. If I remember the gentleman's testimony fairly clearly, if the majority of his land was in the type of use as he described, generally we would consider that to be something that would receive special valuation. That's probably where we differ between Lancaster and Sarpy. We just didn't see where we could put an acreage restriction on it. I'm not saying we're right. It's going to be tested. We're going to find out from the TERC. But that is one of the criteria that we use. [LB777]

SENATOR WHITE: Well, right. I mean, do you agree that you can have a parcel 10 or 20 acres that is a farm? I mean, used in that way. You can have a farm that small.

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[LB777]

DAN PITTMAN: I can say that I believe you could receive greenbelt special valuation on something that small, yes. [LB777]

SENATOR WHITE: For agricultural use. I mean, for example, a 20-acre organic vegetable farm is a big farm if you're really truly doing it organically. [LB777]

DAN PITTMAN: Okay. [LB777]

SENATOR WHITE: Okay. Thank you. [LB777]

SENATOR RAIKES: Senator Cornett [LB777]

SENATOR CORNETT: From the difference in the testimony that we've heard, the law that we passed last year seems to be interpreted differently by different assessors. Am I correct in that assessment? [LB777]

DAN PITTMAN: Um-hum. It varies a little, yes. [LB777]

SENATOR CORNETT: When you say a little, you said that you might necessarily see that gentleman's situation differently than it was ruled in Lancaster. Am I correct? [LB777]

DAN PITTMAN: Yes. I'll tell you the steps I took. When I read it, I try to determine what I believe the law is saying to me. Then I go to my county attorney and have them, you know, give me their take as to what does "primary" mean or "predominant," and they help me in areas that of a matter of law and then I try to be as literal about it as possible. You know, wherever the counties that will draw a line at so many acres because they believe that there's some testimony about possible hobby farms or something's not big enough to actually be an income-producing property, a commercial type of agricultural operation. They make those decisions at the county level and decide whether or not that's enforceable. It happens to be not one of the criteria we use in Sarpy County. [LB777]

SENATOR CORNETT: Thank you. [LB777]

SENATOR RAIKES: Senator Preister, then Senator White. [LB777]

SENATOR PREISTER: Thank you, Senator Raikes. Mr. Pittman, thank you for being here. And I appreciate you saying that when you assess and look at the land, you look at use because I think that is real important, rather than just size or some other criteria. In your appearance here in opposition, what I heard you say is that let's let the TERC

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make some decisions. There's some ambiguity there, but let's wait, let's see them rule and then that will give us some direction. [LB777]

DAN PITTMAN: Yes, that's what I's saying. [LB777]

SENATOR PREISTER: Okay. So I didn't hear you say this isn't workable. I didn't hear you say this is difficult to administer. I didn't hear you say we don't have the mapping, the aerial mapping. I didn't hear any of that. I just heard, yeah, there's ambiguity; yes, different counties look at it differently, different assessors have different standards. [LB777]

DAN PITTMAN: Um-hum. [LB777]

SENATOR PREISTER: I didn't hear we need some standardization. I heard there is a problem. [LB777]

DAN PITTMAN: Um-hum. [LB777]

SENATOR PREISTER: But let's just wait until TERC gives us some direction. [LB777]

DAN PITTMAN: And that's basically what I'm saying, and to clarify it just a little bit, I appreciate the fact that some legislation has come through or is being presented to try and address some of the issues. And I believe that Senator Hudkins that issued it is very honest in thinking this is going to help. But I think it's rational to, after the TERC has heard several different scenarios involving special valuation, whether it's an acreage concern or a use concern and giving their opinion as some of these get appealed and the state court system has a chance to issue their opinions. Then we can actually say, okay, here's all the data that we have, what works, what doesn't work. Give us a little time to study it and then we'll come up with a better product, a more enforceable workable way of determining what should receive special valuation, which is special tax treatment. So it's a very important issue and, you know, it shifts a bit of the tax burden in my opinion to other sectors if this is issued to people. I tell you one of my biggest concerns right now in the front of my mind when I read this legislation was if somebody has a 20-acre piece of land and has a 3-acre corner of it that has alfalfa in it, and they paid, you know, \$600,000-\$700,000 for that and have a large home, they're real intent was not to farm. Their intent was to live out in the country and have plenty of room. There is an agricultural component that can't be denied. But my understanding, if you look at the reg that is issued to the county assessor and the purpose of this law was to allow people wishing to continue to engage in agriculture as a livelihood from being forced from discontinuing agricultural endeavors as a result of excessive tax burdens. Well, it just appears to me from that that it was intended to keep people that are really in agribusiness on the land. And if we can get closer to enforcing it that way that people are legitimately in agribusiness, then it's possibly how the law should be enforced. But

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our real concern, especially in Sarpy County, is if people had no intention of being an agricultural endeavor to simply using alfalfa as weed control and putting so many acres in it. And we don't really want to take that three acres in the case of the 20 and give them special valuation for it. [LB777]

SENATOR PREISTER: Sure. I understand. I appreciate the clarification. I think we're all on the same page on that. We want the hobby just acreage kind of person who wants to be out in the country or escape the city or escape certain school systems or all those things to pay their fair share and to pay it as that type of investment. But the farmer, the person that moves out and has even ten acres and wants to truly grow crops or animals and sell those, if it's truly agriculture or horticulture, then to make a clear distinction so we have uniform approaches across county lines and throughout the state so we have some uniformity. I think we're all trying to get to the same place. [LB777]

DAN PITTMAN: I would agree with that. [LB777]

SENATOR PREISTER: Thank you. [LB777]

SENATOR RAIKES: Senator Cornett. [LB777]

SENATOR CORNETT: Something you said concerns me. Were you waiting for TERC to clarify the law or were you waiting for TERC to make a decision and then to have it go to the appeal court for the appeal court to clarify what the intent was? Because I don't believe TERC can actually...it's not a judicial court. [LB777]

DAN PITTMAN: That's correct. We just take direction from TERC. If I, as an assessor...you know, I've been shot down many times from TERC and they've determined that the method I used to set the value might have been arbitrary or capricious or both or just not following the law. And I take direction from them when I set my policies for the next year, for the next tax year provided there's no court cases that provide direction. Does that answer your question, Senator Cornett? [LB777]

SENATOR CORNETT: It raises more concerns, but yes. [LB777]

DAN PITTMAN: Okay. [LB777]

SENATOR RAIKES: Senator White. [LB777]

SENATOR WHITE: Thank you again. And the reason I follow up in this way is I am advised that USDA and IRS has a designation out for destination agricultural, also recognizing organic farms, things like Val's Pumpkin Patch, the Berry Farm in Sarpy County and others. And one of the things I heard you say is that you think the law as you read it is designed for people who are there with farmland so they wouldn't feel like

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they had to sell it. But we're seeing gentlemen, like this gentleman, who want to be farmers. They maybe were forced off the land in a different place, but now increasingly in the United States there's an economic opportunity to provide near cities either organic foods or places where people can come out, pick their own berries, get their own eggs, those kind of event farming and they're generally been recognized across the country as a true legitimate agricultural enterprise. And so if I heard what you're saying, at least in Sarpy, the bias is against a gentleman like this fellow who bought 20 acres and is trying to establish an agricultural enterprise, and in favor of somebody who had land or a bunch of land and just wants to hold onto it. Is that what you meant to do? [LB777]

DAN PITTMAN: No. That's not what I meant to do. Was it 20 acres that the gentleman had? [LB777]

SENATOR WHITE: I think he had 21, I think. [LB777]

DAN PITTMAN: Okay, and once again what we're looking at is two things is predominate use or primary use, and whether that type of use is what's called a commercial agricultural use. And as we define that in Sarpy County, we're looking for commerce, some type of trade going on, whether he's selling it or trading it. [LB777]

SENATOR WHITE: So if they didn't live on it, would that make it more likely agricultural to you? [LB777]

DAN PITTMAN: No. My only concern say, if they don't live on it, then I don't have to be concerned with a home site or a farm site. It makes it a little more straightforward. I don't know that that would be a concern of mine though. [LB777]

SENATOR WHITE: Well, one of the concerns in many of these places, whether it's almond farming in California or boarding horses, it's critical that somebody be on the land, in case of almond farming, the theft is staggering. In case of horses, you need them there, you need someone there to watch the livestock. So I guess my concern is to make it possible for this area of the economy to grow and thrive around our cities, supply their needs, and give you clear direction because you're, you know, obviously everybody in good faith is struggling with this. That's kind of our problem. [LB777]

DAN PITTMAN: Clear direction is good. [LB777]

SENATOR WHITE: We'll see if we can find you some. [LB777]

DAN PITTMAN: I appreciate everyone's efforts and assessors are always available if you want to talk to them because there's people...I've been in this for 12 years. But there's people who have been in it much longer than I that would be happy to talk about this and were here when greenbelt was first conceived and started to be implemented

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and we struggle with it every year. Sarpy County special valuation is less than 3 percent of my tax base, about 70 percent of my headaches because of interpretation and appeals and things like that. [LB777]

SENATOR WHITE: Thank you. [LB777]

SENATOR RAIKES: Thank you, Dan. I don't see any further...I do. Senator Dierks has one more. [LB777]

SENATOR DIERKS: Well, I was trying to figure out over here in process of appeals, does the county board have that much affect? I mean, are they overturned most of the time when they try to correct an appeal that one of your plan owners have made of your assessment? [LB777]

DAN PITTMAN: I can testify as what happened to Sarpy County. I've had some pretty good luck at overturning the county board actions. [LB777]

SENATOR DIERKS: You have had? [LB777]

DAN PITTMAN: But all I can say is to, you know, blow my own horn, I don't take this lightly and I make sure that I've covered all my bases before I make a decision on things like this. [LB777]

SENATOR DIERKS: Well, Mr. Hudkins was telling us about the number of hours that he spent going through these appeals. It seems to me like there's a tremendous amount of time and effort put into that and if it's not going to be that effective, maybe we need to take a look at something there. I'm just not sure how that works. [LB777]

DAN PITTMAN: Yeah, and I'm not sure if Lancaster uses a referee system. Sarpy County does, but we still allow them to go beyond the referee to the full board if they wish, you know. You have some legislation about referees of course you're dealing with too. So that might change in the future. [LB777]

SENATOR DIERKS: Thank you. [LB777]

DAN PITTMAN: Thank you. [LB777]

SENATOR RAIKES: Okay. Thank you, Dan. Next opponent LB777? Do we have any other opponents? Do we have any neutral testimony? Senator Hudkins to close. [LB777]

SENATOR HUDKINS: Thank you, Senator Raikes and committee. You have been very patient. I'm digging out of my pocket, I hope, some comments I wrote down after a

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phone call with a constituent. I'll address that in just a little bit. But I have some other things that I want to mention after hearing Mr. Pittman's testimony. And I really appreciate his being here because it just shows the differences that the assessors in the different counties are using. They're using different criteria. So let's start in the beginning. He said that it is up to the assessors to interpret if a special valuation should be granted. Well, we're all human beings and we're likely to interpret things a little bit differently. That's not saying that one is wrong or one is right, but it's different and we do want standardization. Mr. Pittman asked if the system is workable and legal. Well, obviously it's not workable because we do have all of these cases being appealed to the county board. My opinion the solution is simple, that is you value the land based upon how it's used, and if you go back to the constitution that says that land will be valued based on use. We are bogged down now with all the cases that we have heard about in Lancaster County. We've heard about others in Sarpy. I know there are some in Seward and in Saunders. We're bogged down. Those were the words that were used. Were the assessors bogged down before LB808 was passed? LB808 was a good bill. It was trying and I believe that, Senator Raikes, I signed onto that bill. What it tried to do was, and my husband didn't know that, but we tried to say if this is not being used for agricultural or horticultural purposes, then no, it shouldn't be getting special valuation. If you're growing turkeys on it for your own hunting pleasure, no, you tax the whole thing. But if you're growing corn or llamas or grapes, I don't care, geraniums, I wish you could go out and see that--it's a little cold today. But when geraniums are growing, there's a geranium farm out by Davey. Lots of money comes off of geraniums. Mr. Pittman also said that in his case, most of his cases going to TERC were residential. That's not what we're talking about. We know that the residential cases, the residences on those pieces of property are valued at full market value. And the majority of...let's see, I don't even understand my notes here. I'll skip that. And he wanted to use a "wait and see" attitude. Well, in the meantime we are spending a lot more of your money, my money, and we're still not going to solve the problem. We do need, like Senator Preister said, standardization. All you have to do for standardization is put in the words "or multiuse parcel." If you've got 20 acres and a house is on one of it, \$300,000 house, fine, valued at full value. If you've got ten acres used for a dirt bike track, fine, full market value. But if you've got 17 acres that you're growing geraniums on or corn or 2 acres of grapes, that should be valued as horticultural ground. Mr. Pittman also said that three acres on the edge of an acreage with a big house out there should not be afforded ag land valuation. No. The 17 acres should not be, but the 3 acres should be based upon the use of that property. Those of you who are not familiar with alfalfa, I'll give you "alfalfa 101" here. In a good year you can get three tons of alfalfa per acre. Price right now for alfalfa is \$140 a ton and you can get 3 to 4 cuttings. You do the math, I didn't. So that is not just piddly. There is money there. Mr. Pittman, and I seem to be picking on him, but he was the one that came up, so I'll just go ahead with that. How do you determine "predominate use" or "primary use?" Do you do it by taking the number of dollars that that house cost compared to the number of dollars that you get from the grapes that you're growing or do you consider 1 acre is used for a house and 19 acres is used for

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corn? You're talking apples and oranges. Which way are you going to do it? You can't have it your way. These 20-acre parcels of ground are niche farmers. It is alternative agriculture. We have now a pretty good group of grape growers in the state. Back before World War II, we had thousands of acres of grapes growing in the state. Well, then with World War II coming on the farmers were told plow up your grapes, plant corn, and we'll pay you for that. Also then about that time, 2,4-D came into being, spray the weeds, killed the grapes deader than a doornail. So we used to have a quite viable grape industry. We're coming back. So grapes are a viable product. It is up to the landowner to prove. That person has the burden of proof to say how this ground is being used. They have to prove it. They can't just waltz into the assessor and say, you've taken away my special valuation and I've got a house and 19 acres of whatever. They have to prove it and it's not just on greenbelt. It is also ag land valuation. It is the burden of proof of the landowner to prove how that ground is being used. Senator Raikes, you talked about Arthur the pig. I had a conversation with a gentleman in the last few days that was opposed to this bill. He happened to be a...I don't know assessor or not. But anyway he said, well, I have a couple of horses and I sold one of those horses. Do I qualify for this special valuation? And I said did you report that income on your Schedule F? He says, no. I says, then you don't qualify. He didn't have a Farm Service Number. He didn't file a Schedule F. What do you get for horses these days? Three thousand? I don't know. I haven't bought a horse in a long time. So here he is, he admitted to me that he was not reporting all of his income. I won't tell you his name. The intent of the bill LB808 was good. It was trying to tighten down the usage of these smaller parcels. Unfortunately the definitions were more general maybe than we would have liked and I'm just tightening them down. So I'll finish up with the comments from another constituent over the phone. We were told when we purchased our property that we would have farmland value if we were in fact growing and selling ag or horticultural products. Now because of a change in language and our proximity to Lincoln, our land has gone up in value and we're now being told by the assessor that our acreage isn't a viable farm. You've just heard from gentlemen right here that 20 acres, and you've heard from me I hope, that 20 acres is definitely a viable farm. Okay. This is not a viable farm and the entire parcel will be taxed at full market value. Other counties with many fewer acreages don't seem to have this problem. The more rural counties understand that we are farmers, but maybe with a second job in town, as do many larger farmers who don't have to worry about the greenbelt status. It seems to me that valuing our acreages at full market value brings in more dollars for the county and city, and perhaps that was the reason for the interpretation of the current law. So what I'm asking you is you've heard people here today say that they have put in considerable investment in their farming operations and it is being used for agricultural purposes. That's not being taken into consideration by the county assessors. We're not saying the assessors are bad or evil people. Good grief, no. They have a job to do. What we're saying is that they are interpreting the law differently than we think it should be. What this bill would do is simply say that the acreages will be considered as a multiple use parcel, multiple use piece of ground and each part would be valued as to its particular use. And once more,

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if the 20 acres is used for a house and a pasture for the kids' pleasure horses, then the whole thing is at full market value. But if the 18 or so remaining acres are growing grapes or llamas or geraniums, corn, hay or any other ag or horticultural product and the products bring in an income, never mind if one year it's way up here and the next year it's down. It's bringing in an income. Those products are being raised and sold. Then the land should qualify for the lower valuation. Are there any further questions? [LB777]

SENATOR RAIKES: Thank you, Senator. I don't see any questions. That will close the hearing on LB777, and we'll turn to LB1008, Senator Wightman and Senator Dierks. [LB777]

SENATOR DIERKS: Senator Wightman, you are on-deck, you are up. [LB1008]

SENATOR WIGHTMAN: Thank you. [LB1008]

SENATOR DIERKS: Somebody else is on-deck. LB1008. [LB1008]

SENATOR WIGHTMAN: Thank you, Senator Dierks, members of the Revenue Committee. My name is John Wightman, representing District 36. That's spelled J-o-h-n W-i-g-h-t-m-a-n. LB1008 provides for a phase out of the Department of Revenue's assumption of county assessment functions, a function that they have had statutory authority for since 1969. A brief history probably would serve the committee well. Actually, although the law was passed in 1969 authorizing the state to assume the duties of a county assessor within a county, no county requested state assumption until the passage of LB269 in 1997 that allowed for employee protections. In 1998, five counties requested and received state acceptance. Those counties were Dakota, Dodge, Garfield, Harlan, and Sherman. Keith and Saunders Counties requested and were accepted by the state in 1999. And two more counties, Greeley and Hitchcock, requested that the state assume those duties and were accepted in the year 2000. Since that year, Loup, Cass, Kearney, Scotts Bluff, and Furnas Counties requested state acceptance. But all but Loup and Furnas were denied any state acceptance. So at that point for various reasons, they did not assume the duties of the County Assessor's Office. Loup County was accepted in 2005 and Furnace County a year later. But no funds were appropriated for either county, so the state is not currently providing that service for those counties. So the state reassessed its ability to fully fund this program, the remaining 84 counties continued to provide their own assessment functions at their own expenses. The state of Nebraska currently funds the salary and benefits of approximately 30 state employees in 9 counties; a budget expense totalling about \$3 million annually. I think it's a little less than that. The reason I am introducing LB1008 is to repeal the current law in order to save the state of Nebraska the amount that they're currently paying in funding this assessment office. And because the state is unable to offer or sustain funding for this program for all counties in Nebraska now or in the future,

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any further counties. Because LB1008 places financial burden on the nine counties that they're presently assuming the duties for, the bill provides for a phase out period for three years during which time the counties will reimburse the state of Nebraska for one-third of the cost in the first year, which would be the 2009-2010 year starting in July 1, 2009. Two-thirds of the cost in the second year before it assumes the full cost of assessment or the state is phased out and they will provide their own assessment duties from that time forward. Counties may opt out of a state assumption program at any time during that three-year period. LB1008 provides employees moving from state employee status to county employee status with salary and benefit transfers and protections. The bill also provides for the appointment of county assessors until the next election. Representatives of the counties and Department of Revenue are present today, and they will be able to answer substantive questions you may have regarding the history of the state assumption program and financial considerations of the bill. My reason in bringing this is that there are 84 counties, the residents of which are paying for the cost of providing the assessment functions to the other 9 counties. They pay none of that. So the state, the residents of the rest of the state are picking up that in addition to providing their own assessment office duties. I think as far as why these other counties weren't picked up upon their filing of applications, primarily has been one of budgetary restraints. They just have not had the funds, and as a result they've not seen fit and not appropriated the funds to go forward with any of the later applications. Now perhaps if other counties hadn't of requested that they be picked up in these same functions, there wouldn't be such a compelling case. But when we've been turning down counties since the last one in about 2001...I mean there have been applications filed since that day, it seems to me that we've created a rather unlevel playing field for all of the other counties. So I would be happy to try to answer any questions. [LB1008]

SENATOR DIERKS: Thank you, Senator Wightman. Are there questions? I don't think I even have to look at the other side of the table because I think those guys (laugh) all went to the powder room. I guess not, thanks, Senator. [LB1008]

SENATOR PREISTER: Thank you. [LB1008]

SENATOR PREISTER: Here's one. [LB1008]

SENATOR DIERKS: Oh, here's another question from Senator Preister. [LB1008]

SENATOR WIGHTMAN: Okay. [LB1008]

SENATOR PREISTER: Thank you, Senator Dierks. It wasn't so much a question. I just wanted to clarify. You said that the county boards were limited by restraint. Did you mean constraints of their budgets or did you mean... [LB1008]

SENATOR WIGHTMAN: No, not the county board. The state of Nebraska has been

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limited as far as picking up the other counties by whatever reason, you know, either that they didn't see fit to act on the application or budget restraints or constraints, whichever you want to use. But budget constraints in that they didn't feel the money was available to assume the additional counties. [LB1008]

SENATOR PREISTER: Okay. Thank you. [LB1008]

SENATOR DIERKS: Okay. Thanks, John. [LB1008]

SENATOR WIGHTMAN: Thank you. [LB1008]

SENATOR DIERKS: Proponents for LB1008? Go ahead, Doug. [LB1008]

DOUG EWALD: (Exhibit 3) Senator Dierks, members of the Revenue Committee, my name is Doug Ewald, E-w-a-l-d. I appear before you today as Nebraska Tax Commissioner and in charge of the Nebraska Department of Revenue and in support to of LB1008. I support LB1008 because it provides a more equitable distribution of the responsibility for funding the property assessment function in the state of Nebraska. As you heard, Senator Wightman allude to here is that the current funding mechanism for those nine counties is basically assumed by the rest of the state of Nebraska. It comes from General Fund, whether that's sales tax, income tax, but it's from the General Fund. And the other 84 counties, those specific counties budget specifically for that assessment function within their counties. So from that standpoint, you have the rest of those 84 counties handling the responsibility for those 9 counties. The current resource availability does not allow us really to take on additional counties from that standpoint. So I'm not proposing that we manage all 93 counties assessment functions today. But therefore just do this to resolve the inequity of funding those specific functions as it exists today. So with that, that concludes my testimony. I'd be happy to take any questions. [LB1008]

SENATOR DIERKS: Thank you, Doug. Questions? I guess not. Thank you very much. [LB1008]

DOUG EWALD: Thank you. [LB1008]

SENATOR DIERKS: Other proponents? Other proponents for LB1008? [LB1008]

LARRY DIX: Senator Dierks, members of the committee, my name is Larry Dix, spelled D-i-x. I'm executive director of the Nebraska Association of County Officials appearing today in support of LB1008. And when we started to look at it from an association, we sort of broke this down. Our support is really based on the fact that over the years NACO has always supported local control. We certainly believe this proposal brings that back to where the assessor would be elected by the folks within their counties. What I

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do want the record to state though is that there's probably going to be some counties that follow me, and those are probably going to be the representatives from some of the counties that are the nine counties that are state assessed. And certainly those nine counties didn't make an in run around the system. They didn't do anything wrong. They certainly held up their hand and said this is what's being offered to us and they took advantage of that. Now, unfortunately the state's finances have changed a little bit and we're starting to look at an opportunity to take them back. And I would ask that the committee consider and at least look at all the possible constraints that they may have now because this bill, within a date certain amount of time, forces those counties to have a county assessor. And I'll let you hear from those counties as to budget considerations, lids, levy issues, those types of things. But in the end, we've worked with Senator Wightman and tried to put some of those provisions in the bill. We don't know that those necessarily are enough for some of those counties, but believe there are some provisions in there. We looked at bringing this out over a number of years in order to assume it. We wanted to make sure that we sort of had some dates and times lined up so that we could get the assessor back in the elected process. But again, at the end of the day, NACO from an organizational point looked at it and said it would be nice to have 93 county assessors, as opposed to the 84 plus the 9. We again, want to look at the consistency. I would tell you in those counties, as in our counties, the state has done a wonderful job of the assessment process. I don't think this is about if somebody is doing their job or not doing their job. I think it's been handled very well in those instances. But at the end of the day, again, we would look to have 93 elected county assessors from each county in the state of Nebraska. With that, I'll conclude my testimony. [LB1008]

SENATOR DIERKS: Questions for Larry? Senator Burling. [LB1008]

SENATOR BURLING: Thank you, Larry. You said we'd be hearing from some of these affected counties. But from your perspective has this experience been cost effective? Has the state furnished that service more economically than the original plan of each county having an assessor? [LB1008]

LARRY DIX: Well, I think that the cost effectiveness of it I think can be argued from a number of different ways. But I think there was a fiscal report that analyzed sort of what the cost was of running the office prior to state assumption, and then three or four years down the road, what that cost was. And if I believe right, and you can look and find out from fiscal what that report was, I believe it showed that there was an increased cost to running that under the state assumption. But keep in mind, I think some of those increased costs were the fact that they would come into the office and there was some complete make overs, as far as computer equipment and desks and some of those things in some of those offices. So you would want to analyze that pretty thoroughly. When we look at the increased efficiencies, I guess what I look at at the end of the day are all 93 counties within their appraisal range, what they have to value, real estate,

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agricultural, and I would tell you they are if they're not, they're moved to that. But I couldn't say that those nine counties were at the higher end of the range or the lower end of the range. They were simply in the range, as were the other 84. So again, I think they're all doing their job. But I couldn't tell you if there really was a fiscal savings on one side or the other. The fiscal report may indicate that there may have been slightly increased costs in those counties. [LB1008]

SENATOR BURLING: Thank you. [LB1008]

SENATOR DIERKS: Other questions? Senator Raikes. [LB1008]

SENATOR RAIKES: So Larry, you say that in those counties it's not obvious I gather from what you just said that it was more expensive? [LB1008]

LARRY DIX: Yeah. I would ask you to look back at that fiscal report. I think there was some indication that there was some expense. But how much that was or how you would, you know... [LB1008]

SENATOR RAIKES: And you did say that you thought there was a good job done in the state assessed counties. [LB1008]

LARRY DIX: I think there was as good a job done as the state assessed as there is a good job done in the county assessed. You know, I don't see... [LB1008]

SENATOR RAIKES: Were some of those...and I should know this but don't, are some of those state assessed counties adjacent to one another? [LB1008]

LARRY DIX: When you look at it, I think there are a couple. But for the most part, you start to look as sort of checkerboarded. I think in my recollection, Dodge and Saunders are probably side by side, and you jump on up north to Dakota, and when you get out... [LB1008]

SENATOR RAIKES: Did the state in their assessment function, did they combine the counties somewhere or another and do the assessment jointly in the two counties? [LB1008]

LARRY DIX: I wouldn't want to answer on behalf of the state. I think they shared some of the resources and some... [LB1008]

SENATOR RAIKES: Wouldn't that be a source of efficiency that you would give up if you went to an individually elected county assessor in each of the counties? [LB1008]

LARRY DIX: Individually elected counties today, many of the individually elected

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counties today are sharing appraisers and sharing that appraiser from county to county to county. I think there are a number of county assessed counties that have an appraiser that they have signed an interlocal agreement to cooperatively work together... [LB1008]

SENATOR RAIKES: But each assessor is...each county has an assessor, an elected assessor? [LB1008]

LARRY DIX: But each county has an assessor. Yeah. [LB1008]

SENATOR RAIKES: So you've got to go through at least that much separately in each county, even if it's a relatively low population county or... [LB1008]

LARRY DIX: Right. And in those relatively low population counties, keep in mind those are the ones where the clerk is the assessor, is the register of deeds, is the clerk of the district court, which they wear multiply hats in those low population counties. [LB1008]

SENATOR RAIKES: Okay. Thank you. [LB1008]

SENATOR DIERKS: Other questions for Larry? Larry, do you have some idea what the average wage would be for an assessor in a county? Is there any information on that? [LB1008]

LARRY DIX: I do not...not as an average across the state, I do not have it. I would tell you it does vary. NACO does a salary survey and tried to group counties and make salary recommendations. I would tell you those for the most part will vary based on population, size, number of parcels. [LB1008]

SENATOR DIERKS: Thank you. Any other questions for Larry? I guess not. Thanks so much. Other proponents of LB1008? Proponents? Are there those in opposition? [LB1008]

PAUL MARSH: (Exhibits 4&5) Paul Marsh, M-a-r-s-h. I'm here today representing the Dodge County Board of Supervisions. I'm a member of that organization for the last 20 years, and I thank Senator Dierks and the Revenue Committee for listening to us today. Obviously, I think it's already been stated, that there's a money issue. And you know, I've always lived in a world that says, you know, follow most decisions, money somewhere pops up. And also pretty attuned to math and understand 9 and 84. My odds aren't good here today. If I'm at the casino, it doesn't look good. But anyway, the reason that Dodge County as a board is opposed to this is not so much the money issue. Am I a fool to tell you that that doesn't enter into it? Sure. But one of the things that we find that isn't really addressed whoever pays the bill, whoever you push the money under the peanut shell to, the issue is how do we best serve our constituents

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statewide, not just Dodge County, statewide? We in Dodge County, as alluded to earlier, was one of the first counties on with the state approximately ten years ago. I have been on the county board 20 years. I have had pretty much equal experience with a county run function and a state run function. Is that a perfect world out there? I think you heard in the previous bill when it comes to assessments, it doesn't seem to happen. But anyway, nonetheless, one of the things that we all need to get down to...and I sat there and I think, you know, life is a learning process. I learned today as I listen to testimony about the horticultural issues and so forth that effectively what happens...and you can see it, it's interpretation, it's politics. I believe that one of the things that the biggest advantages to having a statewide run assessment function is to minimize the politics. I've seen it happen time and time again, and our board room is a board of equalization where politics entered in and didn't make the right decision. The other thing is that I would suggest to you...and the question come up to Mr. Dix earlier, and hopefully I can answer some of those questions from experience, is that it talked about what's the average pay schedule for an appraiser. I regret that Mr. Langemeier had to leave. As an appraiser, I'd like to engage him in a little bit of that discussion. But anyway nonetheless, it come to my attention. Obviously when the state is paying the bills we don't know the salaries are and so forth. We were, two or three years ago...three, four perhaps, we were having some difficulties over some evaluation issues in Dodge County. Catherine Lang and myself got to be best of friends. Depends upon how you define friends on a moment day. I spoke with her today and I think we still have a respect for each other in each other's position. But nonetheless, we were sitting in a meeting, discussed an issue that's similar to what you had come up in the previous issue of the horticulture issue where we had a number that involved roughly 100 lake properties in Dodge County that come to the Board of Equalization. We put a different value on than the assessment function had. And the state, through Catherine Lang's office, filed an appeal to TERC against the Dodge County Board of Equalization. Now, the one thing I've learned today that you get out of that is our county attorney could represent us in that case because we had a state employee in the assessment office. But anyway nonetheless been kind of down that road. The point is that through some of the negotiations we had to talk about how do we get to an end result that everybody can live with? I was, as well as other people that was in that same room that day, you felt the air go out of the room the day when we talked about how much the state paid for their chief appraiser. Keep in mind, Dodge County is the largest county that they do assessments in. And at that time it was in the low to mid \$30,000 range. And like I say, with that the air went out of the room because suddenly we realized this was a case where...you know, I'm a believer in you get what you pay for. I have a distribution, if you would, that kind of relates to this. It's a letter, and unfortunately Senator Janssen is ill today. But it was a letter that in December of 2005 went to Senator Janssen. He also has the dubious pleasure of representing all of us folks in Dodge County. And if you read real quickly in the highlighted numbers there, the salary for a head appraiser in Dodge County at that time was a little over \$35,000 as advertised because we had a vacancy. We had had a constant revolving door in staffing. They couldn't keep the

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position staffed. If you look at that, the chief appraiser we had went--at that time it was seven years ago, it would be nine now--left Dodge County's employment, went to, become the state, was making nearly \$47,000 seven years prior to that. So we've been there and I speak from the standpoint of experience of being in a county function and a state function. We've been there and we know what the cost of doing business is. Now, in talking to Catherine Lang, I think the problem is that she had her hands tied with state salary requirements that affected some of the smaller counties that had assessment functions also. We were maybe...and she was also being left in the lurch because Dodge County was the largest, had larger requirements. Then I get to the point that one of the reasons that I think that you can be best served with a statewide function in assessments is we are seeing more and more larger valued properties, specialized properties. We don't have at the present time an ethanol plant being built or talked about in Dodge County, but they're all over our state. You've got them out here in some of these counties and I'm not so sure the expertise in some of those counties have the ability to put an adequate value on those. Okay? Just as an example, we in Dodge County have multiple properties that fit in a large industrial or commercial type of thing. And so we need an appraiser that has the kind of expertise. As an example, when you talk about shared services between counties, about a year and a half ago, because our chief appraiser in our county had been vacant for nearly two years with this type of salary, they actually couldn't get anybody to come in. We now do a shared appraiser, chief appraiser, with Saunders County. And the young man has a lot of abilities and I think he has a lot of potential. But he's young and he still lacks some experience. When you look at it from the standpoint of certification, the state of Nebraska also certifies appraisers. I'm sure Mr. Langemeier could speak to that. But state assessment functions are exempt from that. They basically license appraisers based on their ability to do financial transactions. As an example, our chief appraiser now that's handling two counties, Saunders and Dodge, has a certification of certified residential. That means that he can do...if he was doing mortgage loan appraisal work, he could do an appraisal on up to four unit apartment building residential. He's evaluating multimillion dollar industrial properties, multimillion dollar commercial properties in Dodge County all the time. He couldn't even do agricultural land if he was doing it for mortgage purposes. Not his fault. The problem is the system...and then the system because of the economics to hire people have had to try to find people they could bring in and train. Now, you've all heard, you've heard from the testimony previously here about how people feel about their evaluations. Everybody wants to pay their fair share. And the only way you can get to that is to have adequate resources to define what is fair. Now, fair honestly depends upon who the individual is. Sometimes that individual's fairness may be different than others. But having 20 years of experience in the Board of Equalization...we've got a board that takes it pretty seriously, as well as what Lancaster County is suggesting also, and tries to evaluate what is the best. But anyway, then one other issue. I mean, we are here basically as much as anything to...if in fact the wishes are that assessment functions become a county responsibility, we would like to see the improvements made to better it for our constituents, not just a matter of who pays the bill. I was going to

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share with Senator Janssen my quick analysis of Dodge County. We are the largest. They talked about statewide. It's about \$3 million. Dodge County, I think they shared a number, this was \$420,000 or something to run the office. But we already know that we're going to have to pay more for appraisal staff to get the results that we think is necessary. So based on about \$500,000 million budget to run that office on a \$100,000 valuation house, that's about \$20 per \$100,000 valuation in Dodge County. That's a local issue for Dodge County. And I can understand the supporters of the bill have had other counties that have wanted to get in on "the free ride" that they have concerns about that. I have another pass out here, if you would please. And this has to do with...we've had our turmoils in Dodge County with assessment. But we had a new young lady that took over as our assessor manager for the state, I would say roughly five, six years ago. Young lady by the name of Debbie Churchill, and she asked me...and I made copies for everyone, she submitted a letter. And she speaks real definitively about what happens with the politics. And when you run as an elected official, you know, it's real easy to hide behind that thing about its local control, all that. Okay? It's political. And she, as well as the Dodge County Board, is supportive of in fact if this bill has the ability to go forward, we would like to see some changes based on the fact that we believe that an appointed assessor minimizes...if they can't be at the state level, an appointed assessor permanently minimizes some of the politics in it. Because you have to understand, do you want a hire...to do a function as important as setting values on your property, do you want to hire the most popular person in your county or the person that's most effective? And I think her letter pretty well addresses that. We, as a county board, feel the same way if it comes back to a county function. I would also suggest to you there will be naysayers that will say, yeah, sure, the county board, they want to run it all. You are the board of equalization. Now you're going to go out and appoint the assessor, and where does the taxpayer fall out in that? That's where I would suggest that Dodge County, being the largest county under the assessment function today, under this bill, that if in fact that was to happen, I would suggest that we look real seriously because change comes real hard for all of us. None of us deal real well with change. So consequently I would suggest that Dodge County is the largest county going to revert back to a county function in this bill. We have an assessed valuation today in Dodge County of about \$2.4 billion. I would suggest that one way you isolate some of this as far as what happens with the County Board of Equalization appointing the assessor, and all of sudden we have...we still would have the requirements to meet the state criteria on valuations between 92 and 100 percent on properties and ag land appropriately. So that's kind of taken care of there. But the other thing I would offer is that so the public's interest is protected is that in a county...and you might set it based on valuation. And I would throw out Dodge County as an example and say if you have a county evaluation that's at least \$2 billion, you know, somebody's got to be the petri dish. Somebody's got to find a better way to do what we're doing because frankly what we're doing right now doesn't seem to be universally acceptable across our state. So consequently I would suggest that in a county of that size you would have to have a chief appraiser in that office. And there's going to be a price associated with that in

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hiring somebody with that criteria that could actually go out and assess all that same property if it was for mortgage purposes as well as for taxes. I've probably gone on too long. At this time, I'd be more than welcome to address any questions you might have based on my experience. [LB1008]

SENATOR DIERKS: Are there questions for Mr. Marsh? I guess not. Thank you very much. [LB1008]

PAUL MARSH: Thank you. [LB1008]

SENATOR DIERKS: Other opponents, please? Other opponents? Could I see a show of hands of how many people would like to testify yet on LB1008? Opponent? Neutral? Okay. I would just like to encourage you to help us out a little bit. We still have three bills to hear today and we're getting close to the bewitching hour. So...go right ahead, sir. [LB1008]

DOUG TEAFORD: Am I done already? [LB1008]

SENATOR DIERKS: No, you're just getting started. [LB1008]

DOUG TEAFORD: (Exhibit 6) Okay. Thank you. Senator Dierks and committee, my name is Doug Teaford, D-o-u-g T-e-a-f-o-r-d. I am a commissioner with Keith County Board. I've been a commissioner for about six years now. So Keith County was participating in this process prior to my election. I am not directly involved in agriculture. I worked in a bank in Ogallala for over 30 years. And so am I directly involved in agriculture? Well, you know, if we loan to producers and we hope to get repaid, we're pretty directly involved. Since retirement, I have enjoyed being on the county board. With this LB1008 coming up for discussion, you know, I try to get a little bit of appreciation for the history of how this came about. And you know, I guess I would take issue with Senator Wightman and other comments that say that the nine counties who are participating have not paid anything. You know, I think the funding for this function is taken care of out of the General Fund, which all counties and all citizens contribute to through sales or income tax or whatever. And so all counties, including the nine, are paying towards this experiment. And as I understand it, you know, when the sales and income taxes were passed, then all of a sudden the Legislature has more funds to deal with. And part of the justification for opposing those taxes was to help give some relief to property taxes. And one of the most logical places for that relief would have been state aid to schools. And it turns out, as I understand it, one component of the formula for state aid to schools has to do with valuation of the different counties. And the lower the valuation is, then the more needy that county would be and therefore it would be eligible to receive more state aid for their school process. So initially that would seem to encourage slowing down on the appraisal process. And I think since there has been, you know, more legislation put in and more pressure that the appraisal process is now

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expected to be a 75 percent at least of market on ag land, and it's supposed to be 100 percent on commercial and residential. And I think, you know, as in these earlier years as I understand it, you know, some of the assessors may have been even elected based on a promise to try to hold valuations down. Now, as the last speaker, Mr. Marsh, stated, you know, there's quite a bit of politics that can be injected into a process like that. And you know, one of our sources of information in greater Nebraska is the Omaha World-Herald, and I know in Omaha their assessor has gone through several sparring matches with their county board regarding funding of the assessor's office. The contention of the assessor being, if they had the funding to properly staff, that they would be able to do an even better job with the appraisal in their office. And the county board has some processes of political pressure that they receive I'm sure. And they say, well, you know, we're under constraint. So the budget for running your office is this much, and so that's what you're going to have to get along with. They are then somewhat restricted. As far as, you know, my feeling about this property tax, the assessment on appraisal value being performed by the state, I think the level of professionalism has been better than it would be otherwise. And that's not to say that, you know, assessors in the other 84 counties are not professional. I think they are all doing as good of a job as they can. But you've heard in some of the previous bills that have been discussed today are concerned about interpretation. And to me the consistency...and I think one word that was used earlier was a standardization, you know, the consistently applied rules are what's going to bring more equitable valuations throughout the county, throughout the state. And you know, that's really the bottom line. I know 9 counties versus 84, those are not the kind of odds that you would like to go into any kind of a contest with. So I'm not expecting that this bill will be defeated. I do think the time line of three years to phase in, I would like to propose that the committee consider at least making that four. So it'd be 25 percent of the function is assessed in the first year, 50/75 and then 100 percent in the 4th year. In Keith County in July of '99, the function of assessor was around \$160,000 a year, and it's my understanding that this past year the property tax administrator's office would have assigned a value closer to \$300,000 for the Keith County function was being administered by the state. So over a nine-year period, certainly the Keith County taxpayers have benefited from that function. I think my concern as this LB1008 is passed would be for Keith County. Right now there are six employees in that office, and probably our county budget is going to say we need to have this scaled down a little bit folks. So you're going to have to try to get along with five and possibly four employees in that office. And as that happens, it's going to unravel the level of refinement that we are now being able to enjoy through the appraisal process. I think Keith County is a very diverse county: tourism, Lake McConaughy, I-80, agriculture is still a very robust part of our economy. And we have two rivers. We have greenbelt considerations, recreational interests are running up property values. You know, if a river runs through it, it is significant in value. And as somebody who has lived for several generations along the river, all of a sudden they are having to scramble to help control the taxes and the valuation on their property. I guess in trying to conclude here, you know, I think one of the things I have the privilege of

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being on several different committees and a couple of them have to do with the dealing with the water issues in the state. Our NRD district out there is in an overappropriated basin and I also am on the Governor's Water Policy Task Force. I had a meeting here in Lincoln yesterday. And you know, there's a lot of good discussion. But with LB962 which say we have water issues and this is how we're going to deal with them, they created the vehicle, but the fuel to run it as far as funding is very limited. And if in fact this property tax administration function is going to be rolled off is around a \$3 million deal at the end of the three or four years. I would like for the committee to very seriously consider that a sizeable portion of this what I would call "windfall" at this point, that some of those funds be directed to the Department of Natural Resources with those monies to be administered through the Water Policy Task Force. I know I'm blending a couple of things there. But you know, I think the level of assessment and appraisal will be compromised in the nine counties. It will tend to be less and we still have the challenge throughout the state of having equalized values. Thank you for your consideration and thank you for your efforts in our behalf throughout the year. [LB1008]

SENATOR DIERKS: Thank you. Questions? I guess not. Thank you very much. [LB1008]

DOUG TEAFORD: Thank you. [LB1008]

SENATOR DIERKS: Those of you who want to testify on the bill, would you please come up and sit in the front row so we can get right on with it. This is...you're in opposition? [LB1008]

ELDON KIEBORZ: Yes. [LB1008]

SENATOR DIERKS: Okay. I think we had a neutral out there. If there's more opposition, please come on up here and get in the front row for us. [LB1008]

ELDON KIEBORZ: Kieborz, K-i-e-b-o-r-z, Eldon, representing Sherman County. Father Time has no mercy. I've got to have cheaters. First thing I'd like to bring up is...and I think at least I've understood this thing was supposedly started out to take over all the assessors or just as a pilot program so that you can find out what it's like and see some reality in the rural area. And I think we should have a lot of senators, according to the testimony you've heard today, that ought to go out and take a look at what's going on out there. The other thing, when you do close it, we'd like to have it so that we can elect an assessor on our own time and schedule it into our regular election year so we can elect at our own price because we can't afford the price that you are paying the assessor's office that we have out there now. And I think another thing that you ought to know, if you say we haven't paid anything, if you look at the records there's ten counties, they took the FSA office away, five of them were county assessors state assessed counties. And if you look back over the history you can see kind of why that

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happened. We figure that cost around \$300,000 for our county alone. The other thing, I think this thing was put out...the costs that have come down to the county, you guys mandate more stuff on the counties every year. For example, a few years ago Central Community Colleges, you changed it from a 40/40 ratio to a 33 state 48 county to pay to support the community colleges. You have jail reimbursement, which we have unpaid. You made the bill, too, for Boyd County. The counties have to pick that up. Our county can't afford that. I called the school yesterday and we have 57.4 percent of the kids are on...they said free lunches, but I will probably put in free and reduced lunches. But that's a pretty good number. That tells you where our county is sitting financially. We can't afford to take it back, and if we do, at least we've got to have it so we can put it into our elected officials. We can't pay an assessor \$10,000 more than we're paying the rest of the elected officials and get away with that. And the other thing is if it's not economic...Mr. Dix said that he didn't know, but our county assessor covers three counties for the state right now on there, and also the appraiser does too. And then they have the appraiser has one assistant, and of course there's an office girl in each county for the assessor's office. So I would say that's about as efficient as you're going to get. [LB1008]

SENATOR DIERKS: What did you say your county is? [LB1008]

ELDON KIEBORZ: Sherman. [LB1008]

SENATOR DIERKS: Sherman. [LB1008]

ELDON KIEBORZ: We tie in with Garfield and Greeley County right up there by it. [LB1008]

SENATOR DIERKS: Any questions for Mr. Kieborz? Senator Raikes has one. [LB1008]

SENATOR RAIKES: If you had a choice between going back on your own and electing an assessor and all that or buying the service from the state, which would you do? [LB1008]

ELDON KIEBORZ: Well, I'm sure that our board would go we'll go back with our own assessor rather than as more economical to us. [LB1008]

SENATOR RAIKES: You're sure it would be cheaper for you in your county to elect your own assessor and run your own office at county expense than it would be to hire the state... [LB1008]

ELDON KIEBORZ: Well, before we had this we had our assessor and then we hired appraiser as needed, so to speak. We didn't have a full-time appraiser. But our appraiser is covering three counties. If we can't make out some agreement with the

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other counties, we won't have an appraiser on full-time basis there I'm sure. [LB1008]

SENATOR RAIKES: Maybe I didn't make myself clear, but what if for X dollars from the county the state will continue to do the assessment service like they are now? [LB1008]

ELDON KIEBORZ: Well, I think the difference is too big right now according to what I'm reading and finding out. [LB1008]

SENATOR RAIKES: The difference between what the state is spending and what you would have to spend, is that the difference? [LB1008]

ELDON KIEBORZ: Yes. [LB1008]

SENATOR RAIKES: Okay. [LB1008]

SENATOR DIERKS: Other questions? Okay. Thank you very much. Is there anyone else in opposition to the bill? Okay. Neutral? [LB1008]

MARILYN HLADKY: Good afternoon, senators. My name is Marilyn Hladky, M-a-r-i-l-y-n H-l-a-d-k-y. I am the Seward County Assessor. I hadn't planned on testifying on this bill, but some of the questions I heard you ask earlier maybe I thought I could address some of them, so I've jotted down a few notes. And just to kind of give you an example for what happens in Seward County as far as the assessor's office, I have approximately 10,500 parcels in my county. My county board has given me a budget for this fiscal year of '07-08 of approximately \$224,000. For staff I have myself; I have a deputy assessor, who also has to be certified as in all counties; I have two clerks, one is actually kind of an appraiser/apprentice/lister, the person that goes out for me and so forth. And then I have a certified general appraiser that I contract with and share with three other counties and they are Cass, Polk, and Saline Counties. And if you'd like to know his salary on an annual basis is about \$24,000 that I pay for him. I had a landfill that we needed to reappraise, so the county allowed me to hire an appraiser with expertise. So when I had a difficult property, you know, we did do differently on that to cover that valuation on it. We've implemented GIS. I have not increased any staff members. In fact, GIS has come to be a big help in the county. We can count acres and do better processes faster with it and become more efficient and more accurate in the valuation of land and tracking ourselves, file, and so forth. I would direct you to the reports and opinion, which will be coming out soon. It comes out in April. It's all of the assessor statistics based on the level of value and so forth within that. The assessors do a survey and that survey says what their budgets are, what their staff is, who they contract with the computer software was. So every year I have about \$60 to \$80 million increase in valuation. I'm over...last year and 2007, I'm about \$1.3 billion, projecting probably more so this year. We continue to do reappraisal. I have never not done reappraisal due to an election year and so forth coming up. That's my job and I get done with it--whatever it

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has to take to get done--to do and enact the job that I have taken oath to do. So I just thought with those questions that you had earlier maybe that would help you on some of your answers and some direction to finding out what maybe all of the counties do for their budgets and so forth. And the staff members are on that report also. [LB1008]

SENATOR DIERKS: Thank you. Questions? What did you say the amount of your increase was this year? [LB1008]

MARILYN HLADKY: I haven't finalized all my values. Last year we went up about \$80 million, and about \$20 to \$25 million of that was growth, so the rest of it's reappraisal. [LB1008]

SENATOR DIERKS: So how does that compare with the year before? [LB1008]

MARILYN HLADKY: The year before was a little bit lower. We did about \$60 million. [LB1008]

SENATOR DIERKS: Okay. Thank you. Any questions? Thank you very much, Marilyn. [LB1008]

MARILYN HLADKY: Okay. [LB1008]

SENATOR DIERKS: I guess we need to have anyone else in neutral? Senator Wightman, would you like to close? [LB1008]

SENATOR WIGHTMAN: Thank you members of the committee. I think the testimony that we've heard kind of shows the problems that we have here. And I was appreciative of Mrs. Hladky's, however, for the Seward County Assessor because I think she shed some real light on this as far as the fact that many of these counties are doing a very efficient business in assessing the properties within their county. I think you could...many of them are combining to hire an appraiser. So it probably is not a lot different than the state would be doing if they were doing the same thing. You know, ideally it would be great if the state perhaps could take over all of it. I'm guessing the cost might be in the \$50 to \$60 million area to do that. I just don't think the resources are available and particularly in what we're looking at probably in the next two or three years to do that. But I don't think that probably there is a will to do this among the Appropriations Committee, among other committees probably that we would increase the budget \$50 or \$60 million. So I don't think that's a real probability. I personally would not have a problem with increasing the phase in to four years if the committee saw fit and thought that would alleviate some of the problems that the nine counties might have. And I'm certainly appreciative of those problems. I think they do have problems and absorbing this within their budget. So if instead of a three-year phase in, it was a four-year phase in, I don't see a problem with that particularly. But just to create a more

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level playing field in all of the counties in the state, I would urge you to advance LB1008. I think that the citizens throughout the state of Nebraska, and particularly the 84 counties, would be much better served. Thank you. [LB1008]

SENATOR DIERKS: Thank you, Senator Wightman. Questions? Senator Raikes, please. [LB1008]

SENATOR RAIKES: What about the possibility of these counties paying the state for this service if they chose to do that, rather than take it on themselves? [LB1008]

SENATOR WIGHTMAN: Again, I would not have a problem with that. I think most of them feel they can do this for a lesser amount than the state is presently paying. So I think that's going to be the problem and that was the indications from some of the prior testifiers. [LB1008]

SENATOR RAIKES: Okay. Thank you. [LB1008]

SENATOR DIERKS: Senator Burling. [LB1008]

SENATOR BURLING: Thank you, Senator Wightman. If the state decided to appropriate the money to level the playing field and do this for every county, you would still have the counties out there that wanted to do their own, unless it was a state mandate that we'd take over all of them to level the playing field. You don't want to do that, do you? [LB1008]

SENATOR WIGHTMAN: I agree that that's not a very likely scenario that all of them would agree to have the state take over the assessment. I think the residents of almost any county kind of jealously protect their right to elect that assessor. And you had some indication of that today. I'm not saying that everybody might not be better served with the appointed appraisers, but I don't think that's very likely to be the feeling of 93 counties. [LB1008]

SENATOR DIERKS: Other questions? I guess that does it, John. Thank you very much. [LB1008]

SENATOR WIGHTMAN: Thank you. [LB1008]

SENATOR DIERKS: Okay. We'll close the hearing on LB1008. And open the hearing on LB1039. [LB1008]

BILL LOCK: For the record, my name is Bill Lock, last name is spelled L-o-c-k. I am representing Senator Janssen who is ill today. Senator Janssen sponsored the bill. This bill is an outcome of an interim study the Revenue Committee did, LR115. The bill's

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essential purpose is to lay a foundation of information and data that would be used were the state of Nebraska to try to implement an income valuation approach to valuing agricultural land for tax purposes. The result of our interim study was as we examined other states was most other states do use that methodology. Critical to that methodology is a good credible base of information on crop prices, crop productivity, and expenses. What the bill does, it has three elements: It establishes a task force. It budgets money, it calls for a contract to be issued to do the research on crop prices, productivity, and expenses; it budgets \$50,000 for that purpose. It also directs the Department of Property Assessment to do a separate study examining soil productivity in the relationship to value. And the membership of the task force is basically designed by Senator Karpisek and Senator Janssen in consultation with each other, I think that describes the basic elements of it. And I'm sure that there will be testifiers on it. There are deadlines in the bill. I should mention on page 3 about when this mandated report is due. And I think that summarizes the bill and I'll answer any questions you may have. [LB1039]

SENATOR DIERKS: Questions for Bill? Senator Raikes has a question, Bill. [LB1039]

BILL LOCK: Oh, he does. [LB1039]

SENATOR RAIKES: I would think this would be bad timing for this idea. [LB1039]

BILL LOCK: If you were implementing it last year, it would be bad timing to be using a five-year average of crop prices. Is that the thrust of your comment? [LB1039]

SENATOR RAIKES: Well, yeah, I guess five-year average. I didn't realize that. But... [LB1039]

BILL LOCK: That's what most other states do. So yes, if it would be particularly bad timing if you were going to implement it now. If you were going to design it and implement it three years from now and you were using a five-year average, you'd have a base level of prices that seemingly are more stable relative to prices between 1999 and 2005, for example. [LB1039]

SENATOR RAIKES: Do we want it more stable or lower? [LB1039]

BILL LOCK: I believe that I ran some five-year averages, and the current five-year average would be much higher than the old five-year average. And so what you're saying is it'd be a bad time to implement it because that's a rising average. Most other states use averages. So you're correct in your observation. [LB1039]

SENATOR RAIKES: Thank you. [LB1039]

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SENATOR DIERKS: Other questions for Bill? Okay. Thanks, Bill. Are there proponents for LB1039? [LB1039]

MATT JEDLICKA: Good afternoon, Senator Dierks and members of the committee. My name is Matt Jedlicka from Schuyler, Nebraska. My family farms and feeds cattle there. I am here in support of LB1039 today as representative of Nebraska Farm Bureau. [LB1039]

SENATOR DIERKS: You need to spell your name for us. [LB1039]

MATT JEDLICKA: I'm sorry. Thanks. J-e-d-l-i-c-k-a. I've a lot of fancy notes here. Did you get it? [LB1039]

SENATOR DIERKS: Yup. [LB1039]

MATT JEDLICKA: I'm going to skim through them pretty quick. If I move too fast, please ask some questions. Yes, land values have grown dramatically over the last few years. That does not change the fact there's four primary factors that are increasing land values beyond their production agriculture capabilities. And that is primarily the 1031 exchange, nonag investors, recreation, and the fear that land values are being set by a low number of sales annually in each county. Given our present system of basing agricultural land values on market prices, it's difficult to sort out nonag influences on the market. Thus, the influences get captured in the assessed values and property taxes paid. Most farmers believe that evaluating agriculture land based on income capability would remove the nonag influences of the valuation of the ag land. They look at other states with significant agricultural sectors that value land based on productivity and question why such an approach cannot be used in Nebraska. In fact, just last week the South Dakota legislature passed a law to adopt this type of land valuation system. Some new technology. LB1039 also instructs Department of Revenue to analyze alternative methods of determining agricultural land value. It is our understanding the Department of Revenue has been investigating alternative methodology to value land using the soil rating for plant growth index. The index is a relative rating of the capacity of soil to produce plant growth. This is determined from the yield data on benchmark soils. With LB1039, the department can examine questions regarding whether such an approach can result in values that are uniform and proportionate. It can examine whether new mapping technologies or other technologies might help implement such an approach. I thank you for your time today. And again, Nebraska Farm Bureau does support LB1039. I would take any questions. [LB1039]

SENATOR DIERKS: Thank you. Are there any questions for Mr. Jedlicka? Senator Raikes, please. [LB1039]

SENATOR RAIKES: Matt, what if you do this and the value comes out higher? [LB1039]

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MATT JEDLICKA: You know, and I would say initially you wouldn't want that, and over time you may have periods where that does happen. What we're looking at is to base it more to obviously income rather than land valuation. And if you were at a time when your income scenario was greater, so be it. I guess I look at that as the producers ability to pay. [LB1039]

SENATOR RAIKES: So again, right now there's no problem. [LB1039]

MATT JEDLICKA: No problem with? [LB1039]

SENATOR RAIKES: Well, probably it's the case right now that market values of the lands are actually lagging a little behind grain prices. [LB1039]

MATT JEDLICKA: Could be. [LB1039]

SENATOR RAIKES: Okay. Are you greenbelted in your county? [LB1039]

MATT JEDLICKA: No. No, we're not, and I'm glad you brought that up because...and that's something I maybe skipped over too fast, this would act as a statewide greenbelt. Okay? A lot of these instances, if a county isn't greenbelted, we have a lot of situations out there that maybe could be. This is a statewide greenbelt and I guess that's why it's so attractive. [LB1039]

SENATOR RAIKES: Okay. Thank you. [LB1039]

SENATOR DIERKS: Other questions? I guess not. Thank you very much, Matt. Other proponents? Pete, how are you tonight? [LB1039]

PETE McClymont: Good, thank you. Senator Janssen, members of the committee, Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm here as vice president of legislative affairs for Nebraska Cattlemen. We are in support of this. We have specific policy for this, so we are appreciative that Senator Janssen and Karpisek brought this bill. I think obviously is some of the things we heard in the opening were a great basis for the foundation to examine this issue more. To Senator Raikes's point, I would say you must assume that corn is going to continue to be \$5 and beans are going to be \$12. Thus, our land values will be high. That would be great to assume that, but I think it's all reasonable to know that any commodity is cyclical. So things will go up, and if the land values rise potentially and lower with what the crop commodities are, that could balance out what you're talking about. But had we done what Senator Coordsen had wanted to do years ago and get this in place, we would still be riding that average. So it would have started to go up anyway given how things were in the mid '80s when they bottomed out. So that's a theoretical argument I'm sure you'll love to question me on.

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But nonetheless, we are very supportive of this and be happy to assist. We think the formation of the task force is a workable number that will help and get to the bottom of this. And so with that, we will support any efforts that this committee and the Legislature would have if this bill passes. [LB1039]

SENATOR DIERKS: Thanks, Pete. Are there questions? Senator Raikes. [LB1039]

SENATOR RAIKES: Well, Pete, at least we know cattle prices can go down. [LB1039]

PETE McCLYMONT: That's very true. [LB1039]

SENATOR DIERKS: I thought he was going to tell us that feeder calf prices for 500 pound calves was going to be at least \$2 a pound. [LB1039]

SENATOR RAIKES: This is your chance. [LB1039]

PETE McCLYMONT: Who am I talking to, the feeder or the rancher here? (Laughter). [LB1039]

SENATOR DIERKS: Other questions for Pete? Thank you very much, Pete. Other proponents of LB1039? Are there opponents to LB1039? Anyone in a neutral position? [LB1039]

LARRY DIX: Senator Dierks, members of committee, my name is Larry Dix, spelled D-i-x, representing Nebraska Association of County Officials. And the only thing that I bring forward, I just want to call your attention and just pose this to get it on the record. On page 2 where we show the breakdown of the proposed task force, when we look at that, since the counties are very involved in the valuation process, we throw the offer out there that possibly we may have a county board member as part of that task force that would change the task force at least to make it an odd number. Right now if I'm doing my math correctly, that is an even number on that task force. And so we throw that out for the committee's consideration. [LB1039]

SENATOR DIERKS: Thank you, Larry. Questions for Larry? I guess not. Thank you very much. [LB1039]

LARRY DIX: One other thought I should have made is also on this task force there's no geographical representation and I don't know if that's important or not. But at least I didn't see it unless I missed it in here. Okay. [LB1039]

SENATOR DIERKS: Thank you. [LB1039]

LARRY DIX: Thank you. [LB1039]

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SENATOR DIERKS: Anybody else in neutral? Are you going to close on this bill?
[LB1039]

BILL LOCK: No, sir. [LB1039]

SENATOR DIERKS: Okay. That brings about the end of LB1039 for today, and our next bill is Senator Erdman with LB1111, I believe. He sounds like he's in a good mood, doesn't he? Go right ahead, Phil. [LB1039]

SENATOR ERDMAN: Senator Dierks, members of the Revenue Committee, my name is Philip Erdman. I represent the 47th District. Senator Raikes, you should be happy. Somebody told you you were right. You don't get that very often. [LB1111]

SENATOR RAIKES: Especially not from you. [LB1111]

SENATOR ERDMAN: That is a fact. LB1111 changes the membership to the Tax Equalization and Review Commission, commonly known as TERC, to no more than two attorney members and states two commissioners shall be licensed as real property appraisers. LB1111 also removes a restriction that the chair and vice chair of TERC also be attorneys, and provides that either of the chair or vice chair may be an attorney. Obviously LB1111 is a solution to all of our problems with TERC and we should just pass that and move on. No, that's not actually true. As you well know, with the TERC board, the members, whether they're attorneys or appraisers, they have to be trained in the other side. So if you're an appraiser, you go through a process to understand the legal side of it. If you're a lawyer, you go through the process of at least trying to understand the appraiser or evaluation side of it. Because of that in recognizing that if the TERC is not a court there should be fair representation from both sides, and if it's going to be a court, then there's a different way to solve that problem which you'll hear in LB1110. To be candid, I introduced LB1111 just as an option I guess in this whole discussion that hopefully we will have either this year or into the future about the future of the commission. [LB1111]

SENATOR DIERKS: Thanks, Phil. Questions for Senator Erdman? I guess you're home free. [LB1111]

SENATOR ERDMAN: How about that? [LB1111]

SENATOR DIERKS: Are there proponents to LB1111? Anyone in support of LB1111? Is there anyone in opposition to LB1111? Opposition? Neutral? [LB1111]

WILLIAM C. WARNES: Senator Dierks, members of the Revenue Committee, my name is Bill Warnes, W-a-r-n-e-s. I am the chairman of TERC. The comments that I'd like to

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make will be brief regarding this bill. I first want you to be aware that the TERC commissioners are required to attend certain classes no matter whether they're attorneys or they're in a different status. The appraiser, of course, would have had USPAP. We attend USPAP. I want you to be aware that I've attended 90 hours of appraisal classes. So I have taken all the classes to be a registered appraiser, which is really not a licensed, credentialed licensed nationally; it's something that's here in Nebraska. I did that because I thought it would help me and I did it before I was chairman. I've also taken and passed the day-long Nebraska assessor's exam just to see what that was all about. I'm a licensed real estate broker, have been since 1985. And I've been out to the National Judicial College on fair hearings in Reno, Nevada. So on the commission currently we have Commissioner Salmon, past assessor for Hamilton County. And it would not be my intention to say anything negative about having another appraiser on the board or on the commission. Anyone who has technical knowledge in appraisal or assessing work is good. But I want you to be aware that when I preside over hearings, my next job is to write the order. If we had, for instance, a vice chairman supporting me that was not a licensed attorney and I was ill or couldn't preside, I'd be concerned about that person both presiding, because we do have legal issues during the hearing, and secondly the writing up of the orders. But the more appraisal experience we have on the board, the better it is. My thought is that from this bill I'm going to encourage all of the commissioners besides the appraiser to take more appraisal classes. I will be attending this spring out in Kearney the class on mass appraisal. I want to take that. Don't have to have it, just want to have it because we do so much work with mass appraisal techniques. I have a suggestion that I may make in time to this committee regarding how we're going to handle the large number of appeal cases that we've got to handle. And one of them might be...I'm not saying I'm going to make this, but one of them might be to use single commissioners to hear residential property cases. They tend to be the easier of the cases to listen to and make fair rulings. If I was to do that, there would be nothing that says you would have to be an attorney. But the more attorneys that I had on the commission, the better off it would be. I feel more comfortable with that. In Kansas, all three of the commissioners in Kansas on their tax appeal board are attorneys. That is not the case out in Iowa where they have only one attorney on their board. So those are the comments that I would like to make to you. Do you have any questions? I'd be happy to try to answer them. [LB1111]

SENATOR DIERKS: Questions for Mr. Warnes? Abbie. [LB1111]

SENATOR CORNETT: Mr. Warnes, repeatedly throughout the last two years we have heard how TERC is unfriendly to the average citizen and already more like a court than it was intended to be. And when I was coming back into the room, I was stopped by the Sarpy County Assessor who said he goes to TERC all the time and it's still a very difficult procedure for him and he takes an attorney with him. And I believe this is an exact quote, he feels sorry for any citizen that comes in front of TERC. Do you think adding more attorneys to TERC is going to help that problem or is it going to make it

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more like a court than it already is, which is what it wasn't intended to be? [LB1111]

WILLIAM C. WARNES: Well, you know that I feel strongly that there needs to be a forum for taxpayers, especially in a residential land classifications, to have another opportunity before they come before TERC and that is through mediation. And I haven't got it totally in place yet. But I have had the deficit funding to begin it in 2008-2009 if I can get cooperation from the counties. So that, in my opinion, would be one of the things that would soften the impact of what TERC is. But I want you to be aware of something that I think is very important. I've been on TERC for two years. So it's not that I'm brand new. But I think the impression that we give as the presiding hearing officer to the taxpayer is critical, it's very important. I will just tell you that I don't think you're going to hear complaints about hearings with TERC when I am the presiding hearing officer. You just won't. Not as far as my demeanor, my politeness, my caring about the taxpayer. But there are difficult cases and we're not going to make everybody happy. You know, I think you know that. But as far as the demeanor and being able to feel comfortable that you're getting a fair hearing, that's a high goal of mine and I think all of the commissioners. [LB1111]

SENATOR CORNETT: Thank you. [LB1111]

SENATOR DIERKS: Thank you. Other questions for Mr. Warnes? I guess not. Thanks for coming over, Bill. Anyone else in a neutral position? Would you like to close, Senator Erdman? [LB1111]

SENATOR ERDMAN: Just briefly. As one of those aspiring appraisers, I have no interest in serving on TERC. Just because you have taken the hours and I have over 180 hours of class time, tested appraisal classes, that doesn't qualify me to be a licensed appraiser. I also have to comply with 2,000 hours or 2,500 hours or 3,000 hours of actual experience in order to be eligible to receive that credential, and notwithstanding the fact that I have to take the test. That is the current standard. Anyone that has started after I started, that's a picnic because the process that you have to go through to become an appraiser will probably be more rigorous than what it takes to become a lawyer. So the process is greatly changing. The theory behind LB1111 isn't to argue whether appraisers or lawyers should be on the commission, but whether or not there's a more appropriate mechanism for seating members. And I think understanding the valuation process is just as critical in the TERC process as understanding the legal side of it and I would like to see a little better balance. I think Commissioner Warnes and others should be commended for their efforts, but again, some of those requirements are also there. He's doing above and beyond what I think is expected and I think he should be commended for that. [LB1111]

SENATOR DIERKS: Thank you, Senator Erdman. Questions for Senator Erdman? Nope. Would you like to just stay right here and begin on LB1110? [LB1111]

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SENATOR ERDMAN: I would. Thank you, Mr. Chairman. Senator Dierks, members of the Revenue Committee, here to introduce LB1110. My name is Philip Erdman, representing the 47th Legislative District. I thought of a good joke and maybe you'll find some humor in it. You know why they call it TERC? Because all the other four letter words were used up. Now, that's somewhat tongue in cheek. Senator Cornett, your constituents have the same opinion that mine do. And in fact, I have sat with my constituents when they've gone through the process and I wanted to intervene on their behalf. What we sold the voters on in 1995 by the Legislature putting the process on the ballot and what the voters actually adopted is nothing near the current practice. And I'm not smart enough to tell you what the solution is. But I have some ideas that I'll share with you that hopefully together we can work to find a solution, including some of the comments that Commissioner Warnes previously mentioned under LB1111, which were also part of my comments on this one, so we're thinking alike. In 1996, the voters of Nebraska adopted a fundamental reform of the State Board of Equalization and believed that they were creating an informal yet effective appeals process to handle property tax protests. The result of the constitutional amendment was the creation of the Tax Equalization and Review Commission or TERC. Unfortunately, and I can't stress that enough, unfortunately TERC has failed to meet those expectations of our Nebraska citizens. Under current law, TERC must make a complete record for review by the Nebraska Court of Appeals. That requirement precludes a great deal of the informality expected by taxpayers. Other restrictions on evidence have also caused significant relevant information to be excluded from consideration by TERC. Regardless of what you want to call them, TERC is a tax court. You can call them a commission. The fact is that they are a court. They have every responsibility of preparing a case just as any other lower court would to be appealed to the court of appeals, and the only way you arrive at a court of appeals is to previously have been in another court. And so under statute you can call it a commission, but for all intents and purposes, at least in my opinion, TERC is a tax court now. LB1110 utilizes the existing authorities under statute in the constitution for TERC. It would still ensure more uniformity and property tax appeals versus the previous process under the district courts. Rather than informal hearings heard by a panel of three TERC commissioners, LB1110 would formalize the appeals process with one presiding judge. LB1110 creates a property tax review court to perform the appeal and equalization functions currently performed under TERC. The office of the court would be in Lincoln, but the judges of the court would travel to Nebraska's counties to hear the appeals. Any one of the three judges would be permitted to hear a case, rather than requiring a three-person panel, enabling property tax appeals to be heard quicker given the current high case load of TERC. At the time of introduction of this bill, there are still efforts being taken to complement the formal process outlined in this bill with a separate and yet essential component to give taxpayers an informal setting to resolve their protests for many of the appeals. Mediation and other dispute resolution methods are being considered as possible amendments to LB1110. In fact, if you read through...which I wouldn't encourage you to

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do that very closely because we have been working for days on amendments. But there are provisions in LB1110 in Section 15 allowing the court to establish procedures that the dispute may be submitted to informal dispute resolution or a process that may be handled by a mediator. There's all kinds of different ideas. The theory behind LB1110, and it may not be reflected in the drafting, is you currently have four individuals on TERC. You currently have three of those individuals that sit before any one case. Commissioner Warnes comments are similar to mine. And that is that under LB1110 you would have one presiding officer, one presiding judge or commissioner, whatever you want to call them, that would hear the case. I don't know how you get 1,800 appeals heard in a year. Their case load ability is around 300. There's two problems: One is the process in which the taxpayer arrives before TERC. In other words, the journey that they have taken. Even with some of my constituents that have been before TERC, whether they are members of a county board or county officials or whether they are taxpayers, even with the experience that they've had they're still not equipped to be effective at that level, even the one case that I actually sat through. They were represented by attorneys. So that's the process that they go through and obviously it's a court of law for lack of a better term. You can't simply present evidence the day of the hearing because the county would have to have the responsibility to be able to understand what you were going to present, just as you would in other legal proceedings to make sure you can prepare your defense against those arguments and what could be exhibits and what could not be exhibits. And you sit there as I did and there were books the size of your bill books that were stacked up in front of the commissioners, and they all went through and tried to figure out what would be allowed and what wouldn't be allowed, and they spent four hours doing that. And my taxpayer, who's a rancher in Banner County, looked at me and said, what am I doing here? So there's two problems to this. One is you've got an inordinate amount of appeals from places like Douglas County. There has to be a solution to stem that tide. TERC should be reserved for those cases that truly need the devotion and the attention of the people that we have placed on this commission to ensure that on those cases they're able to devote the time and the resources to resolve those issues. TERC is not designed to decide whether or not the county mismeasured your house or whether your basement is unfinished or not. There has to be a process. And I will tell you unequivocally that in my conversations with Commissioner Warnes, with the leadership that I think he has shown already, his interest in mediation I think has yielded great results in Douglas County. Obviously there's a cost to that. Obviously there's some consideration about who's responsible for paying for that. But if in all joking aside, if the solution was simply changing the membership of TERC as LB1111 did, I wouldn't have even brought a bill. I think we're well beyond that. I think there has to be a process. Senator White and I have visited about some of his ideas about an appeals process that is more appropriate, more timely. I'm open to suggestions. This process is broken. This process needs to be fixed. And if it doesn't, I pity the citizens that are either paying attorneys or trying to represent themselves. And it has nothing to do with, in my opinion, the commissioners themselves. It's the process. The time line is in place. I was in Ogallala this weekend. I

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had five town hall meetings in eight counties. And in Ogallala one of the counties that was there, I don't know that it was Keith County, but one of the counties said we had to finally make a decision under the process for this year based on what we thought TERC was going to do with the appeals last year. So we went out and we made a decision and lo and behold it was completely opposite to what TERC proposed or what they finally ruled on. But because the time lines and things in place, they had to meet certain requirements as the county for the next tax year because they weren't able to say the previous issues have been resolved. So now they get to go back to that process again and change all of those into the future. There has to be a simpler way. I mean, we're smart enough to figure out that the State Board of Equalization wasn't working in the '90s. I've got to think that after 12 years of experience with TERC we can figure out a more fundamental way that accomplishes what the voters expected, but most importantly accomplishes the same goal. There are going to be some folks that want to appeal their case because they don't like the county. Fair enough. They don't like the assessor, whatever. There's a great deal of folks that have no idea about the process. No matter how many brochures the TERC board puts together or how much training you can possibly give them, the reality is that we have to be able to provide a logical system for them. I don't think we have it. I'm candidly not smart enough to tell you what the solution is today. I know that my staff have spent days, more than hours, days, visiting with commissioners on TERC, visiting with former commissioners, visiting with the legal counsel for your committee trying to figure out what do we do. I don't know the answer, but I offer any assistance that I can provide in accomplishing that. There are provisions of LB1110 that I think are valid, whether they are drafted appropriately or not. The theory behind LB1110 was to take the existing membership, the existing commission, reduce the number from four to three, take the savings from that fourth commissioner, use that money to help cover the cost of the travel of the individuals; not create the bureaucracy that it appears we have created, at least under the opinion of the fiscal note from the Supreme Court. And try to streamline the process to the extent that if we are going to go forward with TERC, we do some of the things that Commissioner Warnes talks about, where we allow individual commissioners to hear a case versus the three panel. And then I think the provisions in there about allowing them to direct those cases to mediation, at least in theory, has some merit. There might need to be some "lawyering" to figure out how it realistically can be done. But my understanding is, is that TERC hasn't and probably will not deny or turn down cases once they get to their level because any decision that they make has to be a formal ruling. And so they might as well go through the whole process. And you know, I've learned more than I ever want to know. I know that there are a number of interested people in my area that would like to see a process, not because they disagreed with the ruling they got, but because they didn't see how it was possible that the ruling that they got or the process that they went through was worth their time. I think that's a sad state of affairs for our process, and I think it's within the state's best interest to find a solution the best that we can. [LB1110]

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SENATOR DIERKS: Thank you. Questions for Senator Erdman? [LB1110]

SENATOR ERDMAN: I just about got promoted there, "Cap." [LB1110]

SENATOR DIERKS: You just about got promoted, yeah. Well, it looks to me like you're home free again until closing. [LB1110]

SENATOR ERDMAN: I may be ahead, but we'll see. I may drive that car into the ditch. [LB1110]

SENATOR DIERKS: Those in support of LB1110. Is there support? Is there opposition? How about neutral? Go right ahead, Mr. Warnes. [LB1110]

WILLIAM C. WARNES: (Exhibit 7) Senator Dierks, members of the Revenue Committee, this Legislative Bill 1110 has many, many pages to it. I have looked at it. I'm just going to highlight some concerns. I'm testifying here in a neutral capacity despite the implications of the bill, which let me first say that any time there's a discussion to prove a process I have no problem with that. I don't even care if it might be of this serious of nature. But what I want everyone to be aware of is TERC is following statutes in its rules and regulations, not just on behalf of taxpayers. But also on behalf of the counties. Counties would be extremely disappointed if TERC turned its back on them. So what we're trying to do is have fair hearings for both parties. It is a real challenge, but we do the best we can. So with respect to this proposal, let me first in priority suggest that there's a concern about the constitutional conflict. We don't talk much about TERC's obligation to do statewide equalization, which we took over in 1995 from the State Board of Equalization. But we have that as a responsibility and we've actually received the preliminary reports and opinion from the Department of Property Tax Administration already to my office. And we will begin that process and you know, there was a bill not very long ago that we talked about in the time frames and so that's coming up. Now, we're an executive function and not a judicial, and to put that task with a judicial body may have serious constitutional conflicts with it. This bill also has many technical deficiencies. But I want you to know I'm not in the business of knowing how to set up a court. But we spent half a day with Senator Erdman's office going over all of the issues and if the Revenue Committee wished, we did talking points on all of those and those could be passed around. In fact, maybe I'll take advantage of the fact that I did this. If I could have these passed around, please. This would go to Senator Janssen and then these would be copies for the committee. So I'm not going to go into the technical deficiencies because like I said, if you ask me a question about them, I'd have to admit I'm not an expert on setting up a court. There are some policies concerns though and I'd ask for you to consider. Right now what I hear for concerns that I'm trying to deal with are concerns that your constituents, taxpayers are concerned that TERC is too formal. Well, I have to ask you to think what happens if you had a court...we're not a court, we're a commission and we don't have to follow the rules of evidence and we do

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not, except in certain circumstances. Is moving to a court system less formal or more formal? For my experience with the district court and county courts in my private practice, you get a great variation there, but they tend to be quite formal, very little understanding. You still will have a court of review, that being the court of appeals and that's what sets the formality in TERC. We have to have our record clean and understandable so that if it's reviewed, all exhibits been properly marked, all the testimony has been properly taken so that our review would not only be a fair hearing at our level, but also at the court of appeals. I want you to be aware that TERC is hearing a lot more than just valuation cases. Under the statute, we have 13 different issues that we're supposed to be responsible for, not just valuation. We hear the homestead exemption cases. We hear exemption cases for charitable religious educational. We hear the statewide equalization, as you know. So the point is I just would ask that you...I'm just pointing out some policy concerns. We're not in the business of making policy. And I tread lightly in bringing these up, but if you had...TERC is not a court. You're right about that. We do not feel we have any leeway in coming up with new law. We just follow the law. We just follow the statutes. We do not feel like we have any authority to veer from that. But you know a court has a little more authority. I don't know that they stake and fine like we do. Well anyway, but those comments...I do want to make one more point. TERC is not going to get five years behind. I won't let it, none of the other commissioners will either. And the way that we will keep it from happening is by the fact that about half the cases that are filed appeal to our commission. They get settled or we have confession of judgements. In 2006 when I did my analysis, there was 1,324. We actually had 1,600 cases, but 723 had been settled. And so we've maybe steered you wrong in thinking that we're going to get five, six years behind. We will have all of 2006 completed by the end of the first quarter of this year. Now that's still behind, but I just want...that's exactly how far we are behind. And we've heard some 2007 cases, especially special value. I hesitate to respond to the comment that TERC is broken. It's the second time I've heard that comment. TERC is processing 300 approximate hearings a year. But we're moving 1,600 cases because a lot of them settle. They settle because we set them. We set them four a day. We're now backing up the commercials so that we have a primary and a backup each morning and afternoon. And so these cases are having to either get taken care of or they come in for a hearing. So that was a misconception that we let the Revenue Committee believe that we're going to get back behind that far. I am concerned though that if the level of appeals continued at the rate of 1,900 plus per year, and you compare it with the average we had for 2000 and 2005 with 960, that we would be in a crisis. I'd have to admit that. And that's why I'm so desperate to get this mediation going because mediation, for instance, for 2007 would take 1,000 cases, 1,000 appeals and run them through mediation. I have not been successful totally on it. I've got the funding, but I haven't been able to get it totally done yet. So those are comments that I make. And if there's questions, I'd be happy to answer them. [LB1110]

SENATOR DIERKS: Questions? Senator Cornett. [LB1110]

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SENATOR CORNETT: Just one, Bill, and I want you to know how much I commend you for the work you have done because you're not in an easy situation on an easy commission, and no one has anything but respect for what you've done. The thing that concerns me is TERC is a commission, correct? [LB1110]

WILLIAM C. WARNES: It is. [LB1110]

SENATOR CORNETT: And every average citizen goes into it and they do feel like it's more like a court than a commission. And I was talking to Dan Pittman again out in the hallway, the Sarpy County Assessor, and he was very clear in that he felt that TERC interpreted the law and they base their decisions on what TERC's rulings are unless those are overturned by a higher court. So hasn't TERC actually in a way taken the place of a court? [LB1110]

WILLIAM C. WARNES: Well, I have to second guess that you're talking about a specific subject that has been talked about a lot here today, the greenbelt. But because we are hearing these cases regularly, as you heard the gentleman, he'll be in front of us tomorrow morning, I don't want to comment specifically on things, to the extent that TERC is interpreting what the statutes say, we do that. But we don't try to guess. We don't try to make up anything associated with what the words mean. And so I will just tell you this, TERC does not get reversed very often. We slow our decisions down until we feel we have researched the law, the court of appeals and the supreme court, before we issue an order. There are issues that are very important to the state that we take a lot of time with. We try not to be activist regarding any issues in those cases. We try to just simply follow the law. And to the extent that somebody might say that we're interpreting the statute, well, that's reasonable for somebody to assume that. But we have to. We have to. We have to look at the law and see how it applies to the facts we have to rule. [LB1110]

SENATOR CORNETT: I see where Senator Erdman is going in that one, there's concerns that if you're actually interpreting the law, then you have attorneys that are not on the commission interpreting that law. And secondly, I mean, someone again, out in the hallway summed it up, they said if it looks like a rose and it smells like a rose and everybody thinks it's a rose...and rose isn't what they used, but (laugh)... [LB1110]

WILLIAM C. WARNES: Well, you know attorneys have such a reputation that it's hard to, you know, proceed this whole discussion. But I tell you that if I get stumped on something that's an appraiser or an assessor issue, I'm immediately talking to the commissioner on our board that is one or was one and has the credentials. And Senator Erdman is certainly right. I can qualify educationwise for the lowest level of appraiser, but I couldn't get the license because I don't have the time and grade, which is very, very important. But I just did it because I wanted to get the academic part behind me.

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So your impressions are just so true that they concern me a great deal and I don't know all the answers to how to overcome a lot of this, but we're going to try. [LB1110]

SENATOR CORNETT: Okay. I look forward to working with you on that. [LB1110]

SENATOR DIERKS: Other questions? I have kind of a couple of questions I think. Does the TERC board get involved with personal property taxes? [LB1110]

WILLIAM C. WARNES: We have, under our statutes, that allowance. However, centrally assessed is one of the places that is, you know, property, and that's all done mainly through the Department of Property Tax Administration. In my two years, Senator, I don't think we've had a...well, we've had them collateral to the real estate valuation, but not by themselves. That is a very small part of what we do. [LB1110]

SENATOR DIERKS: The 99 percent is probably property tax. [LB1110]

WILLIAM C. WARNES: Property tax and all the other issues. We get a lot of exemption cases and they take up quite a bit of time. They can take up quite a bit of time. [LB1110]

SENATOR DIERKS: Okay. Thank you. Any other questions? Thank you very much. Senator Erdman, would you like to close? [LB1110]

SENATOR ERDMAN: We could have...bill is 81 pages long. I assure you the amendments that we had worked on were as long, if not longer. A lot of the issues that were brought up by Commissioner Warnes are valid. Some of the things I think are similar, however. Under LB1110, the court would have the same rules of evidence as TERC. They would not be bound by rules of evidence, which is what TERC has the same provision as well. There are amendments that could be offered. Section 16 and 17 of the bill would require the court to actually perform the equalization services as well, which I recognize is problematic as Commissioner Warnes did. But as I said in my opening, the solution to what's going on with TERC as an entity where they have both the equalization side, they have all of the appeals that they hear in addition to valuation protests, it's not just that level. I think we have to look at reforming that level absolutely. But as I said in my opening, you also have to provide another mechanism. You have to provide that out, if you will, to allow those cases, whether it's a mediation process or others. And I think they both have to be considered essential to this discussion, and I said that in my opening. I'm not sure that it was clear. There was some assertion that this becomes more formal. To be candid, there's more flexibility to the court as far as assignments and things than what's under the existing authority for the commission. So my thought isn't to simply say, let's create a court. My thought is that if you're going to be in court, you might as well have a court. But at the same point I think it's just as valid to say that we want to not be in court, let's find another way to address those. And it doesn't matter who's the benefit or who's the beneficiary, the process should be fair.

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Candidly, if you go through the process of TERC now and you get to TERC, the county has a leg up on you. They have a presumption that they are correct under the statute. We've offered amendments to Senator Langemeier because he has a similar bill that would make that maybe not the case because as an appraiser I recognize that the people along this chain that you go through who probably need to be given the most credibility may not always be the county board members. I can tell you that when the county board sets valuations at some of my counties, they just simply decide, well, we don't want to raise it by that much, we're going to raise it by this much and we're going to move on because we don't want to make somebody mad. The presumptions in this process are just as important as the process. Who has the advantage or who doesn't have the advantage I think is essential, and Senator Langemeier and others are there. But you've got to stop the bleeding. If you were in a surgery, they cut an artery, they wouldn't keep doing the surgery until they addressed the bleeding. I think that's where Commissioner Warnes and others are focusing on, not just the process of TERC, but what is that other viable option? How do we create a process in which the county has a more effective resolution of all of these appeals? And to be candid, if you're going to fight over nickels on residential properties in Omaha and give away the farm on commercial properties, that doesn't make sense to me. There are things like that that are happening at the local level that have to be addressed, and those are fundamental reforms, not that TERC has a problem with, but that end up being TERC's problem. And so from the standpoint of the entire system, what we did with the constitutional amendments in '96 was to throw out all that we had known before with the State Board of Equalization and bring in this new process. I'm not saying we're there yet, but we're simply not at the point of simply changing the membership of the commission and moving on. At least that's my humble opinion. [LB1110]

SENATOR DIERKS: Thank you. Questions for Senator Erdman? Dr. Erdman. He was talking about surgery, wasn't he? (Laugh). [LB1110]

SENATOR ERDMAN: Don't insult doctors, Senator Dierks. Thank you. [LB1110]

SENATOR DIERKS: Thank you very much. That will end the hearing on LB1110 and the hearings for the day. [LB1110]

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Disposition of Bills:

LB1118 - Indefinitely postponed.
LB777 - Advanced to General File, as amended.
LB1008 - Held in committee.
LB1039 - Held in committee.
LB1111 - Held in committee.
LB1110 - Held in committee.

Chairperson

Committee Clerk