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To: House Taxation Committee
Date: March 20th, 2018
Subject: Neutral Testimony on HB 2780.

Honorable Chairman Johnson and members of the House Taxation Committee:

On behalf of the Kansas Association of REALTORS® (KAR), thank you for the opportunity to provide neutral testimony on HB 2780 regarding the payment of cost by the county when an aggrieved taxpayer prevails in a valuation appeal. Through our comments, we hope to provide some additional context to the discussion of this issue.

KAR represents over 9,500 members involved in both residential and commercial real estate and has advocated on behalf of the state's property owners for over 95 years. REALTORS® serve an important role in the state's economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life and providing affordable housing opportunities while protecting the rights of private property owners.

KAR appreciates starting the discussion on this issue. As a policy, the Legislature should always be cognizant of the burden on a taxpayer when pursuing the appeal process pertaining to valuation determinations of their property. In addition to the time and potential costs associated such appeal, we must also recognize the loss of the time value of money due to the taxpayer being required to pay their tax in full at the time of protest.

Arguably, HB 2780 could encourage counties to settle valuation disputes early and removes a perception of impunity on the part of the county. It should go without saying though, that any cost paid for by the county will ultimately be taxpayer dollars. Therefore, it is necessary to balance the desire to make the aggrieved taxpayer whole with the need to be prudent stewards of taxpayer dollars in general.

If the committee desires to explore this concept, KAR would offer a couple of points for consideration.

1. HB 2780 states the county, "shall pay the costs associated with appeal...". Typically, the awarding of cost is discretionary and that discretion is assigned to a court or tribunal hearing the matter. In this case, should it be the Board of Tax Appeals (BOTA) that is given such discretion?
2. Should HB 2780 also consider attorney fees? Kansas appellate courts have been consistent that attorney fees are not part of cost without express statutory authority. Usually, "cost" means fees or charges, such as filing fees or fees for service of process. That being said, if the committee desires to include attorney fees, then HB 2780 should be amended to make that clear.
3. While we have not conducted a comprehensive review of all prevailing party cost and attorney fee statutes, a cursory search reveals that the authority to assess cost and fees against the government is

rare. It is common in Kansas law for such cost and fee provisions in disputes amongst private parties. KAR is aware, that in the eminent domain statutes, the district court is given the discretion to award attorney's fees in favor of a landowner in certain circumstances. See K.S.A. 26-509. The Legislature could follow a similar approach by allowing an appellate court to award cost and fees to a taxpayer appellee if their position (reduced valuation) at BOTA is affirmed by the appellate court.

The intent of HB 2780 is worthy of further consideration. The complexity of the issue is compounded by the fact that cost associated with a valuation appeal will not be the same across all property classifications and whether distinction, if any, should be made. That being said, KAR is ready to work with the Legislature in pursuing the issue raised in HB 2780.

Thank you for your time and consideration of our testimony.

Respectfully submitted,

A handwritten signature in black ink that reads "Patrick Vogelsberg". The signature is written in a cursive, flowing style.

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