

Nebraska Association of County Officials Legislative Report



March 19, 2010

Higher Burden of Proof in TERC Cases Advanced by Committee

Last Friday the Revenue Committee sent **LB 1079** to the floor of the Legislature with an amendment that would increase the level of evidence that counties have to present in cases appealed to the Tax Equalization and Review Commission (TERC). The current standard is "unreasonable and arbitrary." The amendment would increase that standard to "the greater weight of the evidence." This change would result in counties having a heavier burden of proof and taxpayers having a lesser one. If the protesters' burden is lighter, there is a strong possibility that more property owners will appeal to the TERC, which results in the use of more county resources to handle the increased caseload.

NACO has consistently opposed shifting the burden of proof and has been working to stop this bill from advancing. County board members, assessors, attorneys and others have contacted

senators to express opposition to the bill. Please contact your senator immediately on this issue. The bill appears on the agenda for first round debate on Tuesday, March 23.

The amendment would also mandate that real property tax protesters have an opportunity to meet in person with the county board of equalization or referee. Protesters would be given a longer period to file appeals with the TERC. County boards could change the value of real property until Oct. 1 or until an appeal is filed with the TERC, whichever occurs first. TERC hearings could be conducted by a single member of the commission, with the possibility of a rehearing by the entire commission.

Some of the changes proposed by the amendment come from legislation introduced last year, including **LB 213** and **LB 580**.

Debate on Budget Begins

State aid provided to counties through three major programs would be reduced by 2 percent as a part of across-the-board budget cuts proposed by the Appropriations Committee. The 2 percent reduction was applied to the same state agencies and aid programs that were subject to 5 percent budget cuts during the special session.

Special mention is made in the Appropriations Committee's budget report of the county aid plan adopted last year in **LB 218**. The new program would consolidate state aid to counties, county property tax relief and jail reimbursement into a single funding stream, beginning on July 1, 2011. The level of funding would be based upon the statewide taxable value multiplied by a percentage. Each county would receive \$30,000, plus a percentage of the total. Overall funding for the program exceeds the total appropriation for the three programs separately. The complete Appropriations Committee report is available on the Legislature's website at www.nebraskalegislature.gov

The budget contains a requirement that all state agencies develop an agency efficiency review plan for FY2010-11 and FY2011-12. The plans would make recommendations on consolidation of existing programs, opportunities for streamlining, reforms needed to reduce the number of employees,

mandates and requirements, and changes needed to move to a four-day work week. Plans would be completed by Sept. 1, 2010. The plans would be used as the state faces a projected balance that is \$670 million below the minimum reserve when federal stimulus funds disappear in the upcoming biennium.

Debate on the budget bills – **LB 925**, **LB 317** and **LB 1106** - began on Tuesday afternoon. On Thursday, the bills were advanced from Select File. The budget must be adopted by the 50th day, which is March 29.

To facilitate the movement of bills during the remaining 14 days of the session, a consent calendar is being developed with first-round debate anticipated for the week of March 29. Only non-controversial bills without a fiscal note, substantive amendments or opposition will be considered for the consent calendar. After 15 minutes of debate, or less if debate is finished, a vote will be taken on adoption of the issue at hand and then advancement of the bill.

Depending on the bills that are debated, a *Legislative Report* may not be issued next week. The Legislature will be in recess on March 19 and 22. The session is tentatively scheduled to adjourn on April 14.

Snapshots of County Issues

Bills on Select File

- Counties purchasing motor graders, wheel loaders, and certain other heavy equipment would be required to follow state bidding requirements under a pending amendment to **LB 948**. As amended on General File, the bill would require the state to consider the total cost of ownership, including life-cycle costing, when determining the lowest responsible bidder for heavy equipment purchases. The County Purchasing Act already requires consideration of life-cycle costs for purchases of mobile equipment, which is defined to include general purpose construction and maintenance machinery. Senators debated whether such specific information would be available for new models and how much life-cycle cost estimates are affected by the operator of the equipment. The bill appears on the agenda for second-round debate on Tuesday.
- Certain juvenile records could be sealed under a bill aimed at

reducing truancy and getting quicker intervention for troubled youth. **LB 800** also provides for the use of videoconferencing in certain juvenile proceedings and authorizes a juvenile civil citation pilot project in Douglas County. The bill advanced from General File this week.

- **LB 951**, which addresses several election issues, appears on Tuesday's Select File agenda.
- **LB 1010** would require natural resource districts to consider factors such as proposed modes of transportation, adjacent areas, and the status of real property ownership before establishing a trail. The bill is intended to create a process to avoid the controversy experienced when an NRD attempted to use eminent domain to acquire property for a trail between Lincoln and Omaha. The issue was the subject of an interim hearing in 2009.

Bills on Final Reading

- Counties, cities and other governmental bodies would have to disclose confidential legal settlements that involve public funds under **LB 742**. Private insurance companies providing coverage to public entities would be required to provide a copy of the claim or settlement agreement to be maintained as a public

record. Settlement agreements in amounts over \$50,000 would have to be included as an agenda item at the next meeting of the public entity. The bill was advanced from Select File to Final Reading on March 17.

Bills Signed by Governor

Governor Heineman signed 16 bills on Wednesday. Several bills have an impact on counties.

- Supervisor counties are given a mechanism to access funds held by inactive townships by **LB 768**. NACO requested introduction of the bill to provide an option to counties that are unable to fill vacancies on township boards. Without the provisions of LB 768, such township funds are not available for use by the county in maintaining that township's roads. Instead, all county taxpayers bear the cost of road maintenance for the township, despite the taxes levied on the township for that purpose. The bill allows county boards to terminate perpetually inactive townships.
- Wireless telephone carriers will be held harmless from liability when providing location information to law enforcement by **LB 735**. The bill is known as the Kelsey Smith Act, in

recognition of a murdered Kansas woman whose cell phone location information was not immediately released by the carrier due to privacy concerns.

- Preservation of the existing state highway system is designated as a primary priority of the Department of Roads under **LB 821**. The priority designation will be taken into consideration when the Department is developing its specific and long-range state highway plan.
- Counties, cities and villages that impose a dog or cat license tax must collect an additional dollar to help fund the Department of Agriculture's Commercial Dog and Cat Operator Inspection Program. Three cents will be retained by the local government for deposit in the general fund. **LB 910** also adds licensure categories for animal rescue organizations.

Wind Energy Proposal Advanced to Second Round

On Wednesday, senators debated and advanced a comprehensive proposal to regulate wind energy in Nebraska. **LB 1048** would address many of the hurdles that have prevented development of wind energy, including the eminent domain authority given to public power entities, tax structure, and exporting of wind energy to other states. The bill would provide for wind turbines to be taxed based on a nameplate capacity method, rather than being treated as personal property. Although

the taxes paid over the lifetime of the turbines would be about the same, the new method would prevent the sharp peaks and valleys in tax receipts that occur when the equipment is depreciated over five years under a personal property tax schedule. Wind farm companies would remit the nameplate capacity tax to the Department of Revenue, which would return the funds to the county for distribution to the taxing entities that would have received a share of personal property taxes.