

ONE HUNDRED SECOND LEGISLATURE - FIRST SESSION - 2011
COMMITTEE STATEMENT
LB384

Hearing Date: Thursday February 03, 2011

Committee On: Revenue

Introducer: Cornett

One Liner: Eliminate a commissioner of the Tax Equalization and Review Commission and authorize single commissioner hearings

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye: 7 Senators Adams, Cornett, Fischer, Hadley, Pankonin, Pirsch, Utter

Nay: 1 Senator Louden

Absent:

Present Not Voting:

Proponents:

Sen. Abbie Cornett

Lauren Kintner

Jarel Vinduska

Jon Edwards

Representing:

Introducer

Gov. Dave Heineman

Self

NE Assoc. of County Officials

Opponents:

Robert Hans

Representing:

Self

Neutral:

Bob Wickersham

Mike Goodwillie

Representing:

Tax Equalization and Review Comm.

Douglas Co. Assessor

Summary of purpose and/or changes:

The primary purpose of LB 384 is to achieve budget savings by eliminating one of the current four members of the Tax Equalization and Review Commission (i.e., the at-large commissioner).

The Tax Equalization and Review Commission (TERC) was originally created with three commissioners by Laws 1995, LB 490. A fourth "at-large" commissioner was added by Laws 2001, LB 465.

Under current law, TERC has four commissioners who are appointed by the Governor with approval of a majority of the members of the Legislature. Three TERC commissioners are specifically appointed to represent Nebraska's three congressional districts.

Another purpose of LB 384 is to streamline TERC's operations by authorizing TERC to conduct single commissioner hearings of property taxpayer appeals.

LB 384 would become operative on October 1, 2011.

Explanation of amendments:

AM 944, the Revenue Committee amendment to LB 384, rewrites the bill. AM 944 contains modified provisions of four different bills: LB 384 (reduce the number of Tax Equalization and Review Commission (TERC) members from four to three commissioners and authorize the Governor to set commissioners' salaries); LB 405 (TERC-approved single commissioner hearings); LB 363 (TERC-approved omnibus technical changes); and LB 457 (for counties with population of at least 150,000 inhabitants, require that a preliminary notice of valuation be provided to real property taxpayers and give a real property tax protester an opportunity to meet in-person with (a) the county assessor and (b) the county board of equalization or a referee).

1. AM 944 includes modified provisions of LB 457. Beginning January 1, 2013, for counties with population of at least 150,000 inhabitants, AM 944 requires: (a) that a preliminary notice of valuation to be mailed to real property taxpayers or posted on a web site of the county assessor or the county; (b) that real property tax protesters be given an opportunity to meet in-person with the county assessor; and (c) that real property tax protesters who protest their valuation be given an opportunity to meet in-person with the county board of equalization or a referee appointed under section 77-1502.01.

2. AM 944 changes some provisions of LB 384 (as introduced), but it would still reduce the number of TERC commissioners from four to three by eliminating the "at-large" commissioner. Changes made by AM 944 to LB 384 include the following:

(a) The terms of all four current TERC commissioners would expire on October 1, 2011, and the Governor would set TERC commissioners' salaries in his or her discretion.

(b) Terms of office for the three TERC commissioners (one from each congressional district) would be staggered six-year terms. For purposes of making the transition from four to three commissioners, the term of the commissioner from: District 3 would expire January 1, 2014; District 1 would expire January 1, 2016; District 2 would expire January 1, 2018.

(c) TERC, not the Governor, will appoint its chairperson according to TERC's rules and regulations, as authorized by section 77-5003(3).

(d) AM 944 keeps the statutory rule that a TERC commissioner can only be removed from office for cause, as provided in section 77-5003(4). As introduced, LB 384 proposed eliminating section 77-5003(4).

3. AM 944 includes the single commissioner hearing provisions of TERC-approved LB 405. AM 944 authorizes single commissioner hearings of appeals and cross-appeals when: (a) the taxable value of each parcel of real property is \$1 million or less; and (b) the appeal or cross-appeal has been designated for a single commissioner hearing by TERC's chairperson or by TERC's rules and regulations. Documents necessary to establish jurisdiction of TERC would constitute the record of a single commissioner hearing and no recording of a single commissioner hearing would be allowed. Single commissioner hearings would be informal proceedings. The usual common-law or statutory rules of evidence would not apply. The commissioner would be allowed to consider and utilize all matters presented at the proceeding in making his or her determination. An order entered in a single commissioner proceeding could not be appealed to the Nebraska Court of Appeals pursuant to section 77-5019 or any other provision of law; however, under certain circumstances, AM 944 does provide pathways for appealing to the Nebraska Court of Appeals. For example, any party to a single commissioner hearing can - before a single commissioner hearing commences - elect in writing to have the appeal heard by the three-member TERC, whose order could be appealed to the Nebraska Court of Appeals pursuant to section 77-5019. Additionally, the single commissioner conducting the proceeding could, at any time, designate the appeal for hearing by the three-member TERC, whose order could be appealed to the Nebraska Court of Appeals pursuant to section 77-5019. Finally, if a party to a single commissioner proceeding applies for a rehearing of an order issued by a single commissioner within 30 days after the date of an order issued by a single commissioner - except for an order of a single commissioner dismissing an appeal or petition for failure of the appellant or petitioner to appear at a hearing on the merits - TERC would be required to grant a rehearing on the merits before the three-member TERC, whose order could be appealed to the Nebraska Court of Appeals pursuant to section 77-5019. The single commissioner provisions of AM 944 would be operative October 1, 2011.

4. AM 944 includes provisions of TERC-approved LB 363, except that: AM 944 would not increase the TERC filing fee to \$50 (the filing fee would remain \$25); AM 944 would not authorize TERC's statewide equalization notice to be published on a web site maintained by the Secretary of State (such notice must be published in a newspaper of general circulation throughout the state, the same as required under current law); and AM 944 amends section 77-5017(2) by requiring a county board of equalization to send notice of the taxable value of property that has been determined by TERC to be taxable property - rather than tax-exempt property - within 90 days (30 days under current law) after the date TERC's order is certified pursuant to section 77-5018. Among its many other provisions derived from LB 363, AM 944 fixes the problem with a citation to section 25-510.02 that appears in section 77-5019, which governs service of summons for appealing TERC decisions to the Nebraska Court of Appeals. That problem was identified by the Nebraska Supreme Court in *Cargill Meat Solutions Corp. v. Colfax County Board of Equalization*, 281 Neb. 93 (2011). AM 944's remedy for that problem would be operative pursuant to the amendment's emergency clause.

5. AM 944's operative dates would vary. Some sections would be operative October 1, 2011 (e.g., reducing TERC from four to three commissioners and authorizing single commissioner hearings) and some would be operative either three calendar months after adjournment of the Legislature (e.g., January 1, 2013, implementation date for requiring a preliminary notice of valuation to be mailed to a real property taxpayer or posted on a web site of the county assessor or the county) or operative pursuant to AM 944's emergency clause (e.g., fixing the problem with service of summons identified in the Cargill case).

Abbie Cornett, Chairperson