

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

March 24, 2000 LB 968

they speak in terms of a very high burden of proof, and they're two different issues actually, I don't know whether to ask you to just kind of shut your eyes and lay back and we'll give you this discussion, or hold this off for another day. It is a very complex area. It involves two different kinds of concepts. One is a presumption; the other is burden of proof. As I'm hinting to you, the court decisions have added gloss to the legislative provisions and, while the court states a very difficult standard to meet, their decisions arguably have applied a lower standard than what they have articulated in the language that they employ in the cases. The language that they employ in the cases originates both, as I've indicated, from the statutes and in their case law, going back to the early 1950s. They have occasionally, in my view, failed to distinguish between the different kinds of cases to which you apply, appropriately, a different standard. And whether or not, quite frankly, we would be able to sort that out as a statutory issue is open to question. We cannot tell a court what is...whether to employ a particular burden of proof or a presumption. When it comes right down to it, I think they will create whatever rules they see fit in this area based on one or more constitutional principles that I think they have at their disposal. So that's a part of the problem. The other part of the problem is simply to articulate for the TERC's own internal use what an appropriate standard is. You want to give some deference to the decisions of the county board. You do not want every single decision of the county board to be appealed on whatever...for whatever slight or whatever reason that some individual thinks is appropriate. You do have to give deference to the county board decisions in these...in these cases. The statutes themselves have two different sets of language that work in this area. As you can see by examining Senator Coordsen's amendment, there are some in the Chapter 77 area dealing with the county boards of equalization and there is another set in the statutes that deal with the TERC itself, and it's in the 77-5,000 series. There will be a discussion of this issue over the summer. There's an interim study resolution that has been introduced and we will take up. I had introduced a bill that was intended to open this discussion. It was a statutory recitation of language that...would have been a statutory recitation of language that appears in the Supreme Court decisions. So this is...this is an issue that is certainly an appropriate one for us to be