



**Ninety-Seventh Legislature - First Session - 2001**  
**Committee Statement**  
**LB 170**

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**Hearing Date:** January 25, 2001  
**Committee On:** Revenue

**Introducers:** (Revenue Committee)

**Title:** Change provisions for property tax valuation and appellate procedures for appeals to the Tax Equalization and Review Commission

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**Roll Call Vote – Final Committee Action:**

- Advanced to General File
  - X Advanced to General File with Amendments
  - Indefinitely Postponed
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**Vote Results:**

- 8 Yes                      Senators Coordsen, Dierks, Hartnett, Janssen, Landis, Raikes, Redfield and Wickersham
  - 0 No
  - 0 Present, not voting
  - 0 Absent
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**Proponents:**

George Kilpatrick, Legal Counsel  
 Robert Hans  
 Robin Hendricksen  
 Mike Thew  
 William E. Peters  
 Roger Morrissey

**Representing:**

Committee on Revenue  
 Tax Equalization & Review Commission  
 Lancaster County Assessor  
 Lancaster County  
 Himself  
 Douglas County Assessor

**Opponents:**

Tom Sidwell  
 Gary Fisher  
 Claudia Benda  
 Donna Dufek  
 Charles Weston  
 Larry Intermill  
 Mark Haynes  
 Renee Williams  
 Laurice Margheim

**Representing:**

Himself  
 Himself  
 Herself  
 Herself  
 Box Butte County  
 Himself  
 Himself  
 Herself  
 Himself

**Neutral:**

None

**Representing:**

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## Summary of purpose and/or changes:

LB 170 was introduced by the Revenue Committee at the request of the Tax Equalization and Review Commission. It would reverse the outcomes of two recent Supreme Court cases and require that adjustments to value be made to the median of the range.

### Section by Section:

Section 1 would amend section 77-1501 to require county boards of equalization to adjust values to the median of the class or subclass of property.

Section 2 would amend section 77-1510 to provide that appeals of decisions shall be deemed timely if postmarked by the deadline for filing the appeal. This proposal is a result of the Nebraska Supreme Court decision in *Creighton St. Joseph Hospital v. Tax Equalization and Review Commission*, 260 Neb 905, \_\_\_ N.W. 2d \_\_\_ (2000) which held that appeals postmarked before but received after the filing deadline are not timely and should be dismissed. The Court would permit statutory adoption of a “mailbox rule”.

Section 3 would amend section 77-5004 to strike the requirement that TERC commissioners have the same certification required of county assessors.

Sections 4 and 5 amend sections 77-5007 and 77-5013 to 1) move the appeal deadline from section 77-5007 to 77-5013, 2) statutorily adopt the “mailbox rule” for all appeals to the TERC, and 3) provide that the filing of the \$25 appeal fee is necessary for perfecting the appeal. In other words, this change makes the fee jurisdictional for the appeal. This change would reverse another holding of the Nebraska Supreme Court in the *Creighton St. Joseph’s Hospital* case.

Section 6 would amend section 77-5023 to provide that adjustments by class or subclass of property to achieve inter-county equalization must be made to the median. Any adjustments may be made by any class or subclass recognized in the regulations of the Property Tax Administrator or professionally accepted mass appraisal techniques. This definition of class or subclass is to statutorily reverse a decision of the Nebraska Supreme Court in *Bartlett v Dawes County Bd. of Equalization*, 259 Neb. 954, 513 N.W.2d 810 (2000). In that case, the Supreme Court held that the TERC was not permitted to make adjustments by market area because market areas were not classes or subclasses recognized in statute.

Section 7 would amend section 77-5026 to change the standards for what must be present to adjust a class or subclass from “not a just, equitable, and legal assessment” to “the level of assessment fails to” fall in the statutory range.

Section 8 would repeal the original sections, and

Section 9 declares an emergency.

## **Explanation of amendments, if any:**

The Committee amendments strike one section, strike the separate definition of class and subclass for equalization purposes, clarify some language, add all of LB 171 and one section of LB 464. The amendments appear as a white copy amendment that is summarized section by section below.

Section 1 would amend section 49-1201 to provide that any valuation, equalization, or exemption appeal or protest or any other form will be assumed to be filed when postmarked. This general mailbox rule is in addition to the mailbox rule for appeals to TERC that remains in the bill (offered as an amendment to LB 170).

Section 2 would amend section 77-101 to incorporate the new sections 3 and 4 into the property tax statutes (LB 171).

Section 3 would provide a definition of “class or subclass of real property” to be applicable throughout the property tax statutes. According to the definition, a class or subclass is a group of properties that share characteristics not shared by those outside the class or subclass. The classification may be based on use, size, zoning, city size, or market characteristics. If based on the market, the class must be based on characteristics that affect market value. This change is a response to the Nebraska Supreme Court decision in *Bartlett v Dawes County Bd. of Equalization*, 259 Neb 954, 513 N.W.2d 810 (2000), which held that the TERC may not adjust by market area to achieve inter-county equalization because market areas are not classes or subclasses of property found in the statutes (LB 171).

Section 4 would require the Department of Property Assessment and Taxation to publish an annual report detailing valuations and property taxes throughout the state. The Department may charge a fee for providing copies of the report (offered as an amendment to LB 171).

Section 5 would amend section 77-1311 to add a requirement to submit a plan of assessment to the county board before September 1, 2001 and every five years thereafter to the responsibilities of county assessors. The plan is to be updated each year between five year plans. The plan is to examine the level, quality, and uniformity of assessment in the county and may be derived from a progress report developed by DPAT and presented to the assessor before July 31. The plan is to outline issues and recommend action. Section 21 of the amendments repeals outright section 77-5012 that contains the current requirement for the TERC to develop a formal plan of equalization (LB 464).

Section 6 would amend 77-1327 to strike a requirement that the PTA publish a summary of assessment ratio studies, strike unnecessary language, and change an incorrect reference from the Property Tax Administrator to the TERC (LB 171).

Section 7 would amend section 77-1342 to liberalize the use of the DPAT cash fund and allow the fund to be used for a program of land record modernization (LB 171).

Sections 8 through 10 would amend sections 77-1343, 1344, and 1347 to strike subdivision as an event that disqualifies land for special value assessment or requires recapture. This was a recommendation of the Greenbelt Advisory Committee and would allow a farmer to build a house on a part of the land and not trigger recapture for the entire parcel (LB 171).

Section 11 would amend section 77-1363 to harmonize the agricultural and horticultural valuation statutes with the class or subclass definition to be created by section 3. Nothing in this section is to limit the classes and subclasses that may be used by a county to achieve uniform and proportionate valuations (LB 171).

Section 12 would amend section 77-1510 to provide that appeals of decisions shall be deemed timely if postmarked by the deadline for filing the appeal. This change is a result of the Nebraska Supreme Court decision in *Creighton St. Joseph Hospital v. Tax Equalization and Review Commission*, 260 Neb 905, \_\_\_N.W. 2d\_\_\_(2000) which held that appeals postmarked before but received after the filing deadline are not timely and should be dismissed. The Court would permit statutory adoption of a “mailbox rule” (LB 170).

Section 13 would amend section 77-5004 to change the requirement that TERC commissioners have the same certification required of county assessors. The Committee amendment requires the commissioners to be licensed appraisers (LB 170).

Sections 14 and 15 amend sections 77-5007 and 77-5013 to 1) move the appeal deadline from section 77-5007 to 77-5013, 2) statutorily adopt the “mailbox rule” for all appeals to the TERC, and 3) provide that the filing of the \$25 appeal fee is necessary for perfecting the appeal. In other words, this section makes the fee jurisdictional for the appeal. This change would reverse another holding of the Nebraska Supreme Court in the *Creighton St. Joseph’s Hospital* case. A copy of the final decision or other information that documents the final decision would be attached to the appeal form (LB 170).

Section 16 would amend section 77-5023 to provide that adjustments by class or subclass of property to achieve inter-county equalization must be made to the established indicator of central tendency. The definition of class and subclass originally contained in the original bill was struck from LB 170 in favor of the general definition found in LB 171. Finally, the amendment inserts the words “and horticultural” after “agricultural” as called for in LB 171 (LBs 170 & 171).

Section 17 would amend section 77-5024 to insert the words “and horticultural” after “agricultural” (LB 171).

Section 18 would amend section 77-5026 to change the standards for what must be present to adjust a class or subclass from “not just, equitable, and legal assessment” to “the level of assessment fails to” fall in the statutory range (LB 170).

Section 19 would amend section 79-1016 to insert the words “and horticultural” after “agricultural” (LB 171).

Section 20 would repeal the original sections.

Section 21 would repeal two sections outright. Section 46-267 is an obsolete section that purports to exempt all irrigation works from property taxes. Section 77-5012 calls for the TERC to adopt a formal plan of equalization.

Section 22 would declare an emergency.

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**Senator William R. Wickersham, Chairperson**