

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB441

Hearing Date: Tuesday February 03, 2009
Committee On: Urban Affairs
Introducer: Council
One Liner: Change provisions relating to the cost of certain municipal proceeding transcripts

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 6 Senators Coash, Cook, Friend, Lathrop, McGill, Rogert
Nay:
Absent: 1 Senator White
Present Not Voting:

Proponents: Senator Council Buster Brown Lynn Rex	Representing: Introducer City of Omaha League of NE Municipalities
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Opponents:	Representing:
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Neutral:	Representing:
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Summary of purpose and/or changes:

This bill proposes to change provisions relating to the cost of transcripts of appeals in certain municipal proceedings. As introduced it would apply to metropolitan, first and second class cities and villages.

The legislation proposes to amend two statutes in the same fashion: Sec. 14-813 (dealing with appeals from decisions regarding claims made by the city council in metropolitan class cities) and Sec. 19-2424 (dealing with appeals from special assessment decisions by city councils in first and class cities and boards in villages).

In both instances, the change relates to the cost of transcripts which must be prepared for appealing parties. Under current law, the cost of the transcripts is set at the flat rate of ten cents per hundred words. This is changed by this act to set the cost at the actual rate set by the court reporter required to prepare the transcript (according the rules of practice prescribed by the Supreme Court for the preparation of the bill of exceptions).

The appealing party would request the transcript and tender the estimated cost of the transcript to the city clerk. When the transcript is completed, the appellant either tenders the different between the actual and estimated cost to the clerk or receives a refund of any excess payment made beyond the actual cost.

Additionally, in both instances, provision is made for the preparation of a transcript at no cost to the appellant when he or she qualifies as an indigent as provided for in sections 29-3901 to 3908 (rules of criminal procedure), specifically (sec. 29-3901): "(3) Indigent shall mean the inability to retain legal counsel without prejudicing one's financial ability to provide economic necessities for one's self or one's family."

Explanation of amendments:

Committee concerns centered on the provisions of the bill that added language making transcripts free for individuals

that qualified under criminal code rules as indigent.

While the legislation implies that the decision on indigency would be made by the court, it does not explicitly so state or establish a procedure for that determination. It is not clear that an individual who qualified as indigent might not be required to pay for the transcript subject to future refund in the event that the individual, when he or she finally reached a court established his or her status.

In addition, the cited indigency statutes also deal with the appointment of counsel, the assessment of other fees and costs, and other matters not germane to the type of procedures at issue here.

The committee determined that it would avoid potential problems if the legislation specified more clearly (without reference to the criminal statutes) how indigency is defined, how a determination would be made if such status was claimed, and when it would be made.

It will also be noted that no statute governing primary class cities (Lincoln) is being amended by this bill. The relevant statutes governing these cities already provides for the payment of actual costs (Sec. 15-1202 to sec. 15-1204). However, these statutes do not have an analogous provision regarding indigency, while making payment of the fees a jurisdictional prerequisite.

The committee amendment addresses these matters.

First, indigency (in all places that it is used in the bill) is defined in the same basic terms as it is defined in the criminal code (Sec. 29-3901), modified to fit the circumstances of the appeals found in these sections.

Then, it is specified that the court having jurisdiction of the appeal is to determine whether the appellant is indigent upon the motion of the appellant. Following the Nebraska line of cases involving the determination of indigency in criminal matters, the amendment lists a series of factors which the court is to consider in making its determination on indigency.

Sections 1 and 5 of the committee amendment incorporate the amended provisions of the original bill. Sections 2, 3, and 4 add to the bill the sections of statutes governing appeals in primary class cities. The only changes made to these statutes is to add to them the same indigency protections as have been added by this bill to the statutes governing metropolitan class cities and first and second class cities and villages.

Because the payment of the fees and bonds is jurisdictional in appeals in primary class city matters involved here, the amendment requires a preliminary determination of indigency upon affidavit of the appellant before the preparation of the transcript and the deposit of the required fees.

With the adoption of the committee amendment, all appellants in any class of city or village would enjoy the same indigency protections.

Mike Friend, Chairperson