NEBRASKA'S "MYSTERIOUS" NEW TAX VALUATION SYSTEM: L.B. 271, THE AGRICULTURAL LAND VALUATION LAW

INTRODUCTION

In 1857, territorial Nebraska instituted the property tax as a "fair" way of taxing the wealthy for the use of government services. In the twentieth century, however, the measure of wealth shifted from realty to personality, such as stocks, bonds, and cash. State and local governments subsequently implemented sales and income taxes as a "fairer" way to subsidize expanding public services. As part of this trend, a 1966 amendment to the Nebraska Constitution abolished the state property tax. Since that time, the property tax has been levied exclusively by local government units, and it has become a primary source of their revenue.

The Nebraska Constitution mandates that all tangible property be valued by a process which is uniform and proportionate. This mandate, however, has not been followed by local assessing officials. In an effort to protect the low-return, high-investment agri-business of the state, assessors historically undervalued agricultural land for

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1. Act of Feb. 13, 1857, 1857 Neb. Laws 147, *reprinted* in 1 Complete Session Laws of Neb. 373 (codified at NEB. REV. STAT., ch. 46 (1866)). Property taxation consists of two categories: (1) Real estate, land, and improvements to land such as residences and commercial buildings, NEB. REV. STAT. § 77-103 (Reissue 1981), and (2) personal property, including all property other than real property and franchises. NEB. REV. STAT. § 77-104 (Reissue 1981). For the purposes of this Comment, the emphasis is on land, and therefore when the term "property tax" is used, it will refer to real estate taxes.


3. Id.

4. Id. The largest proportion of property taxes goes to support local public education and special education. In 1982, expenditures for education in total accounted for $519 million, or 63% of all property taxes levied. NEB. DEP'T OF REV. ANN. REP. 68, 77 (1982).

5. NEB. CONST. art. VIII, § 1A.

6. See A. FREDERICK & M. LUNDEEN, supra note 2, at 2. A local governmental unit in Nebraska can include counties, cities and villages, townships, rural fire districts, and other miscellaneous quasi-governmental entities, such as a natural resource district. Id.

7. NEB. DEP'T OF REV. ANN. REP. 68 (1982). In 1982, total property taxes levied in Nebraska amounted to $821 million, or nearly $520 per capita. Id.

8. NEB. CONST. art. VIII, § 1. The constitutional provision states: "Taxes shall be levied by valuation uniformly and proportionately upon all tangible property . . . ."

9. See notes 57-92 and accompanying text infra.
taxation purposes.  

This practice was successfully challenged in 1983 in *Kearney Convention Center, Inc. v. Buffalo County Board of Equalization.* After the Nebraska Supreme Court declared the valuation process unconstitutional, agricultural property taxes escalated dramatically. Consequently, Nebraskans passed a constitutional amendment, Amendment Four, which allows agricultural land to be treated differently for valuation purposes. Subsequently, Legislative Bill 30 ("L.B. 30") and Legislative Bill 271 ("L.B. 271") were passed to implement Amendment Four.

L.B. 30's sole purpose was to keep the valuation at the 1984 level only for the year 1985. This bill gave the Unicameral much needed time to study, at length, a workable, long-term solution to the valuation problem.

L.B. 271 is the long-term solution which is to be implemented during 1986. Devised by a special revenue task force committee, the bill: (1) outlines a formula for assessment purposes based on the land's production capabilities, not its market price; (2) defines the land which would fit into such a formula; and (3) puts into place an advisory committee to the Revenue Department to monitor the use of the formula.

10. See notes 57-64 and accompanying text infra.
14. See notes 96-99 and accompanying text infra.
17. L.B. 30 is a one-year interim bill which was passed by the legislature on February 13, 1985, by a 47 to 0 vote. 1 NEB. LEG. J., 89th Leg., 1st Sess. 573 (Feb. 13, 1985). It was approved by Governor Kerrey on February 15, 1985. L.B. 30, 89th Leg., 1st Sess., 1984-85 Neb. Laws 107. L.B. 271 is a long-term bill which was passed by the legislature on May 14, 1985, by a 25 to 20 vote. 2 NEB. LEG. J., 89th Leg., 1st Sess. 2265-66. The bill was approved by Governor Kerrey on May 20, 1985. L.B. 271, 89th Leg., 1st Sess., 1984-85 Neb. Laws 431. It should be noted that only a majority of elected members is necessary to pass a bill on its final reading. NEB. UNICAMERAL R. 6, § 9 (1985).
18. See note 103 and accompanying text infra.
19. See notes 100-14 and accompanying text infra.
22. Id. §§ 4-6, 1984-85 Neb. Laws at 433-34 (codified at NEB. REV. STAT. § 77-1359 to -1361 (Supp. 1985)).
23. Id. §§ 11-12, 1984-85 Neb. Laws at 436-38 (codified at NEB. REV. STAT. § 77-1366 to -1367 (Supp. 1985)).
L.B. 271’s provisions have been misunderstood\(^{24}\) and, in some instances, not understood at all.\(^{25}\) Since the property tax assessment rate for everyone, rural as well as urban, will be affected,\(^{26}\) the bill has a critical impact on Nebraska. Because of this critical impact, L.B. 271 deserves an in-depth study to clarify some of the misconceptions and mystery surrounding the bill and to allow its users a better understanding of it. Therefore, this Comment reviews the agricultural land valuation bill’s history,\(^{27}\) explains with the aid of several tables\(^{28}\) the bill’s contents,\(^{29}\) and explores the bill’s strengths and weaknesses.\(^{30}\)

**BACKGROUND**

**HISTORY**

The procedures by which individual property taxes are determined, assessed, and collected consists of a series of integrated steps. First, the county board, sitting as the board of equalization, totals funding requests from local governmental subdivisions.\(^{31}\) Second, the county assessor\(^{32}\) lists all taxable property in the county and assigns

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26. See notes 189-193 and accompanying text infra.

27. See notes 31-99 and accompanying text infra.

28. Several tables are provided, which hopefully will help the reader to understand the formula when used in conjunction with the examples provided. All tables used in this article are a product of the Ag Land Task Force Committee with minor modifications. AG LAND TASK FORCE OF COMM. ON REVENUE, supra note 13, at 35a, 38a, 40a.

29. See notes 115-244 and accompanying text infra.

30. See notes 245-272 and accompanying text infra. In reading the discussion of these points, several items should be noted. First, the discussion focuses on L.B. 271 because L.B. 30 was only in place for a year and was a bridge to the long-term approach in L.B. 271. Second, L.B. 271 deals with both horticultural and agricultural land. Section 6(1) states: “Agricultural land and horticultural land used solely for agricultural or horticultural purposes shall constitute a separate and distinct class of property for purposes of property taxation.” L.B. 271, § 6(1), 1984-85 Neb. Laws at 434 (codified at NEB. REV. STAT. § 77-1361 (Supp. 1985)). However, this Comment emphasizes agricultural lands.

31. NEB. REV. STAT. § 77-1601 (Reissue 1981). For example, property taxes collected for Keith County are used to support the county government, the city of Ogalala, the villages of Paxton and Brule, fourteen school districts, five rural fire districts, two educational service units, the Twin Platte Natural Resources District, the Mid-Plains Nebraska Technical College, and the county fair board. See A. FREDERICK & M. LUNDEEN, supra note 2, at 2.

32. Assessment and collection of property taxes are the responsibility of local government officials in Nebraska, specifically the county assessor, NEB. REV. STAT. § 77-410 (Reissue 1981), the county treasurer, NEB. REV. STAT. § 77-1701 (Cum. Supp. 1984),
assessed values according to the guidelines in the Nebraska Department of Revenue manuals. Third, the county board determines the individual tax rate by dividing the total revenue needed by the county's total assessed property valuation. An individual's tax levy, or mill levy, is based, therefore, upon the amount of revenue needed by the local governmental unit he supports and upon the "actual value" of his land. Finally, the amount of a property owner's tax is determined by the assessed value of the property owned multiplied by the tax levy rate. For example, if the tax levy rate is set at 2.10, the property owner would pay $2.10 of tax per one hundred dollars of property owned.

In sum, property tax depends upon two elements: the assessed value of the property owned and the tax levy. In determining the property owner's tax liability, the two factors need not work in concert. An increase in one factor does not necessarily require an increase in the other. For instance, if the Unicameral were to raise the assessment value in the Nebraska Department of Revenue manuals, and the county board of equalization, which is also referred to as the county board of commissioners or supervisors, Neb. Rev. Stat. § 77-1506 (Cum. Supp. 1984).

33. Id. § 77-410 (Reissue 1981).

34. Id. § 77-1330(1) (Cum. Supp. 1984). The section provides: "The Tax Commissioner shall prepare, issue, and annually revise guides for county assessors . . . . County assessors shall continually use such guides in the performance of their duties. All appraisals or reappraisals of property for tax purposes shall be in compliance with such manuals and guides." One such manual is the Nebraska Agricultural Land Valuation Manual (1980). This manual has been in effect and updated periodically since 1974. It is part of the Nebraska Rules and Regulations (unpublished agency manual), and, therefore, must procedurally comply with § 84-907 of the Nebraska Revised Statutes (Reissue 1981). When there is any change in a manual, a public hearing is required. Id. § 84-907 (Reissue 1981). Consequently, when the new 1986 manual is finally finished, there must be a public hearing.


36. See A. FREDERICK & M. LUNDEEN, supra note 2, at 2. A taxpayer does not support all local governmental services. The taxpayer is assessed for only those services that he specifically uses. For example, the Keith County Treasurer collects taxes for the Brule Rural Fire District but collects only from property owners within that district. Therefore, Keith County taxpayers may have different property tax liabilities depending upon the number of districts within which the taxpayer's property lies and those districts' respective tax levies.

37. Neb. Rev. Stat. § 77-201 (Reissue 1981). The term "actual value" for property is defined in § 77-112 of the Nebraska Revised Statutes as:

[T]he value of property for taxation that is ascertained by using the following formula where applicable: (1) Earning capacity of the property; (2) relative location; (3) desirability and functional use; (4) reproduction cost less depreciation; (5) comparison with other properties of known or recognized value; (6) market value in the ordinary course of trade; and (7) existing zoning of the property.

Id. § 77-112. But with the passing of L.B. 271, the new agricultural land valuation bill, valuation has been changed to allow the actual value of agricultural and horticultural land to be determined solely by the income-producing method. L.B. 271, §§ 3-13, 1984-85 Neb. Laws at 432-38.
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a person's taxes could remain the same if the local budget requests were lowered. Conversely, if the Unicameral lowered the assessment rate by fifty percent but local government expenditures remained constant, the local government would have to double the tax rates to collect the same amount of revenue.

Uniformity in the Property Tax Valuation Process

Even though taxpayers' liabilities may differ within a district, the Nebraska Constitution dictates that the tax valuation process must be uniform and proportionate within a local taxing district. Traditionally, this uniformity has been achieved by applying a single tax rate to the actual value of all property within the local district. By imposing a proportionate burden on all taxpayers, based on uniform rates, the taxing process ideally is equal and fair.

The property tax system, however, has become more complex as it increasingly has been used to achieve nonrevenue goals. As one commentator has noted, most state legislatures have adopted classifications of property and have applied a nonuniform tax rate by property class in order to achieve these nonrevenue goals. For various reasons, some classes of property are valued for tax purposes at a rate lower than the actual value. A taxpayer, for instance, may pay

39. Until May, 1985, and the inception of L.B. 271, the term "actual value" was held by the Nebraska Supreme Court to be synonymous with the term "fair market value." Richman Gordman Stores v. Board of Equalization, 214 Neb. 470, 472, 334 N.W.2d 447, 449 (1983). For the statutory definition of the term "actual value" and thereby the definition of the term "market value," see note 37 supra. Fair market value is "[t]he amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell." Black's Law Dictionary 537 (5th ed. 1979).
40. See Note, supra note 11, at 314.
41. See Note, Classification of Real Property for Tax Purposes in Illinois—Hoffman v. Clark, 28 De Paul L. Rev. 849, 849 (1979). Such goals include "subsidizing taxpayers by shifting their tax burden to others and influencing private sector decision-making by decreasing the tax burden on property used for socially desirable purposes."
42. See Note, supra note 11, at 314. Property classes for agricultural purposes in Nebraska were described in Box Butte County v. State Bd. of Equalization & Assessment, 206 Neb. 696, 702, 295 N.W.2d 670, 676 (1980). The court stated: [A]gricultural land is classified as irrigated cropland, dryland cropland, range-land and meadow, and pasture. These in turn are subclassified into valuation groups 1, 2, 3, and 4, based on the productivity of the particular soil, and, when necessary, are further subdivided. Finally, recognizing the decrease in rainfall and growing days when moving from the southeast corner of the state to the northwest corner, the state has been divided into seven land valuation areas. Each land classification and subclassification has a calculated per-acre dollar value, differing in each of the seven land valuation areas.
43. See notes 44-49 and accompanying text infra.
taxes on only sixty percent of the valuation instead of one hundred percent of the valuation because of the nonuniform tax rate.

Agricultural property lends itself to such classification. Proponents of the bill assert that preferential treatment is necessary for two main reasons: (1) the unique nature of agri-business; and (2) the concern over land use and the environment.\textsuperscript{44} Agriculture also is a high-risk venture. Farmers have low income compared to high outlay; and the farming industry needs protective taxation, especially in a state like Nebraska where agriculture is the main business.\textsuperscript{45}

Additionally, proponents of preferential taxation are concerned that urban areas are not only absorbing agricultural lands but also are taking open spaces that are needed for aesthetic and recreational purposes.\textsuperscript{46} This urban growth disrupts the environmental balance and upsets orderly urban development.\textsuperscript{47} The population growth of the United States has been centered on growing urban areas that have steadily encroached upon agricultural land.\textsuperscript{48} The fair-value approach to the valuation of property on the city fringes is artificial because the assumption is that the land will be sold for development purposes, thus inflating land prices and causing higher than normal taxes for agricultural land. The promise of high sale prices and the threat of high taxes often forces the assumption into reality: ultimately, the land is sold for development.\textsuperscript{49}

To maintain the agricultural system and urban fringe land, forty-five states by March, 1983, had adopted “Greenbelt laws,”\textsuperscript{50} either

\begin{footnotesize}
\begin{enumerate}
\item For example, in 1950, the average value of an acre of farmland in the United States was $46; today, it is $450. B. Johnson \& R. Hanson, Nebraska Farm Real Estate Market Dev. in 1984-85, at 16 (Dep't of Agric. Econ. Rep. No. 142, Agricultural Natural Resources, U. of Neb.-Lincoln). These land value increases are not paralleled by income trends. Annual income has declined in the first part of this decade, resulting in negative returns on farm assets. Despite the fact that farm real estate is assessed at a lower effective rate than nonfarm real estate, farm property taxes in recent years have been absorbing 6.94% of the total personal farm income, double the comparable figure for urban dwellers. Research \& Technical Servs. Dep't, Int'l Ass'n of Assessing Officers, supra note 44, at 1.
\item Id. at 1-2.
\item Between 1950 and 1972, the United States lost 6.1% of its taxable farmland; 17 states lost more than 20\%; 9 states more than 30\%; 4 states more than 40\%; and 2 states, New Hampshire and Rhode Island, more than 50\%. Id. at 11-12.
\end{enumerate}
\end{footnotesize}
constitutionally or de facto, as in Nebraska. Such laws allow separate classification of agricultural land, and hence, preferential tax assessment treatment. In 1972, an amendment to the Nebraska Constitution allowed the use of Greenbelt Laws and preferential tax assessment for "land dedicated predominately to agricultural use" and "located within an agricultural use zone." In reality, the word "zone" restricted the preferential treatment to urban fringe lands because these lands normally were the only ones "zoned" for agricultural purposes.

In spite of the constitutional restrictions, however, agricultural land outside the urban fringe received de facto preferential treatment. In unzoned areas, county assessors used their own judgment to determine agricultural assessment, relying on the Nebraska Department of Revenue manuals for guidance. As a result, definitions of agricultural land varied from county to county, and in some cases led to arbitrary classifications.

This practice of locally determined agricultural land value also did not comport with the Nebraska Supreme Court's dictate that actual value should correspond to fair market value. Instead, even though section 77-112 of the Nebraska Revised Statutes outlined seven criteria to use for determining land value, the Nebraska Department of Revenue manual emphasized just one of those criteria—the earning capacity of the property.

this policy. Interview with Dr. Bruce Johnson, Agricultural Economist, U. of Neb.-Lincoln, in Lincoln, Nebraska (Aug. 13, 1985).


52. AG LAND TASK FORCE OF COMM. ON REVENUE, supra note 13, at 7.

53. Memorandum from Bill Lock to Ag Land Task Force (n.d.) (Definition of Agriculture for Property Tax), attached as Appendix II-3 to AG LAND TASK FORCE OF COMM. ON REVENUE, supra note 13. The law concerning the preservation of areas around cities is typically known as the "Greenbelt law." See NEB. REV. STAT. §§ 77-1343 to -1398 (Cum. Supp. 1984).


55. Id. § 77-1344. The law also provides a "rollback" provision which removes the tax benefit if the land is converted to a nonagricultural use. Id. § 77-1348. The owner must then pay an amount equivalent to the difference between what the normal high agricultural evaluation would have been without the preferential treatment and the evaluation with the preferential treatment. See AG LAND TASK FORCE OF COMM. ON REVENUE, supra note 13, at 9.

56. AG LAND TASK FORCE OF COMM. ON REVENUE, supra note 13, at 12. Fewer than half the Nebraska counties have agricultural zoning in effect. Id.

57. Id.

58. See note 34 supra.

59. See AG LAND TASK FORCE OF COMM. ON REVENUE, supra note 13, at 12-13.


Not only was there disparity in the agricultural classifications, but also such land had traditionally been undervalued in comparison to other tangible property within each class. For example, residential property in 1983 was valued at 82.91% of the market value, commercial and industrial property at 95.22%, while agricultural improved land was at 50.04%, and agricultural unimproved land at 41.91%. Such nonuniform implementation of the state’s laws ultimately led to Kearney Convention Center, Inc. v. Buffalo County Board of Equalization, a landmark case that challenged the constitutionality of the undervaluing process and ultimately led to a constitutional revision.

Kearney and Its Aftermath

In 1981, the Buffalo County Assessor appraised building improvements on the Kearney, Nebraska, Holiday Inn, owned by the Kearney Convention Center, Inc., according to the Marshall and Swift Manual. This manual was one of two used to value all land in the county. The other was the Nebraska Agricultural Land Valuation Manual used solely to value agricultural land at a rate preferential to that of commercial land.

62. See Note, supra note 11, at 316. Speaking before the Constitutional Revision and Recreation Commission on August 16, 1984, Nebraska Governor Robert Kerrey indicated this undervaluation had been the practice in Nebraska for over 100 years. Id. at 316 n.19. Indeed, it has been such a widespread practice that the amicus curiae brief submitted in Kearney Convention Center, Inc. v. Buffalo County Board of Equalization, 216 Neb. 292, 344 N.W.2d 620 (1984), urged the court to take judicial notice of the fact. See Brief for the Amici Curiae at 5, Kearney Convention Center. It should be noted that there was nothing sinister in this undervaluation process. Most assessors were assessing at a realistic rate; that is, most assessors were following the Nebraska Department of Revenue’s Agricultural Land Valuation Manual, which was already using an income-producing valuation approach. They were valuing the land according to what it was producing, not according to its market value. When land values rose dramatically in the late 1970’s, the assessment values also should have risen dramatically if the valuation had been done on a market-valuation system. But since the valuation was done using an income-producing approach, the assessment values did not rise. Hence the discrepancy was successfully challenged in the Kearney Convention Center case. Telephone interview with Dr. Bruce Johnson, Agricultural Economist, U. of Neb.-Lincoln, in Lincoln, Nebraska (Nov. 8, 1985).

63. Brief for Amici Curiae at 5-6, Kearney Convention Center.


65. Id. at 293-94, 344 N.W.2d at 621. This was the first year that the manual was used. Prior to 1981, building improvements had been assessed according to the Nebraska Building Construction Manual. However, that manual had not been updated to account for inflation. Consequently, when the updated Marshall and Swift Manual was used in the assessment process, it led to a drastic rise in the convention center’s taxes. Id. at 294, 344 N.W.2d at 621. The increase was from $2,072,730 to $3,332,065, an increase of approximately 53%. Id.

66. See Note, supra note 11, at 318. The Marshall and Swift Manual valuation technique centered on the cost of reproducing the improvement less depreciation. Id. at 294, 344 N.W.2d at 621. The Nebraska Agricultural Valuation Manual used a land-
When the Kearney Convention Center ("Convention Center") realized that its taxes were being raised significantly, it filed a written protest with the Buffalo County Board of Equalization. The Convention Center conceded that the actual value of its property had been accurately determined. It, however, claimed that the valuation method used for other land in the same class had uniformly underestimated the other land. Therefore, its property had been unjustly and unfairly assessed in comparison to other property in the county.

After the board of equalization refused to lower the Convention Center's valuation, the Convention Center appealed to the District Court for Buffalo County. The district court dismissed the petition and affirmed the county board's decision.

On appeal, the Nebraska Supreme Court reversed the district court's decision and held for the Convention Center. The supreme court reasoned that the Nebraska and the United States Constitutions demanded uniform taxation of all tangible property. Uniformity would be achieved by the valuing of all tangible property at its actual value. It, however, would be "permissible to reasonably classify property for tax purposes and to use different methods to determine assessed values for different classifications of property [as long as the] results reached shall be uniform and proportionate."
The court, however, found that no correlation was shown between the assessment methods used for property classified as farmland and property classified as real estate, even though these tangible properties were in the same class for taxation purposes.\footnote{78} Furthermore, the discrepancy between assessments for farmland and commercial improvements was not due to the county assessor's error in judgment but was rather a deliberate and intentional discrimination systematically applied throughout the county.\footnote{79} The supreme court then remanded the case to the district court to have the actual value of the Convention Center's property reduced by forty-four percent in order to equalize its assessment with that of other property in Buffalo County.\footnote{80}

Basically, \textit{Kearney Convention Center} did not break any new legal ground because the court had dealt with the same issue in previous cases, such as \textit{Grainger Brothers Co. v. County Board of Equalization},\footnote{81} and \textit{Konicek v. Board of Equalization}.\footnote{82} The taxpayers in each case claimed that their respective properties were not uniformly taxed in proportion to other tangible property within the county.\footnote{83} In both cases, the Nebraska Supreme Court found the assessments to have been discriminatory and reduced the taxpayers property valuations,\footnote{84} just as it did in \textit{Kearney Convention Center}.\footnote{85}

\footnote{78. \textit{Kearney Convention Center}, 216 Neb. at 302-03, 344 N.W.2d at 625.}
\footnote{79. \textit{Id.} at 300, 344 N.W.2d at 624.}
\footnote{80. \textit{Id.} at 303, 344 N.W.2d at 626. The supreme court found that farmland in Buffalo County was assessed at only 44% of its actual value, whereas the corporation's improved real property was assessed at its full actual value. \textit{Id.} The case of \textit{Sioux City Bridge Co. v. Dakota County}, 260 U.S. 441 (1923), sets out the principle that "the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of the statute." \textit{Id.} at 446.}
\footnote{81. 180 Neb. 571, 144 N.W.2d 161 (1966).}
\footnote{82. 212 Neb. 648, 324 N.W.2d 815 (1982).}
\footnote{83. \textit{Konicek}, 212 Neb. at 649, 324 N.W.2d at 816; \textit{Grainger Bros. Co.}, 180 Neb. at 573-74, 144 N.W.2d at 164. The argument in \textit{Grainger Bros. Co.} revolved around the difference in valuation between commercial and residential real estate, whereas in \textit{Konicek}, the argument centered on the fact that improved farmland was valued at a higher rate than unimproved farmland. \textit{Konicek}, 212 Neb. at 649, 324 N.W.2d at 816; \textit{Grainger Bros. Co.}, 180 Neb. at 573-74, 144 N.W.2d at 164.}
\footnote{84. \textit{Konicek}, 212 Neb. at 650, 324 N.W.2d at 816-17; \textit{Grainger Bros. Co.}, 180 Neb. at 584-86, 144 N.W.2d at 169-71.}
\footnote{85. \textit{Kearney Convention Center}, 216 Neb. at 300-04, 344 N.W.2d at 624-26.}
Why then did the *Kearney Convention Center* case have such far-reaching ramifications?86 Several Nebraska senators supported the Kearney Convention Center in an *amicus curiae* brief, urging the court to hold for the Convention Center.87 The lawmakers felt that the intentional and systematic undervaluation of agricultural land in relation to other property in the same class unlawfully shifted the property tax burden to that other property.88 And, even though this case was a narrow case involving only the convention center, the decision in the case raised a major issue of statewide concern and impact—that all property in the same class must be valued uniformly and proportionately.89

The Nebraska Department of Revenue, “[s]ensing that the court would continue to strike down such discrepancies in property values, and seeking to avoid an avalanche of lawsuits by urban property owners requesting reductions of their land valuations . . . concluded that its only alternative was to update the Land Manual.”90 This updating resulted in an increase of approximately sixty percent in the assessed tax value of agriculture land.91 This development exacerbated the already depressed farm economy,92 and led to a push by agriculture organizations to get a constitutional amendment passed that would allow for separate classification of farmland for property tax reasons.

**AMENDMENT FOUR**

Frightened by the projected increase resulting from the updated manual, farm organizations approached Governor Robert Kerrey for his support93 in amending the Nebraska Constitution so as to allow for the separate classification of farmland. He agreed to support their constitutional amendment efforts but informed farmers that

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86. The *Kearney Convention Center* case ultimately led to constitutional amendment four, which, in turn, is implemented by L.B.'s 30 and 271.
87. See Brief for the Amici Curiae at 14, *Kearney Convention Center*. The state senators involved were John DeCamp, Bernice Labedz, Vard Johnson, James Pappas, Loran Schmit, Marge Higgins, Peter Hoagland, and Chris Beutler. *Id.* at 1.
88. *Id.*
89. *Id.*
90. See Note, *supra* note 11, at 334-35.
91. *Id.* The increase occurred because one part of the formula used in valuing the land became dependent upon market value. For an in-depth discussion, see *id.* at 335 n.150.
93. Interview with Bill Kerrey, Governor Robert Kerrey's aide, in Lincoln, Nebraska (Aug. 19, 1985). Dick Mercer, a farmer from Kearney, Nebraska, spearheaded this campaign. Some of the groups in favor of this amendment were Nebraska Farm Bureau Federation, Nebraska Stock Growers Association, Nebraska Livestock Feeders Association, and the Farmers Union of Nebraska. See Note, *supra* note 11, at 336 n.160.
they would first have to gain public support. Proponents lobbied heavily for the bill, arguing that the status quo in the property tax area would not change.

Finally, on August 16, 1984, Governor Kerrey called a special session of the Unicameral to address the agricultural land tax valuation issue. The Unicameral then passed amendment four, which amended article VIII, section 1 of the constitution to read: "The Legislature may provide that agricultural or horticultural purposes shall constitute a separate and distinct class of property for purposes of taxation." This amendment was placed on the November ballot, and was passed by a margin of two to one. The amendment allowed the legislature to set up a system which valued agricultural land other than on the basis of market value and at a valuation rate different from commercial or residential land.

LEGISLATIVE BILLS 30 AND 271

Once Nebraska voters had passed amendment four, the legislature had to find a way to implement this new valuation system. In January, 1985, during its regular session, the legislature introduced eight bills, two of which, L.B.'s 30 and 363, were short-term, one-year solutions to the implementation problem; the other six, L.B.'s 270, 271, 364, 365, 366, and 409, dealt with a long-term approach. All of the bills were assigned to be heard by the Revenue Committee on January 28, 1985.

94. Interview with Bill Kerrey, Governor Robert Kerrey's aide in Lincoln, Nebraska (Aug. 19, 1985).
95. Omaha World Herald, Apr. 8, 1985, at 26, col. 1; Lincoln Journal, Feb. 5, 1985 at 8 col. 1. It must be noted that the term "status quo" was never defined, and it came to mean different things to different people. See notes 189-93, 219-224, and accompanying text infra.
96. See Note, supra note 11, at 335 n.154.
97. Id. at 335. The lawmakers voted 32 to 16 to pass the resolution. Id.
98. Id. at 317.
99. Amendment 4 was passed by a vote of 402,515 for, and 171,558 against. Omaha World Herald, Nov. 8, 1984, at 22, col. 6. The amendment was approved by voters on November 6 in all 93 counties with the heaviest opposition in Douglas, Lancaster, and Sarpy counties. But even in these primarily urban counties it still passed two to one. Id. at 22, col. 1.
100. Lincoln Star, Jan. 19, 1985, at 8, col. 1. Time was short for the legislators to arrive at a permanent, workable valuation system by April 1, if the bill was to be used for 1985 valuations. The county boards and county assessors needed time to implement the new changes and to notify the property owners of the changes. Ag Land Valuation Bills: Hearings on L.B.'s 30 and 271 Before the Comm. on Revenue, 89th Leg., 1st Sess. 4 (Jan. 28, 1985) (statement of Sen. Carsten, co-sponsor of L.B. 30) [hereinafter cited as Hearings]; Floor Debate on L.B. 30, Neb. Unicameral, 89th Leg., 1st Sess. 486 (Feb. 4, 1985) (statement of Sen. Hefner, co-sponsor of L.B. 30).
101. AG LAND TASK FORCE OF COMM. ON REVENUE, supra note 13, at 2.
102. Id.
L.B. 30—A SHORT-TERM ANSWER

Senator Cal Cartsen, one of the sponsors of L.B. 30, indicated that the bill's intent was to keep valuations at the level determined by the method outlined in the 1984 Nebraska Agricultural Land Valuation Manual. The Revenue Department, along with county officials, assessors, and farm groups, favored this bill. Subsequently, on February 13, 1985, the legislature passed this short-term solution by a forty-seven to zero vote with an emergency clause making the law effective immediately after the governor signed it.

Throughout the 1985 tax year, valuation remained the same as it had been for 1984. The problem of a long-term solution, however, remained unsolved. Sensing the complexity of the problem, several organizations which attended the Revenue Committee hearings urged the committee to appoint a task force to find a workable solution. In response, the committee established the Ag Land Task Force.

103. Hearings, supra note 100, at 3 (statement of Sen. Carsten, co-sponsor of L.B. 30). The other sponsor was Senator Elroy Hefner.
104. Id. at 59-60 (statement of Donna Karnes, Nebraska State Tax Commissioner). Ms. Karnes stated: "L.B. 30 which is the short-term solution that would permit the assessors to use the '84 manual for next tax year, wins our favor." Id. at 60.
105. Id. at 74-75 (statement of Jack Mills, Nebraska Association of County Officials).
106. Id. at 80-81 (statement of Robert W. Downer, Banner County Clerk and Assessor).
107. Id. at 87 (statement of Bryce Neidig, President of Nebraska Farm Bureau Federation); id. at 92 (statement of Merle Olson, Registered Lobbyist for the Nebraska Farmers' Union); id. at 94-95 (statement of Ernie Gotschall, Chairman of the Taxation Committee of the Stock Growers Associations); id. at 99-100 (statement of Frank Johannsen, member of the Nebraska Wheat Growers Association); id. at 101 (statement of Marvin McKay, Nebraska Pork Producers); id. at 105 (statement of Norman Hall, Legislative Representative from WIFE (Women Involved in Farm Economics)); id. at 105-06 (statement of Don Hanway, Lobbyist for the State Grange).
108. L.B. 30 was favored over L.B. 363 as a short-term method because L.B. 363 would be based on 60% of the market value outlined in the 1985 manual and this would be more difficult to implement on such short notice. Id. at 60-61 (statement of Donna Karnes, Nebraska State Tax Commissioner). Additionally, the farm groups were leery of the figures used in that manual. Id. at 88-89 (statement of Bryce Neidig, President of Nebraska Farm Bureau Federation).
109. See AG LAND TASK FORCE OF COMM. ON REVENUE, supra note 13, at 2.
113. Floor Debate, supra note 100, at 487-88 (Feb. 4, 1985) (statement of Sen. V. Johnson, Chairman of the Committee on Revenue). See also Hearings, supra note 100, at 76-81 (statements by Jack Mills, Nebraska Association of County Officials and Robert Downer, Banner County Clerk and Assessor).
114. Lincoln Journal, Jan. 30, 1985, at 34, col. 6. Senator Vard Johnson appointed a task force comprised of Senators David Landis, Jerry Miller, Carson Rogers, Univer-
L.B. 271—THE LONG-TERM SOLUTION

The Revenue Committee charged the Ag Land Task Force ("Task Force") with the following responsibilities: (1) exploring alternative methods of valuing agricultural land; (2) developing a recommended method to value such land based, either wholly or substantially, on the earning capacity approach; (3) developing a definition of agricultural land that would preserve the Greenbelt law; and (4) preparing and delivering a report and a drafted bill back to the Revenue Committee by April 1, 1985. To fulfill these responsibilities, the Task Force agreed on the following goals for the bill:

[The bill should provide] simplicity, understandability, rationality, objectivity, maintenance of the status quo statewide for agricultural land, predictability of impact for the present and future, stability of assessed valuations, equitability across agricultural land categories, consideration of the ability to pay and stability over time without legislative tinkering. Additionally the bill should be able to be implemented by 1986, should maintain the virtues of the Greenbelt law and should be ... constitutional.

Types of Agricultural Land Valuation

The Task Force first undertook to look at the different methods of valuing agricultural land. Basically, the issue was how to value an income-producing asset, such as farmland. There are three basic methods used for valuing all types of real estate: the market-analysis approach, the cost-analysis approach, and the earning-capacity approach.

A market-analysis approach or comparable-sales approach is used for valuing most property in the United States. This approach is based upon actual prices paid for similar properties and as-
sumes that an informed buyer will pay no more for the property than the cost of comparable properties. Essentially, the assessor finds a similar piece of property that has been sold recently and sets the value according to that sale.

This market-analysis approach contains several presuppositions: first, that the market will be active enough to provide a fair number of comparable sales; second, that, in the comparable sales, there is a willing buyer and a willing seller—arms-length transactions; and third, that an analogous piece of property can be found. The latter is often difficult because soil classifications vary, as do ground water, rainfall, and cropping patterns. Additional problems with the market-analysis approach arise when the market is thin or the transaction is not arms-length. Unlike residential land where there are many transactions daily, Nebraska agricultural land is basically a thin market as only two to three percent of the land is sold yearly. Because any given property may be sold only once every forty or fifty years, market data are insufficient to determine comparable worth. Furthermore, the farmers’ present economic woes have created an abnormal and artificial situation. Although the amount of land listed for sale has doubled, in many cases sellers have been forced to sell because their notes have been called in for payment. Consequently, the transactions are not arms-length, are not repre-


122. See Floor Debate on L.B. 271, supra note 117 at 4169-70 (statement of Sen. Landis, Chairman of Task Force Committee).

123. Id.

124. See Hearings, supra note 100, at 34 (statement of Dr. Bruce Johnson, Agricultural Economist, U. of Neb.-Lincoln).

125. Telephone interview with Dr. Bruce Johnson, Agricultural Economist, U. of Neb.-Lincoln (Nov. 8, 1985).

126. See Hearings, supra note 100, at 34 (statement of Dr. Bruce Johnson, Agricultural Economist, U. of Neb.-Lincoln).

127. B. JOHNSON & R. HANSON, supra note 45, at i-i. A financial crisis grips most of the United States farming sector. Depressed income levels, heavy debt, and high interest rates have forced many farmers to sell. BUREAU OF BUSINESS RESEARCH, U. OF NEB.-LINCOLN COLLEGE OF BUS. AD., VOL. 40 NO. 485, A PERSPECTIVE ON AGRICULTURAL DEBT IN NEBRASKA 1 (1985). Nebraska ranks sixth in the nation in terms of the amount of agricultural debt. Id. This debt has increased tenfold from just over 1 billion dollars in 1960, to 11 billion dollars in 1983. Id.

128. B. JOHNSON & R. HANSON, supra note 45, at ii.

129. See Floor Debate on L.B. 271, supra note 117, at 4170 (statement by Sen. Landis, Chairman of Task Force Committee). Farm expansion is still the primary reason for buying land, but lower land prices are also an important factor. In contrast, seller-financial problems rank as the dominant reason for selling land. B. JOHNSON & R. HANSON, supra note 45, at ii.
sentative of normal times, and, therefore, cannot yield accurate data for comparison. The second method of valuation is the cost-approach analysis, which is based on the substitution principle. This approach examines the cost of replacing improved land and depends upon the landowner's having a number of improvements on the property for appraisal purposes. This valuation method tends to be more appropriate when buildings and other improvements constitute a majority of the land valued.

The final valuation method, used by the Task Force to implement L.B. 271, is the earning-capacity approach. This approach bases land value on its income-producing capabilities as determined by soil and land type, either irrigated, dryland, or rangeland. In other words, the value will be determined by the land's average production capabilities, not the individual farmer's or rancher's ability to produce from that land. The personal element is thereby removed from the taxation valuation equation.

The Formula

The second responsibility that the Task Force faced was to develop a recommended method, or formula, for valuing agricultural land based on the earning-capacity approach. Each year, the Revenue Department prepares a valuation manual pursuant to section 77-

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130. Id. at i. The land values are presently at their mid-1960's level, and, therefore, can be considered “fire sale prices.” See Floor Debate on L.B. 271, supra note 117, at 4170 (statement by Sen. Landis, Chairman of Task Force Committee).


132. Id.

133. Id.

134. See AG LAND TASK FORCE OF COMM. ON REVENUE, supra note 13, at 21-22. Another name for this approach is the use-value approach, which is the practice of valuing property by its particular use rather than its market value. RESEARCH & TECHNICAL SERVS. DEPT', INT'L ASS'N OF ASSESSING OFFICERS, supra note 44, at 15. It should be noted that this approach was already emphasized in the Nebraska Department of Revenue's Agricultural Land Valuation Manual. NEBRASKA DEPT' OF REVENUE, NEBRASKA AGRICULTURAL LAND VALUATION MANUAL, § 2, at 16 (1980). The Task Force found this approach preferable because it was less costly to implement, because it responded quickly to changing economic conditions, and because the use of market value would be inconsistent with the intent of amendment four. AG LAND TASK FORCE OF COMM. ON REVENUE, supra not 13, at 24-25.

135. See Floor Debate on L.B. 271, supra note 117 at 4168 (statement of Sen. Landis, Task Force Chairman). See also Omaha World Herald, Apr. 3, 1985, at 34, col. 1 (land assessment to be based on its average productivity).

1330 of Nebraska Revised Statutes. For years beginning after 1985, the department will prepare the manual based upon the formula set out in sections 7 to 13 of L.B. 271.

The formula’s basic goal is to help estimate “how much the property will earn during each future year for the life of the asset and to express the value of that income stream in current dollars.” This goal translates into the formula in the following manner:

\[
\text{PRESENT VALUE} = \frac{\text{INCOME STREAM (Future earnings)}}{\text{CAPITALIZATION RATE (Discounting the earnings back to the present)}}
\]

When computing property values, an individual must first work with the top half of the equation—the income stream (see Table A). An individual computes the income stream as follows:

\[
\text{INCOME STREAM} = \text{Gross Receipts (yield of crops per acre \textit{times} price for those crops)} \times \text{Landowner's Net Income Share (the share the landowner receives in relationship to his renters)} \times \text{Cropping Mix.}
\]

137. Neb. Rev. Stat. § 77-1330 (Cum. Supp. 1984). Because of the expense involved, the Task Force made a recommendation that the Revenue Department annually update the manual but only adopt a new one when values of agricultural land decrease or increase five percent or more from values adopted in the last manual. See Ag Land Task Force of Comm. on Revenue, supra note 13, at 44. The legislature adopted this recommendation. L.B. 271 § 13, 89th Leg., 1st Sess., 1984-85 Neb. Laws 431, 438 (codified at Neb. Rev. Stat. § 77-1368 (Supp. 1985)). The manual would also have to meet the requirements of notice, public hearing, and filing specified in chapter 84, article 9, of the Nebraska Revised Statutes. Id. § 14(2), 1984-85 Neb. Laws at 438-39 (codified at Neb. Rev. Stat. § 77-1330 (Supp. 1985)).

138. L.B. 271, §§ 7-13, 1984-85 Neb. Laws at 434-438. The federal government also recognizes the need to value a farm as a farm rather than at the property’s highest and best use. It provides for this special use valuation in § 2032A of the Internal Revenue Code. Like L.B. 271, §§ 2032A(e)(7) and (e)(8) provide for income-stream valuation based on a five-year average and calculated to a present value through the use of capitalization rate. I.R.C. § 2032A(e)(7)-(8) (1985). Unlike L.B. 271, however, the federal statute still relies on comparable property to value the income stream. Id. § 2032A(e)(7)(c).

139. See Ag Land Task Force of Comm. on Revenue, supra note 13, at 23.

140. This process is known as “discounting,” as opposed to “compounding.” For example, in compounding, if someone invested $100 (present value) at 10% compounded annual interest, at the end of a year, he or she would have $110. In discounting, however, one begins with the future value ($110) and determines the present value. To arrive at the present value, divide $110, the future value, by the discount rate of 1.10. This equals $100, the present value:

\[
\frac{\text{Future value}}{1.10} = \frac{110}{1.10} = 100 \text{ (present value)}.
\]

141. See Ag Land Task Force of Comm. on Revenue, supra note 13, at 35A.
Step I: Figuring Gross Receipts:

First, an individual must determine the most recent five-year average yield of crops per acre for each county and per each major crop raised within the county.\textsuperscript{142} Next, an individual derives county crop yield estimates by soil class, using relative productivity levels.\textsuperscript{143} Finally, the acreage yields are multiplied by the average commodity prices received over the most recent five years, resulting in the amount of gross receipts.\textsuperscript{144}

Step II: Landowner's Income Share:

The total is then multiplied by the landowner's income share. In short, the estimate of the landowner's income share is the landowner's total percentage of receipts less expenses incurred by the landowner. For example, if there is a sixty-forty split,\textsuperscript{145} the landowner's forty percent share is multiplied by total receipts to arrive at the landowner’s share of crop receipts. From these receipts, the landowner’s expenses\textsuperscript{146} are subtracted to determine the landowner’s net return.

Step III: Cropping Mix:

The landowner’s net return is then multiplied by the cropping mix. The cropping mix factor recognizes that a given parcel of

\textsuperscript{142} See AG LAND TASK FORCE OF COMM. ON REVENUE, supra note 13, at 36. This information is published annually by the Nebraska Crop and Livestock Reporting Service in conjunction with the United States Department of Agriculture's Statistical Reporting Service ("SRS"). \textit{Id.}

\textsuperscript{143} \textit{Id.} This information is available from the United States Department of Agriculture's Soil Conservation Service Office ("SCS"). When rangeland is involved, levels of carrying capacity—the number of head of livestock that an acre of land can support—will serve as production levels for rangeland. This information is also developed by the SCS. \textit{Id.}

\textsuperscript{144} \textit{Id.} Crop prices are derived from the Statistical Reporting Service ("SRS") for each Crop Report District ("CRD"). For rangeland and pasture prices, five-year average cash rental rates by CRD, as maintained by the Department of Agricultural Economics, University of Nebraska-Lincoln, are used. For rangeland, these rental rates will be expressed on an animal per unit per month basis. In areas where pasture is not generally rented out in this fashion, the rental rates will be expressed on a per acre average. \textit{Id.}

\textsuperscript{145} \textit{Id.} at 37. The conventional share for a landowner in Nebraska is a 60-40 split on dryland acreage. In other words, the tenant receives 60% of the crop receipts, while the landowner receives 40%. \textit{Id.}

\textsuperscript{146} \textit{Id.} Using the current crop budget series maintained by the Department of Agricultural Economics, University of Nebraska-Lincoln, and other data sources, landowner expenses are estimated as to each crop and within cash CRD. Such expenses include the landowner's share of fertilizer and chemical pesticides as well as fixed costs such as depreciation, insurance, and property taxes. \textit{Id.} In the case of rangeland and pasture, typical fixed expenses are subtracted from the gross cash rent, which leaves a net cash rent equivalent to the per acre net returns derived from cropland. \textit{Id.} at 38.
cropland does not stay in a single crop year after year. A cropping rotation though is used to varying degrees. Therefore, it is necessary to determine each county's average cropping mix for the past five years. This average is then multiplied by the landowner's net return, with the result being the income stream.

The following example summarizes the calculation of the equation's income stream (see Table B):

Irrigated cropland in Buffalo County is used for three major crops—corn, grain sorghum, and soybeans. The five year average county yields are 124.0 bu./ac. corn, 80.6 bu./ac. grain sorghum, and 43.0 bu./ac. soybeans. The five year average prices received for these crops in this district (Central Crop Reporting District) are $2.82/bu., $2.48/bu., and $6.30/bu. respectively. Thus, total receipts by crop and type of irrigation are as appears in column (5). For center pivot irrigation, the conventional share is 50-50 while for gravity irrigation, the share is 60-40. However, the expenses incurred by landlords under such shares reduce the net return to a smaller amount. In the case of center pivot irrigation, the landlord will generally pay for half of the seed, fertilizer, chemicals, and fuel for the irrigation system. These expenses, in addition to a fixed cost for the pivot distribution system (which is not part of the real estate) and miscellaneous expenses of ownership reduce the net share to an average of 25.0 percent of total receipts for corn production. For gravity irrigated corn, the landlord typically shares 40 percent of the fertilizer, chemicals and irrigation fuel costs. But because of not having the fixed cost of a pivot distribution system, the expense total is less than with a pivot system. As a result, the landlord net share of receipts is higher for corn production under gravity—30.1 percent. The above process is duplicated for each crop, yielding a net dollar return to landowners of $17,269,890 from a cropping array consisting of 178,800 acres. Thus, the average per acre net returns are $96.54 per acre for all irrigated land in Buffalo county.

After an individual has determined the amount of the income stream, he must then apply the capitalization rate. The bill's rate, used to discount the future income-stream flow to its present value, is a blend of debt and equity (see Table C). The amount of each portion blended shall be based on the relationship of real estate debt to real estate owner equity for Nebraska's farming sector. The debt

147. Id. This can be determined from the SRS statistical survey. Id.
148. See id. at 38-39.
149. Id. at 20.
150. Id. The novel concept of the blended capitalization rate was introduced by Dr. Johnson. Ohio is the only other state which uses a blended rate. Id.
portion is then multiplied by the most recent five-year average of the Federal Land Bank's interest rate in the Omaha district; the total reflects the cost of borrowed money in the marketplace.\textsuperscript{151} The owner equity portion is multiplied by the most recent five-year average of six-month United States Treasury Bill interest rates;\textsuperscript{152} the total reflects the amount of interest earned on an alternative nonland investment.\textsuperscript{153} After figuring the debt and equity portions of the capitalization rate, they are added together to determine the blended capitalization rate.

Inputting the figures from Tables B and C results in the following assessed property values:

\[ \frac{96.54 \text{ (INCOME STREAM)}}{.11 \text{ (CAPITALIZATION RATE)}} = 878 \text{ (Present Value)} \]

Once calculated, the present value, which is the property's assessed value, is multiplied by the assessment rate; that total must then be multiplied by the local mill levy to determine the total property tax liability.\textsuperscript{154}

\textit{Definition of Agricultural Land}

Once the Task Force had developed the formula, it had to define what type of property would be eligible for assessment under the law.\textsuperscript{155} Prior to L.B. 271, the only definition of taxable agricultural land existed in the Greenbelt law,\textsuperscript{156} which assumed that zoning laws were in effect for farmland.\textsuperscript{157} Because most farmland outside the Greenbelt area was not zoned and as there was no other uniform statewide definition of agricultural land,\textsuperscript{158} the Task Force set out to define agricultural land for property tax law purposes. The commit-

\begin{footnotesize}
\textsuperscript{151} Id. at 40.  
\textsuperscript{152} Task Force members Dr. Ray Supalla and Dr. Bruce Johnson contributed the new concept of using real versus nominal interest rates in computing the capitalization rate, evidenced by the use of the Treasury Bill rates and the Federal Land Bank rates. Id.  
\textsuperscript{153} Id. at 40. This ratio is part of a statistical series maintained by the United States Department of Agriculture and is updated annually. Id. Presently, this rate is 11%. Interview with Dr. Bruce Johnson, Agricultural Economist, U. of Neb.-Lincoln, and co-author of L.B. 271's formula, Lincoln, Nebraska (Aug. 13, 1985).  
\textsuperscript{154} See notes 31-37 and accompanying text supra.  
\textsuperscript{155} See AG LAND TASK FORCE OF COMM. ON REVENUE, supra note 13, at 11. Besides defining the type of property eligible for assessment, the income-producing method possesses two other important features. One is a provision describing the computation of income, L.B. 271, § 9, 1984-85 Neb. Laws at 453 (codified at NEB. REV. STAT. § 77-1364 (Supp. 1985)), and the other is a provision describing the development of the capitalization rate. Id. § 10, 1984-85 Neb. Laws at 436 (codified at NEB. REV. STAT. § 77-1365 (Supp. 1985)).  
\textsuperscript{156} Memorandum from Bill Lock, supra note 53.  
\textsuperscript{157} See notes 50-56 and accompanying text supra.  
\textsuperscript{158} See Memorandum from Bill Lock, supra note 53.
\end{footnotesize}
tee tried to include in the definition of agricultural land the past uniform practices of the Department of Revenue and county assessors, as well as agricultural uses that had been outlined in the Greenbelt law and other Nebraska laws.\footnote{AG LAND TASK FORCE OF COMM. ON REVENUE, supra note 13, at 41.} The Task Force also included many of the principles found in other state laws,\footnote{Memorandum from Bill Lock, supra note 53.} primarily:

(1) Minimum acreage requirements. Basically, land is considered agricultural when it exceeds twenty acres and produces agricultural products.\footnote{L.B. 271, § 4(1)(a), 1984-85 Neb. Laws at 433 (codified at Neb. Rev. Stat. § 77-1359(1)(a) (Supp. 1985)).} The purpose of this minimum requirement is to limit the ability of small acreages to receive the benefits of L.B. 271.\footnote{Memorandum from Bill Lock, supra note 53.} However, parcels of twenty acres or less may still qualify as agricultural land if it can be proven that gross sales of agricultural products produced from the land exceed $1,000.\footnote{L.B. 271, § 5, 1984-85 Neb. Laws at 433-34 (codified at Neb. Rev. Stat. § 77-1360 (Supp. 1985)).}

(2) Historical use provision. To qualify as agricultural land, the property must have been used in agricultural production in at least two of the last three years.\footnote{Id. § 4(1)(c)(ii), 1984-85 Neb. Laws at 433 (codified at Neb. Rev. Stat. § 77-1359(1)(c)(ii) (Supp. 1985)).} The purpose of this historical use provision is to limit a property owner's ability to retain preferential tax treatment for agricultural land converted to other use.\footnote{Memorandum from Bill Lock, supra note 53.}

(3) Agricultural activities the state wishes to recognize. These activities include, but are not limited to, the growing of grain and feed crops; the growing of forages and sod crops; animal production including the breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry; and the growing of fruits, vegetables, flowers, seeds, grasses, trees, and other horticultural crops.\footnote{L.B. 271, § 4(2), 1984-85 Neb. Laws at 433 (codified at Neb. Rev. Stat. § 77-1359 (Supp. 1985)).}

\textit{Advisory Committee}

The Task Force's last recommendation was the creation of an eight-member Agricultural Land Valuation Advisory Board.\footnote{Id. § 11(1), 1984-85 Neb. Laws at 436-37 (codified at Neb. Rev. Stat. § 77-1366 (Supp. 1985)). Actually the task force recommended a seven-member board, but the legislature added a county board member to the list making it an eight-member board. Id.} The
governor is to appoint, with legislative approval,168 seven members and a chairperson, the Director of Agriculture,169 who will serve four-year terms.170 The Board will be required to meet at least twice annually,171 to review, recommend, and participate. The Board will review the data used to develop the Department of Revenue manual, the manual itself and the values produced by the manual.172 It will then make written recommendations to the tax commissioner and the legislature as to the necessary improvements in the manual.173 Finally, the board will participate in public hearings with the tax commissioner whenever the Department of Revenue promulgates a revised manual.174 After the Task Force made these recommendations to the Revenue Committee, the Committee sent L.B. 271 with the incorporated changes to the full Unicameral for debate.

L.B. 271—THE DEBATE

L.B. 271 engendered considerable debate before and after its passage. Since agricultural land valuation has such far-reaching effects for Nebraska, it is imperative to understand the “pros” and “cons” of this debate to understand the bill better.

Cons

Opponents of L.B. 271 felt that the legislators did not make an informed choice on the bill because they were “rushed” into a vote on it.175 Opponents argued that the legislators should have taken another year to study the bill to ensure a simple, workable solution to

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168. Id. The initial members of the board appointed by Governor Kerrey on July 5, 1985, were Janet Edwards of St. Paul, Howard County Assessor; Dale Kastens of Lodgepole, Garden County Commissioner and wheat farmer; Roger Wehrbein of Plattsmouth, an agricultural crop producer; Rod Cathcart, Lincoln attorney; George Chilton of Gordon, livestock producer; Ray Supalla, U. of Neb.-Lincoln, agricultural economist; and Bruce Smith of Scottsbluff, a businessman. Press Release from Neb. Dep’t of Revenue (July 5, 1985).

169. L.B. 271, § 11(1)(g), 1984-85 Neb. Laws at 437 (codified at NEB. REV. STAT. § 77-1366(1)(g) (Supp. 1985)).

170. Id. § 11(3), 1984-85 Neb. Laws at 437 (codified at NEB. REV. STAT. § 77-1366(3) (Supp. 1985)).

171. Id. § 11(4), 1984-85 Neb. Laws at 437 (codified at NEB. REV. STAT. § 77-1366(4) (Supp. 1985)).

172. Id. § 12(1)-(3), 1984-85 Neb. Laws at 437 (codified at NEB. REV. STAT. § 77-1367(1)-(3) (Supp. 1985)).

173. Id. § 12(4)-(6), 1984-85 Neb. Laws at 437 (codified at NEB. REV. STAT. § 77-1367(4)-(6) (Supp. 1985)).

174. Id. § 12(7), 1984-85 Neb. Laws at 437 (codified at NEB. REV. STAT. § 77-1367(7) (Supp. 1985)).

such an important problem as agricultural land valuation.\textsuperscript{176} They felt that confusion surrounded the bill and its ramifications—particularly where the formula was concerned.\textsuperscript{177} The chief complaint about the bill was the complexity of its formula. Opponents found the formula not only to be difficult to understand, and therefore hard to challenge,\textsuperscript{178} but also to be based on unsound economic assumptions which would lead inevitably to unpredictable results.\textsuperscript{179}

Due to this unpredictability, opponents were uncomfortable with eliminating the tried-and-true method of market analysis in favor of the new method of land-use valuation on which the formula would be based.\textsuperscript{180} They argued that both systems should be maintained because the market-analysis approach was simple to understand and was a system with which the public identified.\textsuperscript{181} Moreover, opponents reasoned that the new land-use valuation system had not yet proven itself workable.\textsuperscript{182} Opponents contended that, if both systems were kept, comparisons could be made between the two to prove to the public that, even though the farmer's land was being valued at a lesser rate than residential and commercial property, he was not actually receiving a tax break.\textsuperscript{183}

Opponents further claimed that L.B. 271 will be unconstitutional because its application will result in nonuniformity within a class.\textsuperscript{184} Because amendment four did not repeal the uniformity clause of the Nebraska Constitution\textsuperscript{185} but simply permitted the legislature to value agricultural land as a separate class, opponents reasoned that land within each class would still have to be valued “uniformly and proportionately.”\textsuperscript{186} For example, the classifications of rangeland, dryland, and irrigated land within the agricultural class would still
have to be treated alike. This uniform treatment could not be accomplished by using only one capitalization rate, opponents argued, because a single rate would not accommodate different returns for different types of land. Opponents claimed that nonuniformity would result within the agricultural class itself, and that the valuation process via the formula would be unconstitutional.

Another complaint was that the bill did not do what it was supposed to do: implement amendment four. The chief issue behind this objection was that Nebraskans were promised by amendment four proponents that a tax status quo would be maintained. Yet, opponents asserted that the implementation of L.B. 271 would bring radical changes within counties. Some individual farmers, for example, would pay as much as sixty-five percent more in taxes, while others would pay twenty-seven percent less. In those areas where agricultural taxes would go down, urban taxes would go up, straining local mill levies. Clearly, opponents argued, the status quo would not be maintained.

In addition to the concerns regarding the bill’s content and effect, opponents were concerned with its administration. The Department of Revenue, which will produce the manual from which property tax valuations will be made, will now oversee the assessment process. Opponents felt that the assessment process should have been kept in the hands of the local assessors where it had been traditionally. Opponents felt that local assessors and boards of equalization would no longer have a say in the assessment process.

Critics of L.B. 271 also believed that the bill denies the taxpayer constitutional due process because the formula is complex, and there-

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(response to legal questions), attached as Appendix I-I to AG LAND TASK FORCE OF COMM. ON REVENUE, supra note 13.

187. Interview with Jerry Knoche, Nebraska Dep’t of Revenue, in Lincoln, Nebraska (Aug. 20, 1985). It should be emphasized that Mr. Knoche is not an opponent of the bill, but he simply indicated that the single capitalization rate could lead to a constitutional problem. Id.

188. Id.


190. Id. See also notes 219-21 and accompanying text infra.


196. Id.
Opponents further argued that the centralization of the assessment process makes it difficult for the taxpayer to appeal, because the statute itself does not provide for an appeal process.

Pros

Proponents of L.B. 271 claimed that amendment four permitted an immediate solution to the agricultural land valuation question. By maintaining the 1984 valuation level during 1985, as was provided by L.B. 30, the legislature was “flying in the face of the Constitution.” Freezing land valuations for a second year because legislators were confused or insecure with the bill would likely provoke a lawsuit. If the courts found the bill unconstitutional, the 1985 manual and its high valuation level would have to be used. Besides, they claimed that L.B. 271 “is a work product that probably is one of the better crafted pieces of legislation in the Legislature, because it has been gone through so carefully.”

Even though the bill had been crafted carefully, proponents recognized the complexity of the formula. They, however, believed that it could be mastered with a little effort. Moreover, the data on which the formula is based are broader and more standardized than the market-analysis approach data had been. The formula is based on the land’s production capabilities, not on the farmer’s ability

198. Id.
201. Id. at 5277.
202. Id. at 5278. It is likely that a property owner who was dissatisfied with keeping the 1984 manual valuation in place longer than was provided for by L.B. 30, the interim bill, could have brought a constitutional challenge on the ground that amendment four mandated that a change be made immediately.
204. Floor Debate on L.B. 271, supra note 117, at 4706 (May 3, 1985) (statement by Sen. V. Johnson, Chairman of Revenue Committee). The legislature felt that this carefully crafted work product brought Nebraska in line with adjoining states whose systems reflect the earning capacity of agricultural land. L.B. 271, § 3(2)(c), 1984-85 Neb. Laws at 432 (codified at NEB. REV. STAT. § 77-1358(2)(c) (Supp. 1985)).
207. Interview with Senator David Landis, Chairman, Ag Land Task Force of Committee on Revenue, in Lincoln, Nebraska (Aug. 20, 1985).
to produce from that land.

Proponents argue that removing the personal element, and therefore, using a broader standardized statistical base, stabilizes the assessment process and produces a more predictable tax liability.

Because the tax liability is more predictable, there is no need to maintain the market-analysis approach in conjunction with the new land-use valuation process. Besides, keeping both systems would be costly, and it might appear to the public that the farmers were getting a tax break, especially if there was a discrepancy between the two valuation systems, and the farmer was allowed to pay the lower of the two assessments.

Proponents also disputed the assertion that the bill would have unconstitutional results. They agreed that amendment four did not repeal the uniformity requirement in taxation. However, they noted that the Nebraska Supreme Court has recognized that absolute and perfect uniformity is impossible within the taxing system. As long as the method used correlates to some common standard of value and is not intentionally and systematically discriminatory, the courts are reluctant to involve themselves in what they view as political judgment issues or technical appraisal issues. Only when the system is clearly arbitrary, capricious, and contrary to law, as under the facts of the Kearney Convention Center case, will the courts respond. Consequently, as long as the new valuation method is applied under a reasonable standard of uniformity, the courts will be satisfied.

Further, as to the claim that L.B. 271 did not carry out the mandate of amendment four by maintaining the status quo, the proponents countered that this contention's validity depended upon which definition of status quo was used. To some people, status quo

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211. *Id.*
212. *Id.*
214. LeDioyt v. County of Keith, 161 Neb. 615, 621, 74 N.W.2d 455, 460 (1956).
218. *See id.* at 302, 344 N.W.2d at 625.
219. Interview with Senator David Landis, Chairman, Ag Land Task Force of Committee on Revenue (Aug. 20, 1985).
meant that there would be no change within a county;\textsuperscript{220} to others, it meant that the valuation system would remain on the market theory.\textsuperscript{221} To the Ag Land Task Force, it became apparent, because of the historical undervaluation of agricultural land and its resulting inequities, that only a statewide status quo could be maintained.\textsuperscript{222} The proponents referred to the Ag Land Task Force definition as proof that the amendment four promise had been kept. The statewide ratio of urban property tax to agricultural property tax would remain virtually the same.\textsuperscript{223} Therefore, because there had been no shift in taxation responsibility from rural to urban, the status quo had been maintained.\textsuperscript{224}

Proponents admitted that the status quo would change within counties,\textsuperscript{225} but whether a person's tax liability would change would depend not only upon the valuation of the land, but also upon local budget demands.\textsuperscript{226} If a taxpayer's valuation would increase, for example, his tax liability still could remain the same if the local budget demands would decrease, and thereby decrease the mill levy.\textsuperscript{227} Even though urban taxes might rise due to decreasing agricultural taxes under L.B. 271, taxes might have risen anyway as a result of decreased agricultural tax revenues because of the depressed farmland prices.\textsuperscript{228} Furthermore, changes would not be a result of the formula as much as a correction of past inequities within the taxation system.\textsuperscript{229} Proponents stated that, once the initial upheaval is over, the assessment system will be more equitable from county to county and across the state.\textsuperscript{230}

The proponents defended not only the content and effect of the bill, but also its administration. The bill does not unconstitutionally delegate taxing authority to the Department of Revenue: the department will not be exercising the taxing power but will be simply im-

\begin{itemize}
\item\textsuperscript{220} Joyce, \textit{Ag Land Valuation Supported}, Lincoln Star, Apr. 5, 1985, at 15, col. 3.
\item\textsuperscript{221} Floor Debate on L.B. 271, \textit{supra} note 117, at 4184 (Apr. 26, 1985) (statement by Sen. Wesley).
\item\textsuperscript{222} Omaha World Herald, Apr. 8, 1985, at 26, col. 1.
\item\textsuperscript{223} \textit{Id.} The average statewide impact would be a 1.9\% decrease in farmland valuations. \textit{Id.}
\item\textsuperscript{224} Omaha World Herald, Apr. 2, 1985, at 16, col. 1.
\item\textsuperscript{225} Stingley, \textit{Proposal to Change Farmland Valuation Aims for Status Quo}, Omaha World Herald, Apr. 2, 1985, at 18, col. 2.
\item\textsuperscript{226} Floor Debate on L.B. 271, \textit{supra} note 117, at 4693 (May 3, 1985) (statement by Sen. Rogers).
\item\textsuperscript{227} See notes 31-37 and accompanying text \textit{supra}.
\item\textsuperscript{228} Floor Debate on L.B. 271, \textit{supra} note 117, at 4169 (Apr. 26, 1985) (statement by Sen. Landis, Chairman).
\item\textsuperscript{229} Omaha World Herald, Apr. 8, 1985, at 26, col. 2.
\item\textsuperscript{230} Floor Debate on L.B. 271, \textit{supra} note 117, at 4705-06 (May 3, 1985) (statement by Sen. V. Johnson).
\end{itemize}
implementing a clearly outlined legislative mandate.\textsuperscript{231} The department cannot create its own formula; rather, it must synthesize statistics from designated sources and apply them in overseeing the proper administration of the bill.\textsuperscript{232}

This latter point does not mean that the assessment process has been changed. The process, in fact, has been centralized since 1974.\textsuperscript{233} By standardizing the formula and defining the word "agriculture," L.B. 271 has removed the valuation process from the county assessor's individual judgment and has eliminated arbitrary valuation of agricultural land.\textsuperscript{234} The proponents also noted that assessors welcomed the removal of the arbitrariness from the old system and the standardization of the formula.\textsuperscript{235}

Even though the process has been centralized and the bill does not provide for an appeal process, this does not mean that the taxpayer has lost his due process rights or his ability to appeal an assessment decision. On the contrary, the appeal process does not need to be written into this bill for it is available in other Nebraska statutes and remains unchanged by L.B. 271.\textsuperscript{236}

However, a more difficult appeal to maintain would be an actual

\textsuperscript{231} Anderson v. Tiemann, 182 Neb. 393, 402, 155 N.W.2d 322, 328 (1967). The court stated: "Where the Legislature has settled the guiding principles and standards of policy, and has provided the precision and due process which can obviously not be fully detailed in the basic legislation, the act should be upheld." \textit{Id.} In Anderson, the Nebraska Supreme Court upheld the constitutionality of the delegation of legislative power which allowed the State Board of Equalization and Assessment to set the rate of tax. The court reasoned that the law "explicitly sets out the computations to be made by the state board, the method and manner in which the computations shall be adjusted and determined, and the specific standards to be used in setting the tax rate." \textit{Id.}

\textsuperscript{232} L.B. 271, § 6(1), 1984-85 Neb. Laws at 434 (codified at NEB. REV. STAT. § 77-361(1) (Supp. 1985)).

\textsuperscript{233} Interview with Dr. Bruce Johnson, Agricultural Economist, U. of Neb.-Lincoln, in Lincoln, Nebraska (Aug. 13, 1985).

\textsuperscript{234} \textit{Id.}

\textsuperscript{235} Interview with Bill Kerrey, Gov. Robert Kerrey's aide, in Lincoln, Nebraska (Aug. 20, 1985).

\textsuperscript{236} Interview with Senator David Landis, Chairman, Ag Land Task Force of Committee on Revenue, in Lincoln, Nebraska (Aug. 20, 1985). For example, if a taxpayer finds a mathematical error in the assessment or questions whether the land qualifies as agricultural land, he may file a written appeal to the county board of equalization. NEB. REV. STAT. § 77-1502 (Cum. Supp. 1984). In the latter case, the board will consider the facts as presented by the taxpayer and then consult the definition of agriculture, in L.B. 271 to see if the land fits within the definition. If the board finds for the taxpayer, it may equalize the land's value with other county land. \textit{Id.} § 77-1504. Alternatively, it may adjust the assessment with the permission of the tax commissioner to achieve actual value. \textit{Id.} § 77-1506. If the taxpayer's claim is denied by the board, he then can appeal to the district court and finally to the state supreme court. \textit{Id.} § 77-510.
attack on the formula itself. The taxpayer may protest the data used in the formula, but, as the figures are from reputable government sources, the cost of challenging them may be prohibitive. This inability to appeal could be considered a denial of due process, but just because questioning the valuation formula data may be costly, the bill in no way denies the taxpayer the right to do so either individually or by a class action.

Proponents recognized that the bill may not be perfect but felt that it was the best alternative approach available. L.B. 271 has placed the agricultural land valuation system on a "constitutional footing" which has the best chance to make the system as equitable as possible. They further assert that this bill is only the beginning of the process of making the property tax valuation system equitable. To further that goal, the bill has provided for changes and for the monitoring of changes by an advisory board so that the process can continue.

ANALYSIS

The Task Force had several goals in recommending L.B. 271. Basically, these goals fall into the areas of bill content, effect, and administration. Overall, the bill places Nebraska on firmer legal ground in the area of property taxation. First, it implemented amendment four in a timely manner; L.B. 271 went into effect in January, 1986. Second, it removed the arbitrary and capricious manner in which taxes were assessed, and thereby created equality within the agricultural class and fairness within the system, as the


238. Id.

239. State ex rel. Douglas v. State Bd. of Equalization & Assessment, 205 Neb. 130, 286 N.W.2d 729, 733-34 (1979). The court stated: "This court has long adhered to the rule that a taxpayer is not deprived of his property without due process of law if he has an opportunity to question its validity or the amount of such tax or assessment at some stage of the proceedings." Id.


245. See text accompanying note 117 supra.

state constitution demands.\textsuperscript{247}

As to content, laws guide society; therefore, legislation should be written simply so that the general public can understand it. The major complaint against L.B. 271 is the difficulty in understanding the economics of the formula, and, hence, the adverse impact it may have.\textsuperscript{248}

The formula is difficult for the novice to understand, and in this respect, the legislation does not meet the goals of simplicity and understandability.\textsuperscript{249} With work, the formula can be mastered. During the legislative debate, it was suggested that the market valuation process should be maintained because “it’s what we’ve done for the last fifty years in Nebraska and it’s simple to understand.”\textsuperscript{250} But the simplest is not always the best or the fairest solution. The formula is based on data and statistics from known and respected sources.\textsuperscript{251} This objective data will be hard to tamper with or to subject to political pressure.\textsuperscript{252} In the end, the land should be treated equally according to its production capabilities.\textsuperscript{253} Because there should be less chance for intentional abuse in the property tax system, a greater uniformity of assessed valuation within the agricultural class should result.

However, there may be a chance for unintentional abuse if the economic data upon which the formula is based are faulty.\textsuperscript{254} It is difficult to predict at this point if that will prove to be true. The correctness of the formula probably will not be discerned for several years because of its five-year, built-in average.\textsuperscript{255}

Although the formula is complex, the “difficult to understand” claim does not extend to the bill’s agricultural land definition. L.B. 271 defines taxable agricultural land within the context of the tax laws for the first time.\textsuperscript{256} It classifies by size, crop type, and histori-
AG LAND VALUATION

Even though the bill gives clear parameters, it allows for flexibility when it states: "Agricultural products shall include but not be limited to." Therefore, if a unique animal such as llamas are being raised, they can be included in the definition if the land on which they graze meets the other criteria of size and historical use.

Further flexibility has been built into the definition with the recognition that there may be land in federal agricultural programs. Such land may have remained idle for conservation purposes and normally would not fit under the historical use provision, but will still be considered agricultural property for tax purposes.

Therefore, L.B. 271 provided a much-needed, clearly drawn definition of agricultural land for taxation purposes. The definition eliminates the inequity and discrimination arising from the local assessors applying their individual definitions. Yet, flexibility has been maintained in the bill so that new products may be added as they evolve in the state.

A major criticism of the bill is its timing. The Nebraska farmer faces fragile economic situations, such as bank closings, loan tightenings, and rising farm foreclosures. Certainly, the impact of the bill will have some grave consequences for farmers whose agricultural property taxes are raised, and it will strain already tight, local government budgets where farm taxes are lowered.

But these tax changes can be monitored and altered through the democratic process. From the beginning of L.B. 271, taxpayers have monitored the legislative process and even participated in it; this direct participation continues with the advisory committee provided for by the bill. The committee will monitor the Revenue Depart-

257. See text at notes 155-66 supra.
259. It may seem strange to use llamas as an example. However, they are, at present, successfully being raised in southeastern Nebraska. As a matter of fact, the first national llama sale was held in Tecumseh, Nebraska, in 1981, and has been held each year since that date. Telephone interview with Mrs. Fred Hartmann, breeder of llamas (Jan. 19, 1986).
260. See notes 164-65 supra.
261. See text accompanying notes 115, 155-166 supra.
262. See text accompanying notes 57-60 supra.
263. It was the farmers who precipitated amendment four. See text accompanying notes 93-99 supra. They along with county officials participated in the Revenue Committee hearings and prompted the appointment of the Ag Land Task Force, in which they participated. See text accompanying note 113 supra. Additionally, the public is involved in the advisory committee. See note 168 supra. It will be incumbent upon the taxpayer to let his legislative representative, as well as the governor, know his feelings on this critical matter if the process needs to be changed.
264. See note 168 supra.
ment's valuation process. Therefore, if this process is in error, the committee can help recognize the fact and disseminate this information to the public and the Unicameral. It should be kept in mind, however, that this group is solely advisory and appointed by the governor. It is questionable, then, how much effect it will have and if politics will play a critical role in its make up. The appointment contingency may not help "keep stability over time without legislative tinkering."

Further, administration of the bill by the Revenue Department does not appear to create a constitutional delegation problem because the Revenue Department is not usurping the traditional legislative function of taxation. The department is not using its own formula or inserting its own data. The law specifically outlines how the manual and formula are to be constructed and how the data are to be used. Therefore, there is no substitution of Revenue Department policy for legislative policy, only an implementation of legislative policy. If the bill is administered as required, it should stabilize the assessment process to make it uniform and proportional within the agricultural class.

This bill may not be the utopian answer to the agricultural land valuation problem, but it certainly offers the chance for uniformity,

265. See text accompanying notes 167-72 supra.
269. See text accompanying notes 231-32 supra. There is another delegation issue which may arise—tied to state legislative delegation of authority to statistics compiled by the federal government. Memorandum from Don Norden to Ag Land Task Force, at 5 (Feb. 11, 1985), attached as Appendix I to Ag Land Task Force Of Comm. on Revenue, supra note 13. In L.B. 271, the Unicameral is tying its traditional taxing power to federal statistics by using data in L.B. 271's formula which have been compiled by the federal government. The bill's blended capitalization rate uses federal data in the form of Treasury Bill interest rates and the Federal Land Bank interest rates, both of which are set by federal agencies.

If the data used in the formula are based on federal policy decisions like the discount rate, which is a monetary policy determined from time to time by the Federal Reserve System, the use of this data is impermissible. See Op. Neb. Atty. Gen. No. 241, at 348 (Mar. 5, 1980). However, there is no delegation problem if the data are based on existing independent factual standards, such as the consumer price index which is not based on future policy decisions, but rather, independent factual standards. Shepoka v. Knopik, 201 Neb. 780, 783-84, 272 N.W.2d 364, 366 (1978). It seems unlikely that the use of the Treasury Bill interest rate and the Federal Land Bank interest rate will be unconstitutional, since market factors, rather than federal policy decisions, apparently control the setting of these two rates.

stability, and accuracy to a once arbitrary and capricious system. Changing a system that led to unconstitutional unfairness and inequity is in and of itself laudable. How well L.B. 271 will work in practice, however, will depend upon the formula's application and the reliability of the data upon which the formula is based.

CONCLUSION

Property taxes in Nebraska are a key element in local budgets. Nebraska’s constitution provides that all real property—whether residential, commercial or agricultural—be treated equitably for taxation purposes. Over a period of time, however, it became apparent that agricultural land, unlike its residential and commercial counterparts, could not be valued at its full market value. Agriculture is a highly risky business where most of a farmer’s assets are returned to the land and are not available to pay taxes.

Consequently, in order to preserve this business, Nebraska undervalued agricultural land for taxation purposes. This practice was successfully challenged in the Kearney Convention Center case, where the court held such a practice to be unconstitutional. In complying with this ruling, agricultural property taxes went up sixty percent. To counteract this effect, Nebraskans passed amendment four which allowed different assessment for agricultural land. L.B. 271 implemented this amendment by: (1) clearly defining agricultural land, (2) valuing land on an income-producing system rather than market-valuation system, and (3) setting in place an advisory board to the Revenue Department to monitor this system.

The bill will correct past inequities in the assessment system. Therefore, its initial impact will be felt by every Nebraskan. Once the initial shifting is over, there appears to be a stable, accurate valuation system in place. How good or bad this system is will depend upon the accuracy of the data used in the formula and the implementation of the formula. Only time will tell if it indeed will be fatal to Nebraskans as some have predicted.

Billie L. Johnson—'86

271. See text at notes 57-64 supra.

TABLE A
An Income Capitalization Approach
Estimating Agricultural Land Value

INCOME STREAM

<table>
<thead>
<tr>
<th>CROP YIELD</th>
<th>CROP PRICE</th>
<th>GROSS RECEIPTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>SRS County Crop Yields</td>
<td>SBS average Crop Price by County District</td>
<td>Department of Ag Extension Land Economic Data Series For Range</td>
</tr>
<tr>
<td>SCS Yield Estimation</td>
<td>Average Prices Received for Three Year Average</td>
<td>Total Receipts (Per Acre)</td>
</tr>
<tr>
<td>(3-year moving average)</td>
<td></td>
<td>By crop and county</td>
</tr>
<tr>
<td>By well class</td>
<td></td>
<td>(multiplied by)</td>
</tr>
<tr>
<td>SCS Replaced Carrying Capacity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>By well class</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Step I

<table>
<thead>
<tr>
<th>Conventional Landowner Shares</th>
<th>Landowner Shares of Gross Receipts (Per Acre)</th>
<th>Landowner Expenses (Per Acre)</th>
</tr>
</thead>
<tbody>
<tr>
<td>By crop and county</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Step II

<table>
<thead>
<tr>
<th>SRS Historical County Cropping Patterns</th>
<th>Typical Cropping Mix by County (Irrigated and Dry)</th>
<th>Weighted Landowner Income By County (Per Acre) (For irrigated, dry and range)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(3-year Average)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Step III

<table>
<thead>
<tr>
<th>Indicated Portion of Real Estate Asset Value (State Average)</th>
<th>Federal Land Bank Interest Rate by Year Average (Omaha District)</th>
<th>Blended Capitalization Rate (Weighted by Debt and Equity)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(divided by)</td>
<td></td>
</tr>
<tr>
<td>Owner Equity Portion of Real Estate Asset Value (State Average)</td>
<td>Average Interest Rate of Smith County Treasury Bills (3-year Average)</td>
<td>Capitalized Per Acre Value By Soil Class (For irrigated, dry crop land, and range)</td>
</tr>
</tbody>
</table>

CAPITALIZATION RATE

TABLE B

Table 1: Derivation of Landowner Net Returns to Irrigated Land in Buffalo County

<table>
<thead>
<tr>
<th>CROP</th>
<th>ACRES</th>
<th>YIELD PER ACRE</th>
<th>$/BU</th>
<th>TOTAL RECEIPTS</th>
<th>LANDOWNER NET RECEIPTS %</th>
<th>TOTAL $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corn Center Pivot</td>
<td>68682</td>
<td>124.0</td>
<td>2.82</td>
<td>24,016,722</td>
<td>25.0</td>
<td>6,004,181</td>
</tr>
<tr>
<td>Gravity</td>
<td>97418</td>
<td>124.0</td>
<td>2.82</td>
<td>34,065,126</td>
<td>30.1</td>
<td>10,253,503</td>
</tr>
<tr>
<td>Grain Sorghum</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Center Pivot</td>
<td>1373</td>
<td>80.6</td>
<td>2.48</td>
<td>274,446</td>
<td>25.0</td>
<td>68,612</td>
</tr>
<tr>
<td>Gravity</td>
<td>1947</td>
<td>80.6</td>
<td>2.48</td>
<td>389,182</td>
<td>20.1</td>
<td>117,144</td>
</tr>
<tr>
<td>Soybeans</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Center Pivot</td>
<td>3912</td>
<td>43.0</td>
<td>6.30</td>
<td>1,059,761</td>
<td>31.6</td>
<td>334,884</td>
</tr>
<tr>
<td>Gravity</td>
<td>5548</td>
<td>43.0</td>
<td>6.30</td>
<td>1,502,953</td>
<td>22.7</td>
<td>491,466</td>
</tr>
<tr>
<td>Total</td>
<td>178,880</td>
<td></td>
<td></td>
<td>17,269,890</td>
<td></td>
<td>$17,269,890</td>
</tr>
</tbody>
</table>

Average Landowner Net Returns/Acre = $17,269,890 divided by 178,880 = $96.54


TABLE C

Table 2: Derivation of the Blended Capitalization Rate — An Example

<table>
<thead>
<tr>
<th>Source of Funds</th>
<th>Portion</th>
<th>Rate of Interest</th>
<th>Weighted Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt</td>
<td>.20</td>
<td>.1200&lt;sup&gt;a&lt;/sup&gt;</td>
<td>.0240</td>
</tr>
<tr>
<td>Equity</td>
<td>.80</td>
<td>.1075&lt;sup&gt;b&lt;/sup&gt;</td>
<td>.0860</td>
</tr>
<tr>
<td>Total</td>
<td>1.00</td>
<td></td>
<td>.110</td>
</tr>
</tbody>
</table>

<sup>a</sup> Five year average FLB interest rate (Omaha District).
<sup>b</sup> Five year average rate on six-month U.S. treasury bills.
