

2013 SENATE FINANCE AND TAXATION

SB 2101

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB2101
1/14/2013
Job Number 17138

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact sections 57-09-04, 57-11-04, and 57-12-09 of the North Dakota Century Code, relating to challenges of property tax assessments and notice to property owners of assessment increases; and to provide an effective date.

Minutes:

You may make reference to "attached testimony."

Vice Chairman Campbell opened the hearing on SB 2101.

Senator Cook - I think we have all heard the saying that beauty is in the eye of the holder. I think that can be said with SB 2101. Some are probably going to see this legislation as beautiful; others might have a different opinion, but nowhere is the opinion of what is beautiful I think more obvious than when we talk about the assessed value of one's home. It's a subjective decision and I think all of us who have had any time on this tax committee at all have probably had a constituent come to us and say they disagree with the value that the assessor has assigned to their property. It's a subjective number, it's based on some facts, but ultimately it comes down to what one person thinks. SB 2101 was introduced simply to get this topic on the table. I've had conversations with a constituent of mine who is very upset over his assessed value. He's tried all of the remedies available to him to get them lowered. He claims he would sell the property for what it's worth. He asked for legislation that would allow him to do just that, say sold. I do believe there is one state in this nation that does have that, in code I've asked our intern to do some research on that. SB 2101 is just to get the idea or the discussion of what do we do when there is a dispute over value. I sat down with Mr. Walstad way last summer and we tried to come up with a remedy. You can read the remedy there, it allows the owner of the property to go get another assessment, pay for it himself, take that assessment to the assessor, they can agree to lower it, or something in between, if there is still disagreement then they can agree on another assessment that the property owner would pay for and that one is final. There are a lot of discussions out there, generally when someone comes to me and says their property is assessed too high, first question I ask them is will you sell it for that? And I can be honest with you generally they say they will not. Generally when they complain about their assessment I find that more often than not the problem they have is they think theirs is assessed too high compared to what their neighbors is. I think that this is an important issue that we need to discuss that we need to get before us, if we can find a good solution for it that would solve this problem, to what degree it exists, then we've done our job. If not,

then we have to try. The first section deals with township boards, the second section deals with city assessors. That is why there are 2 sections to the law, and with that I will stand for any questions.

Senator Miller - The goal with assessments is to be as accurate across the board as possible, right?

Senator Cook - Yes sir.

Vice Chairman Campbell - In your years of experience on this committee how many people do you estimate do you think will take advantage of this?

Senator Cook - Very few.

Vice Chairman Campbell asked for testimony in favor of SB 2101. No one came forward. He then asked for testimony opposed.

Kevin Ternes, Minot City Assessor - See attached testimony 1.

Senator Cook asked how many assessors are in the state. He and Kevin Ternes agreed well over 1,000 and that they are not all accurate.

Senator Cook - You talk about the date of the assessment. Subsection 1 and 2, assure the dialogue happens, you are talking about already happens in Minot. It's the third bullet point that actually sets, I think the benefit to the property owner and that is that a new assessment has to be done. So it would be a current assessment. It's done under the direction of the state supervisor of assessments. The property owner pays the cost of that and its final. What's the problem? What's wrong with letting the taxpayer, and there is going to be very few of them, what's wrong with offering them one recourse if that dispute becomes so personal to them that they want to fight it. What's wrong with them having to option to get an appraisal, pay for it, and say they are right? Even if it ends up saying they are wrong, they have to pay the bill. I don't understand what the problem is.

Kevin Ternes - The first appraisal that this individual would bring to this board, a city board, doesn't say what date it would have to have been done. So that's maybe something that could be cleaned up. If the board says we don't like this appraisal but we'll let the state supervisor manage another appraisal I don't understand how that is even workable at that point. I'm all in favor of another person taking another look at something, a third opinion, absolutely, but I don't see how it's even workable for the state supervisor. Are you suggesting the tax department staff would then come out and do the assessment?

Senator Cook - I assume the way this is written is that the property owner would not have sole discretion in choosing who is going to do the appraisal.

Kevin Ternes - So you are saying that the property owner or the state supervisor would then decide, okay, we are going to go through the yellow pages and let's pick this guy?

Senator Cook - There would have to be some discretion there as far as who is going to be chosen. Somebody has to have, I think, some input as to the assessor that is going to do the appraisal.

Kevin Ternes - With that being said, the problem with 'Mr. Smith' now coming out to do your final appraisal is that he again, won't have access to the data that the assessor used in placing that value on your house. He doesn't have all the information. The assessor has got all these confidential sales, that we are going to use that he won't have and some of those could have sold for more than what this appraiser is going to have access too, and this is my point.

Senator Cook - Why is that a problem?

Kevin Ternes - I'm suggesting to you that the appraiser is looking at 3 condominiums that sold for \$125,000, but he not aware of the 3 that sold for \$175,000 and those are the 3 that the assessor used and the private appraiser won't have those. So now 'Sherry' is going to come up low when the assessor is using these 3 other sales that sold across the road that were sold between private parties but we've confirmed through the state tax department and the private appraiser won't know those. So your yellow pages appraiser is dealing with less data than the assessor is.

Senator Cook - You can take a whole bunch of assessors and you are all going to come up with a different number.

Kevin Ternes - We are trained to come up very close, but it's true that would happen if you hired an appraiser to look at your house for refinancing.

Senator Cook - Why does yours have to be the final one?

Kevin Ternes - We are suggesting that that appraisal that has been done, that you would like to present, is already being presented to the board, and I'm not aware of why. If you want to have another one done, I guess that's fine, but how can you do it with 2 people looking at 2 different databases. They aren't even going to be close. That's my only concern. You are now going to give difference to a private appraisal that was done, I assume as of February 1st then, which is, if the appeal went to the next level and the state supervisor supervised this appraisal, would be done as of February 1st, fine, that eliminates this "when was your date done and when was the assessment done", that's fine, but how do we get around this thing that they are looking at 2 different sets of data.

Senator Cook - Don't you think that maybe if there was a final step, a definite step that the property owner could take and that all the assessors knew that the property owner could take, don't you think that might motivate assessors across the state to all raise their level of performance?

Kevin Ternes - I think if we feel that some assessors are not doing a good job then we need to get to the basic root of it and I think there was a bill that passed into law 2 years ago that went a long way into doing that. I would hope that the state supervisor of assessments, through what I believe they now have authority to do is do some auditing. I

believe that they would do some auditing. I'm not saying they have the staff or manpower to do it, but if they would start doing that I think issues that you are speaking about are going to go away because at this point if I don't like my assessment and the county board didn't agree with me I'll go to the state and their going to send one of those state tax department people out to look at what the assessor has done and make a recommendation to the state board. In my opinion that is your final level of appeal and you now having someone outside of that local jurisdiction look at that assessment. So I believe we've got everything in place. I know your hearing from this particular individual that doesn't feel that way, but I believe there is something in place for a board to look at a private appraisal, there is something in place for the state to come out and look at the assessors number and say hey your crazy.

Senator Dotzenrod - On page 2 of the bill on line 7, this is that third choice that the subdivision has, that the property owner can, it would require a new appraisal to be conducted under the direction of the state supervisor of assessments, and a lot of the argument I've heard from you is that the private assessor compared to the public assessor have 2 different databases. So you're not going to get the same result. When I read this I didn't assume that that new appraisal would be a private appraiser. It says under the direction of the state supervisor so my assumption was well, the state supervisor will contact another subdivision, a neighboring subdivision, a county assessor, or one of their people that they have internal to the department, I didn't assume that new appraisal would be a private appraiser. I guess I'm not sure; it appears that your assuming that new appraisal will be a private one; I'm not sure based on what I read of the bill that that is the case. That there may be an assessment done under the provisions of this language here that would be a person who would have access to the kind of information you are talking about. If that were the case then would a lot of your argument go away?

Kevin Ternes - Clearly that is what would have to be cleaned up then if you intend that this means that the state tax department will send out someone from the property tax division to do the new appraisal for the assessment then a lot of my concern would go away. That is why people go to the state board and say "the county didn't agree with me, they are still wrong, here I am" and it's not going to cost them \$500 to do. All they have to do is drive down to Bismarck and put in an appeal and I believe the state tax department will even take written testimony, you don't even have to go, and if you want someone from Bismarck to come out and over see what someone at the county or city or township level has done, provided you have gone through all the appeal process so far, that's exactly what we've got now. That is why I'm looking at this bill and I'm seeing the word 'may' consider a private appraisal. They can appeal to the state, we've got that now.

Senator Triplett - You mentioned in your testimony that you have some ethical concerns about the situation directing an appraiser. Can you give an easy way of cleaning that up or is that sort of a fundamental process?

Kevin Ternes - Basically if you direct me to supervise an appraisal, that's basically what it says now, to be done on property A in such and such a town, I the supervisor can get together with the owner and say "okay there is 5 appraisers in your area, who would you feel comfortable calling"? That is basically what Senator Cook was indicating is how it should work. We are going to call this person and he's going to come out and do a new appraisal but that is where the supervising stops. A bank, the buyer of the property, the

seller of the property, King Tut himself can't tell me the appraiser, the private appraiser who you have now hired and I'm going to charge \$600 to do the appraisal, you cannot direct me what to consider what not to consider, what area I have to pay attention to, that is unethical for me to listen to any of that outside noise when I do that appraisal. I, as a licensed certified general appraiser have full authority on what I'm going to consider and not consider. I know this because I hold the highest certified general rating from the state of ND there is.

Senator Triplett - If you're going to just decide who the actual appraiser is but that's the limit of the direction would you have concerns with that?

Kevin Ternes - If you change the bill to the fact that the state supervisor is no longer going to select, to me that's neither here nor there.

Senator Triplett - If we change the word 'under the direction of' to 'the state would select the appraiser' would that get away from your ethical standpoint?

Kevin Ternes - Certainly that makes it better but I think we have 2 different opinions already. We have one person that reads the bill and says the state is going to do it with their staff, another person thinks that the state is going to help select someone, some private appraiser to do it. My whole premise is that we have an appeal situation right now where if someone looks at the appraisal that you already hold in your hand, you can go right to the state and the state will come out and take a look at it.

Senator Triplett - On why the bank appraisals are not intended to be used for other purposes, can you speak to that?

Kevin Ternes - It goes back to the whole licensing theory of how the federal government has allowed that appraisers who do appraisals for banks for financing, for developers, how they do their job. Many times if you tell me I want you to appraise this house for ongoing concern, what is that house worth with a beauty shop inside. That tells me the scope of my work and now I go out and appraise that property with those parameters. If you tell me to appraise the property as just the real estate, forget the business now I'm dealing with that. Many times appraisals are done with a specific scope for lending and they are not to be used and the private appraiser does not want his material to be used for any other purpose because he did it for the bank. He didn't do it thinking it would be analyzed based on all the other appraisals and assessments on the street because now it may look bad.

Senator Triplett - Isn't it the case that sometimes a bank just wants an appraisal that will basically support the amount of the loan they are giving and they really don't even care what the full value might be on the market. They just want to know that there is at least that much value.

Kevin Ternes - That is absolutely correct and that is why there are different levels of refinance. There is drive by appraisals, there's walk through appraisals, so we've got a lot of issues we are dealing with and what this bill is trying to do, and I realize it's intent, we are trying to merge the private into the assessment world and I'm here to say if the house is worth \$200,000 hopefully we will both be on the same page or be very close and it's those

differences, when we are not then the state now has the authority to go out and say "hey, why is it so much different than the assessment" and he doesn't have to pay \$500-600 to have it done.

Vice Chairman Campbell - Since the oil crisis a lot of the bankers and appraisers have come to more common ground because banks obviously don't want to, if they have to own property on a foreclosure they want the appraisal to be fairly accurate market value. So I think the appraisers, they can lose their license if they have a track record that can be challenged and some of the bad appraisers have been weeded out. In your opinion do you see that, in the Minot area do you see some of the appraisers that you could go to get a low figure, are those people gone by the way side or are they still there?

Kevin Ternes - There are people in town that we know that if you want it to work somehow they will make it work. If you need a high value, that's the guy to go to, if you need a low value, that's the person to go to. Some of that hasn't gone away. Some of that the federal government has tried to eliminate by now stating that 'First Western Bank' now has a list, and they can't keep going to number 2 on the list they have to go through a rotating list. Even if you're the guy that always makes it work for the bank and the buyer they can't keep calling you because they have this rotating list now and that is what is being done to prevent all these things that have happened in the past from happening again. I really would like to stress that there is no guardian angel out there in private appraisal world that is going to protect you from the big bad assessor. As far as the assessor is concerned, we are the person at the table that doesn't have a thing to win or lose in this. We are the most disinterested objective person at the table. The private appraiser is trying to make that number work for the buyer and the seller. He's got a target to hit and he's afraid if he doesn't that he will lost some business here or there, the assessor really doesn't care.

Vice Chairman Campbell - On the average how long does a person have to wait for an appraisal?

Kevin Ternes - In Minot and I believe the western part of the state is 6-8 weeks. I've been told its 4-6 north of the Rugby area. There are a lot of small areas they just can't get appraisers. Two months is not unrealistic.

Senator Triplett - Speaking to you assessors being the most disinterested objective people at the table brought something to mind from my days as a county commissioner. That may be true at the level of reasonable sized cities like Minot for example where you come from. Would you agree that is not true at the level of the township where being a 6x6 square mile area with a relatively few number of land owners it would be possible for an assessor on one side of a township to deflate values and inflate values on the opposite side of the township just out of personal interest.

Kevin Ternes - That is correct. I would stand corrected on that part of it.

Senator Miller - I have heard it, I have to raise the assessments in this town but I do not want the political backlash from everybody. I think it's a pretty prevalent problem especially in our medium sized towns.

Kevin Ternes - Clearly if you have a town that the average house is assessed at \$50,000 and they are selling for \$75,000 there's a system in place to keep that from happening that is called the state sales ratio and that number should automatically throw a flag to the county tax director to get that city up to where it should be. Let's say assessments go up 50% the mill levy drops 50% no big deal. There is a system in place for that to keep from happening and if it's not being used then I blame the tax director because they are the final authority in that county for making sure those numbers are where need to be.

Senator Miller - If all we are doing is going by that number, that sales ratio, that's not going to get to where an accurate, it's going to get closer but your still, you're going to have some houses that are way under value. I think maybe this isn't the bill, but the overall objective's got to be accurate assessment. That benefits us all.

Kevin Ternes - Part of the problem is you have some cities that have the auditor doing this part time and they aren't going through the properties year by year neighborhood by neighborhood doing an accurate assessment. We were hoping that this last bill 2 years ago would bring professionalism to some of these small town small jurisdiction assessments.

Connie Sprynczynatyk, ND League of Cities - See attached testimony 2 on behalf of Ben Hushka.

Vice Chairman Campbell closed the hearing on SB 2101.

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Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

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Minutes:

Committee Work

Scott Rising, North Dakota Soybean Growers Association - Attachment 3 was handed out to the committee after the hearing.

Chairman Cook opened discussion on SB 2101.

Chairman Cook - When the property owner disputes what the assessor has said the property is worth, I tried to come up with a plan of action that the property owner could follow at least so he was to believe he did everything he can and that some subjective view of an assessor wasn't the final straw. The property owner does have the ability to go to district court. I don't know if this would get used very often if this was the law. There is some investment that the owner of the property is going to have to make.

Senator Miller - Section 3 of the bill that has kind of got a different application all of itself. I don't remember us talking about that much.

Chairman Cook - You talking 10% to 5%?

Senator Miller - I don't think anyone ever really addressed that.

Chairman Cook - That 10% to 5% was not the primary objective as the prime sponsor of this bill. That's something that seems to be getting attached on because I think this is a big issue especially in the House. I think you're going to see something come over from the House. At least they had many bills with 10% to 5% in it.

Senator Oehlke - One of the biggest issues that came out of this is the value of properties that public appraisers don't have information on what their sales prices were and I remember after we had this hearing, it must have been at lunch because Senator Lee was

there and we were talking about this and she brought up her extensive real estate experience and she said "oh yeah, when you sell a house you say now that you want to record the value of this transaction because all you have to do is put down a dollar plus valuable consideration and everybody says, yeah, I just want to put down a dollar plus valuable consideration, I don't want anyone to know what my house sold for". So there is all those numbers out there that the county appraiser has access to that the public appraiser does not and it's probably more critical in areas of the state where there are lots of sales. I'll bet that can make a real huge difference.

Chairman Cook - Why don't you get some amendments. I agree with you Senator Oehlke that that should be the law, it would not be the first time that issue was at the legislative arena at a tax table for discussion. It's not the law because that's the side that always wins in the debate. There is another side to that coin. I would turn this bill into a real interesting hearing if it got over to the House. I would still love to see the amendments drafted.

Senator Dotzenrod - When you talk to the people up in property tax and they talk about how they look at, when they get values that come in, they have a process they go through where they throw some out, they won't use them, and that is between like a family and their son. The son buys the house or the farm and they have to throw that one out. There has to be an understanding that was in arm's length deal or that it was a public arena where it was sold and also they will look at something that is far outside the norm for one reason or another. I'm not sure the criteria they have, but when they see a sale that doesn't fit and is really out of bounds with what they have they will throw it out.

Chairman Cook - I think it's safe for me to say that if what you just suggested had been the law for the last 15 years that the assessed value of a whole lot of homes in North Dakota would be higher than what it is. I think that would have been the consequence of that. They don't know what homes are going for.

Senator Triplett - I was pretty well taken by the testimony that we heard from Kevin Ternes from Minot where he said 'in conclusion I'm concerned this bill sets up numerous inequities based on dates and deadlines of when the assessment and the appraisal will be done. Differences in different sales data for the assessor and the appraiser, different analysis and assumptions, and the fact that with different appraisers are using different data, homes that have a recent sales price or appraisal will be considered differently than those that don't have a recent sale or appraisal'. I think he outlined about 5 different issues that he sees with the bill right there and unless someone has amendments that would fix all of them or at least most of them I think I would chose to vote against this bill.

Chairman Cook - Mr. Wocken worked pretty hard on trying to get some language that would address these and he finally threw in the towel. He offered to do that for me, but, I didn't expect assessors to speak highly of this whole bill. Kevin Ternes I would consider to be one of the better state assessors we have in the state. By no means do I think you could take the 10 best assessors in the state and have them agree on the assessed value of a home. And that is the problem, it is subjective to a certain degree and somehow if there is a way that you can take the property owner in this environment and give him one last final step that he can go through and somehow feel like, alright, I have fought my fight, it's over.

Chairman Cook closed discussion on SB 2101.

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Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

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Senator Oehlke handed out proposed amendment 13.0023.01001 (attachment 4).

Chairman Cook - The key part of this is subsection 3. I wonder why subsection 8 on the back page is put in there but also struck out.

Senator Oehlke - They don't have to guard the secrecy.

Chairman Cook - Is that in law now?

Senator Oehlke - That is in law now. When Walstad did prepare this for me he did say that there is something in a bill that's in the House right now and I think it would be a perfect correlation with this one and then you would have everything the same so when you see the House's stuff come over on a different bill it's going to look the same and you won't have to deal with that issue and I thought that was a good idea.

Chairman Cook - I would speculate that maybe if this had been the law that a lot of what I have in the bill to address the problem, maybe that problem would have gone away. I'm not sure. I would suggest we leave it in.

Senator Triplett - This amendment is drafted regarding a completely different section of law. We haven't had a hearing on it. It's a really significant change in state policy, something that has been secret or confidential in the past, we are just now taking that away without any hearing or any public notice that we are even doing it. I really object to this way of doing business. I appreciate Senator Oehlke's research in finding a different way to solve

what you perceived as a problem, but this is not the way to legislate. If we want to do this we need to call a public hearing.

Chairman Cook - I think your argument would have a lot more merit if it was after crossover but it will get a public hearing in the House.

Senator Oehlke - I think we did have pretty significant discussion on it in our testimony of this bill. There were people here that said hey we just don't get the information that the county gets and the counties said we can't give it to them.

Senator Triplett - I will vote against it on principal. I think bills generally get more attention the first time they go through something. Sometimes they tend to get muddled in the shorter second third of our process and people who were tracking them think okay I've done what I need to do and they don't go back and follow them again and if they get completely changed up the right people don't have a chance to, people don't have time to follow what we do with the level that we do and I think when you slide in to a whole different chapter of the code you start changing long established policy no one has the chance to even notice that it's happening. We have no media coverage; nobody gets this and all of the sudden it just slides through without comments. I will vote against this and send out an email to all of the auditors and realtor groups in the state who may have an interest in it so they are aware of it. I just think this is not how we should be doing legislation.

Senator Oehlke - I would hope that we would make sure that everybody understands that this is something that may happen. I certainly wasn't thinking about doing anything in secret.

Chairman Cook - Senator Triplett you are right it is a different section of code but even so there is a certain degree of being germane to this bill, it's dealing with the same issue. I'm comfortable that it will have another hearing and I would argue that the second hearing is the one that gets the most attention. But you raise a valid point.

Senator Dotzenrod - On page 2 of the amendment you have these A-L items that are listed in there, it says up above this section does not apply to deeds transferring title to the following types. Is this information that the registrar of deeds at the county knows that but can't tell? Or is that information that is not provided to the registrar of deeds or anyone else?

Senator Triplett - When you draw a deed if it meets one of these things you just put right on the face of the deed this is exempt from the requirements of this statute and you name the statute pursuant to and you name the subsection. The information does not go to them but they know why they aren't receiving the information with great specificity and it's a notarized document so people ought not to be lying about it.

Senator Dotzenrod - So in the case of these items you don't have a group of people that has the information and another group of people doing comparable work that doesn't have the information. Basically nobody in the system is going to have this information. The deed gets recorded and it's not like a select group in the court house has this.

Senator Triplett - That is correct.

Senator Dotzenrod - Part of my line of thought on this is we got to this point and developed this list A-L over a period of time and I'm sure there was a rationale for it. I'm sure there was some debate and hearings and questions and it was a process it went through to get us to this point. I am a little hesitant to say that in this environment that we are in now that we know enough to say that that was ever invalid or that the conditions have changed to the degree that whatever they did back then when they put this together, we are in a different era, we need the information and so however their logic was that got them to that point we just think it doesn't apply anymore. I'm hesitant to do that because I don't really understand the arguments that were made that got us to that point. (10:25)

Senator Oehlke - I think it's pretty simple how they got there. Joe blow said I don't want everybody knowing what I sold my farm or my house for. It's none of their business. So I just want it to say a dollar plus other valuable consideration. Now when your realtor gives you that option, or when you go to file the sale of your deed and they say we give you this option, you can either say that or you can say you made a bazillion dollars on this and what are you going to say? The average North Dakotan is going to say I don't want those goes guys to know everything I'm doing and it puts you at a really unfair disadvantage if you want to challenge your tax bill because you think your appraisal is not accurate. And so you go out and hire an appraiser and they don't have access to the information. Why don't they have it? Well they can't get it, but then the other side can use all that information right now to prove their side and you have no way of knowing, you still walk out of that situation feeling like you got hosed. This is an effort to try to amend that.

Senator Dotzenrod - I follow what you are saying and it's a good logical argument that you are making but I'm sure that all those things you mention were part of a previous discussion as well. That is the dynamics you are talking about between the realtor knowing having all the information and what were the consequences of not providing this to the public, that argument that you just made was part of an earlier argument when these were put in place but for some reason there was a feeling that they needed to do this. I'm not sure of the kinds of consequences that parties would have in mind or that the public policy makers had in mind. I think you are saying basically that maybe the policy makers just got pushed a little bit by people that said it's a personal matter and I don't want anyone to know it and the policy makers made as just a default position said okay. That might be the argument how we got here.

Chairman Cook - I think we can quit speculating. I think we can find out very quickly what the history is here for you and we will do that.

Chairman Cook closed discussion on SB 2101.

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Chairman Cook opened discussion on SB 2101.

Chairman Cook - Senator Triplett your concern brought back a lot of memories of this issue. I'm going to pass out HB 1225 which was introduced by Representative Louser this session. You will see that HB 1225 is the identical bill to the amendments that Senator Oehlke is offering here to SB 2101. This bill passed the House Political Subdivision unanimously, it passed the House 90-1 and it's had its good hearing. I think your concern is justified, it's germane, but by putting these amendments on we not only guarantee there is a hearing in the Senate we guarantee there is a second hearing in the House. Any other discussion?

Verbal Vote on Amendment 5-1-0

Senator Burckhard - I'll move a Do Pass as Amended.

Seconded by **Senator Oehlke**.

Senator Miller - There's possibly a reason why this bill would be unneeded with the amendments as a whole but it really certainly doesn't hurt anything. I think it's reasonable to at least give it a go ahead for the time being.

Chairman Cook - That is my thought s exactly. This is an important issue for the voters. If you are going to have fair property taxes it's got to start with a fair appraisal.

Senator Triplett - I do appreciate the information you have provided on the amendment and it does make me feel better about the fact that the topic has had a discussion but I can't support the bill amended or unamended because I think that it's a flawed process that

your basically turning over the control of the assessment process to some other appraiser who's decision is final and non-appealable. We are passing off the role of government to an outside hired appraiser as far as I can see and I just don't think it's appropriate.

Senator Oehlke - I look at it from the other side. I think it's giving someone who is possibly challenging the valuation on their appraisal a fair chance as playing on a level field.

Senator Triplett - There was a large business, one of a kind sort of business in my county when I was on the County Commission whose property was seriously under appraised and our tax assessor set about trying to get it to a rational number. They fought bitterly for most of the year and finally came to an agreement, not dissimilar to what you have proposed here but in an informal basis. It was a very specialized company and there were no appraisers locally who even wanted to tackle it so they agreed to bring in an appraiser from Minneapolis and the county and the property owner agree to split the cost of the appraisal. We didn't agree to be bound by it but we agreed to consider it vitally and it really made the difference in the sense that it was an objective serious look comparing this property to other similar properties on a regional basis and really solved the problem and ended up that the new appraisal which was substantially higher than what the property had been appraised at was accepted by the property owner and nothing ever came of it in the appeal, he accepted it. I think the process you are suggesting here has merit, I really do, I just don't think it should be controlling on the government. I think it should be more of an advisory kind of thing and if it were advisory I could support it, but I can't support it the way it's written.

Roll Call Vote on a Do Pass as Amended 5-1-1

Carried by **Senator Oehlke**.

JB
2-24-13
1 of 3

PROPOSED AMENDMENTS TO SENATE BILL NO. 2101

Page 1, line 1, after "sections" insert "11-18-02.2,"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 11-18-02.2 of the North Dakota Century Code is amended and reenacted as follows:

11-18-02.2. Statements of full consideration to be filed with state board of equalization or recorder - Procedure - ~~Secrecy of information~~ - Penalty.

1. Any grantee or grantee's authorized agent who presents a deed in the office of the county recorder shall certify on the face of the deed any one of the following:
 - a. A statement that the grantee has filed a report of the full consideration paid for the property conveyed with the state board of equalization.
 - b. A statement that the grantee has filed a report of the full consideration paid for the property conveyed with the recorder.
 - c. A statement of the full consideration paid for the property conveyed.
 - d. A statement designating one of the exemptions in subsection 7 which the grantee believes applies to the transaction.
2. Any party who presents an affidavit of affixation to real property of a manufactured home in the office of the county recorder in accordance with section 47-10-27 and who acquired the manufactured home before the affixation of the manufactured home to the real property shall either contain in or present in addition to the affidavit of affixation any one of the following:
 - a. A statement that the party has filed with the state board of equalization a report of the full consideration paid for the manufactured home before the affixation.
 - b. A statement that the party has filed with the recorder a report of the full consideration paid for the manufactured home before the affixation.
 - c. A statement of the full consideration paid by the party for the manufactured home before the affixation.
3. The recorder may not record any deed unless the deed contains one of the statements required by subsection 1 or record any affidavit of affixation unless the affidavit contains or is accompanied by one of the statements required by subsection 2.
4. The recorder shall accumulate and at least monthly forward to the state board of equalization a report containing the information filed in the recorder's office pursuant to subsection 1 or subsection 2.

5. The state board of equalization shall prescribe the necessary forms for the statements and reports to be used in carrying out this section, and the forms must contain a space for the explanation of special circumstances that may have contributed to the amount of the consideration.
6. For purposes of subsection 1, the word "deed" means an instrument or writing whereby any real property or interest therein is granted, conveyed, or otherwise transferred to the grantee, purchaser, or other person, except any instrument or writing that transfers any ownership in minerals or interests in minerals underlying land if that ownership has been severed from the ownership of the overlying land surface or any instrument or writing for the easement, lease, or rental of real property or any interest therein.
7. This section does not apply to deeds transferring title to the following types of property, or to deeds relating to the following transactions:
 - a. Property owned or used by public utilities.
 - b. Property classified as personal property.
 - c. A sale when the grantor and the grantee are of the same family or corporate affiliate, if known.
 - d. A sale that resulted as a settlement of an estate.
 - e. All sales to or from a government or governmental agency.
 - f. All forced sales, mortgage foreclosures, and tax sales.
 - g. All sales to or from religious, charitable, or nonprofit organizations.
 - h. All sales when there is an indicated change of use by the new owners.
 - i. All transfer of ownership of property for which is given a quitclaim deed.
 - j. Sales of property not assessable by law.
 - k. Agricultural lands of less than eighty acres [32.37 hectares].
 - l. A transfer that is pursuant to a judgment.
8. ~~The state board of equalization shall guard the secrecy of information contained on statements filed with the board under subsection 1 or subsection 2, and any information contained on statements and any information provided by local officials must be limited to data necessary to perform official duties and may not include the names of any grantors or grantees to deeds or of any parties to affidavits of affixation. Any reports made available to the public must be made in a manner that will not reveal the names of any grantors, grantees, or parties. The recorder shall guard the secrecy of information contained on reports filed in the recorder's office under subdivision b of subsection 1 or subdivision b of subsection 2.~~
9. Any person that, in the statements provided for in subsection 1 or subsection 2, willfully falsifies the consideration paid for the transferred real property or the manufactured home, as applicable, or interest therein or

that falsely certifies that the person has filed a report of full consideration with the state board of equalization is guilty of a class B misdemeanor."

30x3

Renumber accordingly

Date: 2-25-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2101

Senate Finance & Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0023.01001 Title 02000

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Oehlke Seconded By Senator Dotzenrod

Senators	Yes	No	Senator	Yes	No
Chariman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Tom Campbell			Senator Connie Triplett		
Senator Joe Miller					
Senator Dave Oehlke					
Senator Randy Burckhard					

Total (Yes) 5 No 1

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal Vote

Date: 2-25-13
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2101**

Senate Finance & Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senator	Yes	No
Chairman Dwight Cook	X		Senator Jim Dotzenrod		
Vice Chairman Tom Campbell	X		Senator Connie Triplett		X
Senator Joe Miller	X				
Senator Dave Oehlke	X				
Senator Randy Burckhard	X				

Total (Yes) 5 No 1

Absent 1

Floor Assignment Senator Oehlke

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2101: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). SB 2101 was placed on the Sixth order on the calendar.

Page 1, line 1, after "sections" insert "11-18-02.2,"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 11-18-02.2 of the North Dakota Century Code is amended and reenacted as follows:

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 - c. A statement of the full consideration paid for the property conveyed.
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4. The recorder shall accumulate and at least monthly forward to the state board of equalization a report containing the information filed in the recorder's office pursuant to subsection 1 or subsection 2.
5. The state board of equalization shall prescribe the necessary forms for the statements and reports to be used in carrying out this section, and

- the forms must contain a space for the explanation of special circumstances that may have contributed to the amount of the consideration.
6. For purposes of subsection 1, the word "deed" means an instrument or writing whereby any real property or interest therein is granted, conveyed, or otherwise transferred to the grantee, purchaser, or other person, except any instrument or writing that transfers any ownership in minerals or interests in minerals underlying land if that ownership has been severed from the ownership of the overlying land surface or any instrument or writing for the easement, lease, or rental of real property or any interest therein.
 7. This section does not apply to deeds transferring title to the following types of property, or to deeds relating to the following transactions:
 - a. Property owned or used by public utilities.
 - b. Property classified as personal property.
 - c. A sale when the grantor and the grantee are of the same family or corporate affiliate, if known.
 - d. A sale that resulted as a settlement of an estate.
 - e. All sales to or from a government or governmental agency.
 - f. All forced sales, mortgage foreclosures, and tax sales.
 - g. All sales to or from religious, charitable, or nonprofit organizations.
 - h. All sales when there is an indicated change of use by the new owners.
 - i. All transfer of ownership of property for which is given a quitclaim deed.
 - j. Sales of property not assessable by law.
 - k. Agricultural lands of less than eighty acres [32.37 hectares].
 - l. A transfer that is pursuant to a judgment.
 8. ~~The state board of equalization shall guard the secrecy of information contained on statements filed with the board under subsection 1 or subsection 2, and any information contained on statements and any information provided by local officials must be limited to data necessary to perform official duties and may not include the names of any grantors or grantees to deeds or of any parties to affidavits of affixation. Any reports made available to the public must be made in a manner that will not reveal the names of any grantors, grantees, or parties. The recorder shall guard the secrecy of information contained on reports filed in the recorder's office under subdivision b of subsection 1 or subdivision b of subsection 2.~~
 9. Any person that, in the statements provided for in subsection 1 or subsection 2, willfully falsifies the consideration paid for the transferred real property or the manufactured home, as applicable, or interest therein or that falsely certifies that the person has filed a report of full consideration with the state board of equalization is guilty of a class B misdemeanor."

Renumber accordingly

2013 HOUSE FINANCE AND TAXATION

SB 2101

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2101
March 18, 2013
Job # 20058

Conference Committee



Explanation or reason for introduction of bill/resolution:

A Bill relating to challenges of property tax assessments and notice to property owners of assessment increases.

Minutes:

Attached testimony #1, 2, 3, 4, 5

Chairman Belter: Opened hearing on SB 2101.

Opposition

Kevin Ternes, Minot City Assessor: See attached testimony #1, 2 and 3. (ended at 16:25)

Representative Zaiser: Wouldn't this snowball and cause other inequities?

Kevin Ternes: You have a whole row of something assessed at one value because that is what the majority of them are selling at. It could possibly snow ball if the assessor said that he/she was going to lower them all then.

Vice Chairman Headland: You talk about a form that takes two minutes to fill out that could handle the problem, what is that form and how often is it approved or disapproved?

Kevin Ternes: It is called an abatement form and it's available on-line. Generally when there is a mistake or an issue it's approved 90% of the time. The only time when abatement isn't approved when clearly the assessor's office, all the elected officials and the state think that there isn't a problem.

Vice Chairman Headland: If the assessor chooses not to go along with what they are asking for, it would go to the state equalization board or who?

Kevin Ternes: If somebody doesn't like the assessment on their property they can go to the local board of equalization, if they don't get satisfaction they can go to the county, and still proceed to going to the state. At this time these processes has not cost them any money. (ended 20:35)

Vice Chairman Headland: Obviously there is a problem somewhere down the line so I think we need to continue to try and smoke it out.

Representative Owens: Right now we have a system where you don't have to physically visit a property to dictate how much taxes you will pay on it.

Kevin Ternes: There was a bill a couple years ago that would have required the assessor to actually go out and physically inspect, but the legislative assembly was not ok with that.

Connie Sprynczynatyk, North Dakota League of Cities: See attached testimony from Ben Hushka, Fargo City Assessor #4. (26:05)

Joe Ibach, Appraiser: I think the system we have in place right now, works. (ended 29:46)

Vice Chairman Headland: Have you ever been used by a property owner to dispute what they believe is an error to their assessment and have you ever agreed that there was an error to their assessment?

Joe Ibach: I have been retained several times by the property owner. It is a case by case situation; I have never had it go to district court and usually on commercial property.

Vice Chairman Headland: You have been in dispute alongside a property owner with the local assessment all the way to the state equalization board and have been overruled there as well?

Joe Ibach: Yes but it has only gone to the county commission, never to the state.

Vice Chairman Headland: Could you give us an example of what the error was in your judgment?

Joe Ibach: An office building in Bismarck, the assessment was significantly higher than what I appraised it for. I have the ability to use so much more data than the assessor does. In this case the property owner was still not successful. (ended 32:41)

Representative Kelsh: Is it a common practice for a fee appraiser to make an appraisal without a sight visit.

Joe Ibach: For a fee appraiser, no.

Representative Kelsh: Is it legal?

Joe Ibach: There is no legality relative to that, it just a question of whether or not my client wants me in there. An example is on foreclosures, the owner usually don't let you in so it is possible the appraisal can be done without an interior inspection.

Kathy Maier, private residential appraiser: See attached testimony #5. Ended at 37:15

Chairman Belter: If a buyer doesn't take out a loan for their home is there any way you would know what the selling price is?

Kathy Maier: I would ask for that selling price.

Chairman Belter: The buyer does not have to disclose that.

Kathy Maier: Typically is for financing purposes it is necessary but it could be done without one.

Chairman Belter: Any other opposition to 2101?

Marcy Dickerson, State Supervisor of Assessments: I agree with everything the prior speakers have said.

Vice Chairman Headland: Is it time to come up with a more appropriate term because equalization doesn't seem to work anymore?

Marcy Dickerson: I think equalization works quite well.

Chairman Belter: Closed hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2101
March 18, 2013
Job # 20075

Conference Committee

Kristi Fletcher

Explanation or reason for introduction of bill/resolution:

A Bill relating to challenges of property tax assessments and notice to property owners of assessment increases.

Minutes:

Chairman Belter: Opens hearing SB 2101.

Rep. Owens: Moves Do Not Pass.

Rep. Schmidt: Second.

14-0-0

Carried by Rep.Drovdal.

Date: 3-18-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2101**

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Owens Seconded By Rep. Schmidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	✓		Rep. Scot Kelsh	✓	
Vice Chairman Craig Headland	✓		Rep. Steve Zaiser	✓	
Rep. Matthew Klein	✓		Rep. Jessica Haak	✓	
Rep. David Drovdal	✓		Rep. Marie Strinden	✓	
Rep. Glen Froseth	✓				
Rep. Mark Owens	✓				
Rep. Patrick Hatlestad	✓				
Rep. Wayne Trottier	✓				
Rep. Jason Dockter	✓				
Rep. Jim Schmidt	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Drovdal

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2101, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2101 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2101

SENATE FINANCE AND TAXATION COMMITTEE

Senate Bill 2101

1/14/2013

Senate Finance and Taxation Committee

TO: HON. Senator Dwight Cook, Committee Chairman

FROM: Kevin Ternes, Minot City Assessor

Thank you for accepting my testimony related to the administration of this bill if it would be come statute as written. It would seem the bill's intent is to allow preference for a correction of assessment to be given to a property owner if their real estate appraisal differs at least 5% less of the current assessment. Currently, any property owner is encouraged to bring in a recent appraisal to provide additional information to the assessor and board of equalization or abatement hearing already. Some appraisals are done quite well and provide good information for an assessor and can be used in arriving at a fair and equitable assessment that may in fact resemble the appraisal's estimate. However after reading and examining many appraisals that were performed for financing purposes over the last 20 years and then having several of them provided for additional information for assessments I have found the following:

There are numerous errors on many appraisals from wrong square footage to not doing adequate research on the comparable sales data.

Many adjustments made by private appraisers I do not believe can be supported in the market and are oftentimes used to make "the numbers work".

Often times out of state or out of area appraisers find work in a community and attempt to perform an appraisal without adequate knowledge of the local area.

Because private appraisers are not familiar with all the confidential sales as they are precluded by current state statute from seeing them, they don't have as much information or data as the local assessor does.

My question is this bill uses the word "may" in line 23 so what does this bill offer that is currently not allowed?

Also, there would be considerable confusion about the bill if enacted for the following reasons:

-The bill doesn't say how old the appraisal can be or what date it must have been completed by or for. An appraisal that is over 6 months old is generally not considered by a bank as useable and for our purpose, the market could have changed up or down in that amount of time. Assessments are done with consideration to market value as of February 1st for the year of assessment. If an appraisal is

brought in that was done 6 months after that date, or 6 months prior to that date, the numbers could very well be different because the appraiser and assessor would be using to different sets of data.

-Assessors have a larger database than private appraisers do because state law currently doesn't allow confidential sales to be release to appraisers. As a side note, we'd be more than happy to assist you in changing this, and in opening up all the confidential data for everybody certainly. So forexampl, in a particular condo phase, you could have several comparable sales that the assessor is using, but the private appraiser doesn't have access to. Obviously there is going to be a different estimate of value result and over 5% might not be uncommon. Whose value is more correct?

-larger jurisdictions have numerous appraisers performing work for lending purposes. They all have different opinions, different sets of adjustments, different collections of data and ways of analyzing their data. There is no question that similar properties in the same neighborhood will be appraised at different market value estimates depending on the time of the year, winter less value, then spring and fall when people are buying and selling, more value.etc.....whereas the assessor takes all of the data, public AND confidential, from the ENTIRE year and analyzes it and arrives at an estimate of market value "consistent and equitable" across the whole condo development, neighborhood, city, or county.

-This statute will result in somebody buying a condo in the winter when sales are slow and an appraisal coming in that usually resembles the sale price and that appraisal then being presented to the assessor as proof of what the property should be assessed at. But the assessor will be using that sale, plus numerous other sales that happened after this particular owner purchased their home that could show numerous properties that sold for more in the spring and fall. To use one appraisal to set somebody's assessment different from all the other assessments is far from fair or equitable.

-The bill doesn't indicate who licensed the appraiser. Which board, what state board etc.?

-Private appraisers may consider the value of fences, sprinkling systems, financing points, landscaping differently then assessors do or are allowed to do.

-Regarding section 2, line 21, of this bill, the state supervisor of assessments would "arrange anddirect" a new appraisal? Does this mean tax department staff would appraise the property in question? And what would determine the cost to the tax payer? Tax Department staff would not be familiar with the local market, would not be familiar with the assessment models, are not certified with the same certification that private appraisers are, and don't have the field experience to do the appraisal nor would they be familiar with the URAR form. What type of report would the tax department use? The assessor's format with the same models and data used to do the rest of the jurisdiction? If not, does the state supervisor bid out the project to an appraiser? How can the state supervisor direct a private licensed appraiser? Its unethical to give them directions on how to complete their appraisal.

-Appraisals completed for lending purposes usually say they are not allowed to be used for any other purpose. Many private appraisers would not want their appraisal being scrutinized by the assessor who in some of the larger cities and counties and even smaller ones, will have a level of appraisal certifications greater than the private appraiser may have and greater than what the state supervisor of assessments is required to have.

Finally, regarding Section 3 of sending a notice of increase at a 5% level of increase rather than a 10% increase we can certainly do this. It costs more money, more time and doesn't seem to get people engaged anyhow but certainly the more information people have the better. As an example however,

we sent out close to 9,000 letters of increase in Minot last year, over half the city got one, and we had 12 people come to the city board of equalization of which none questioned their assessment but were just upset about taxes in general. People don't usually get talk about their assessment until the bill comes in December and then it's the dollars not the assessed value they are upset about.

In conclusion, I'm concerned this bill sets up numerous inequities based on dates and deadlines of when the assessment and the appraisal will be done, differences in different sales data for the assessor and the appraiser, different analysis and assumptions, and the fact that with different appraisers using different data, homes that have a recent sale price or appraisal will be considered differently then those that don't have a recent sale or appraisal.

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NORTH DAKOTA SENATE
FINANCE AND TAXATION COMMITTEE

Senate Bill 2101
Testimony of Ben Hushka
Fargo City Assessor
January 14, 2013

Mr. Chairman and members of the Senate Finance and Taxation Committee, my name is Ben Hushka. I am the City Assessor for Fargo. I have been with the Fargo Assessment Department for more than 36 years. I am very concerned about fair and equitable assessment practices in this state.

I have two main concerns about certain provisions of this bill. They both relate to the appeal of an assessment where an independent appraisal by a state certified or licensed appraiser (which, by the way, I am) is presented to support that appeal.

The main concern relates to the equity of valuations for assessment among similar properties. Assessors apply mass appraisal methodologies to arrive at their values. Mass appraisal evolved out of the need for uniformity and consistency in ad valorem appraisals and consists of appraising groups of properties, as of a given date, using standardized procedures and statistical testing. Single-property, or fee appraisal, in contrast is the valuation of a particular property as of a given date,

Mass appraisal, unlike single-property appraisal, requires the development of valuation models that replicate the forces of supply and demand over a large area. Single-property appraisers conduct market analysis and develop one or more valuation models to estimate the value of a single property. The single-property appraiser doesn't, and has no need to, have a concern with arriving at similar values on similar properties. The assessment, or mass appraiser, is constantly aware of that issue.

I guarantee, that by adjusting assessment values of select properties based on appraisals that were not completed in the context of mass appraisal, will result in more inequities. The cornerstone of mass appraisal is equity. This assures that the values of similar properties are comparable and, the ultimate tax assessed, is uniform among like properties.

My other concern regards the specifics of the intricate differences and nuances that distinguish mass appraisals for assessment from single-property appraisals.

Licensed and certified appraisers must disclose, identify, support, and document certain information in their appraisal reports in order to comply with the *Uniform Standards of Professional Appraisal Practice (USPAP)*. Failure to do so could result in censure, or in the extreme, revocation of their license.

There are certain basic expectations that a client in need of appraisal services of real estate desires and should receive. The appraisal industry has defined those components in order to standardize, monitor, and regulate the industry. Much of this has come from federal regulation dating back to the first “bank bailout” of the early 1980’s.

One of those components is known as the “as of” date of the appraisal. Every appraisal, which is an opinion of value, is as of one point in time. An opinion of value today can be much different tomorrow, next month, or next year. That is especially true in a rapidly increasing or decreasing market.

This bill only refers to the consideration of an appraisal that was prepared by a licensed or certified appraiser. It is completely void of any reference to the “as of” date of that appraisal. By statute, the assessment date for property tax is February 1st of each year. Assessment officials are required to appraise properties according to their status “as of” that date.

Two other important elements of an appraisal engagement are the intended use and intended user of the appraisal.

Appraisals are ordered and used by many different people, for many different reasons. Those reasons may include (among many others) financing, purchasing, leasing, estate purposes, divorce, insurance, divisions of property, etc.

The intended use of an appraisal may warrant different definitions of the value opinion to be rendered. In the case of a division of property, the value opinion desired may be for only a partial interest in the property. In a lease situation, the appraisal may be ordered for only the leased fee interest (owner) and may include none of the improvements that the leasehold interest (tenant) added to the property.

It is widely understood and accepted in North Dakota, by statute and case history, that all rights and interests in property are to be valued for property tax purposes, unless expressly exempted by law.

This bill does not address the issue of appraisals submitted in an appeal that do not adhere to the assessment date or that may not include a value opinion of all taxable interests and rights in the property.

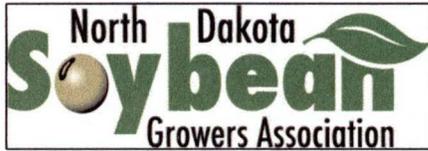
All appraisals performed by independent (certified or licensed) appraisers have an intended user and client (the one who engaged the services of the appraiser). The two can be the same, but not always are. Most often, due to the fact that many appraisals are performed for financing purposes, the client and intended user is the mortgage company and/or appraisal management company.

These appraisals are performed by the appraiser, for those clients and users, for the purposes agreed upon.

Rarely is the owner of a property the client or intended user of an appraisal. However, they may obtain a copy of the appraisal that was performed as a requirement to obtain their financing. If they submit their copy of the appraisal as a basis to appeal their assessment, it would most likely be without the knowledge or consent of the appraiser, client, or intended user of that appraisal.

I do not believe that adjusting assessment values based on appraisals, performed for completely different purposes, will serve to better the assessment process in the state.

This concludes my testimony. Thank you for your consideration.



Testimony for SB 2101

Good morning Chairman Cook and Senate Finance & Tax Committee Members. I am Scott Rising, and am here this morning on behalf of the North Dakota Soybean Growers Association.

Our state's Soybean Growers are supportive of the provisions found in SB 2101. We believe the root of many disagreements involving tax issues is differing estimations of value.

Resolving these disagreements requires introduction of "actionable" information. SB 2101 provides for the introduction of third party "actionable" appraisal information. Our state's taxpayers have a right to introduce credible evidence of their position in tax disputes and review processes. SB 2101 accomplishes that goal.

Thank You all for your time and attention, and most importantly, your continuing service on our behalf.

I am available any questions that you may have of me.

Contact Information: Scott Rising, 701-527-1073 (cell),
grwbeans@earthlink.net

February 20, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2101

Page 1, line 1, after "sections" insert "11-18-02.2,"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 11-18-02.2 of the North Dakota Century Code is amended and reenacted as follows:

11-18-02.2. Statements of full consideration to be filed with state board of equalization or recorder - Procedure - ~~Secrecy of information~~ - Penalty.

1. Any grantee or grantee's authorized agent who presents a deed in the office of the county recorder shall certify on the face of the deed any one of the following:
 - a. A statement that the grantee has filed a report of the full consideration paid for the property conveyed with the state board of equalization.
 - b. A statement that the grantee has filed a report of the full consideration paid for the property conveyed with the recorder.
 - c. A statement of the full consideration paid for the property conveyed.
 - d. A statement designating one of the exemptions in subsection 7 which the grantee believes applies to the transaction.
2. Any party who presents an affidavit of affixation to real property of a manufactured home in the office of the county recorder in accordance with section 47-10-27 and who acquired the manufactured home before the affixation of the manufactured home to the real property shall either contain in or present in addition to the affidavit of affixation any one of the following:
 - a. A statement that the party has filed with the state board of equalization a report of the full consideration paid for the manufactured home before the affixation.
 - b. A statement that the party has filed with the recorder a report of the full consideration paid for the manufactured home before the affixation.
 - c. A statement of the full consideration paid by the party for the manufactured home before the affixation.
3. The recorder may not record any deed unless the deed contains one of the statements required by subsection 1 or record any affidavit of affixation unless the affidavit contains or is accompanied by one of the statements required by subsection 2.
4. The recorder shall accumulate and at least monthly forward to the state board of equalization a report containing the information filed in the recorder's office pursuant to subsection 1 or subsection 2.

5. The state board of equalization shall prescribe the necessary forms for the statements and reports to be used in carrying out this section, and the forms must contain a space for the explanation of special circumstances that may have contributed to the amount of the consideration.
6. For purposes of subsection 1, the word "deed" means an instrument or writing whereby any real property or interest therein is granted, conveyed, or otherwise transferred to the grantee, purchaser, or other person, except any instrument or writing that transfers any ownership in minerals or interests in minerals underlying land if that ownership has been severed from the ownership of the overlying land surface or any instrument or writing for the easement, lease, or rental of real property or any interest therein.
7. This section does not apply to deeds transferring title to the following types of property, or to deeds relating to the following transactions:
 - a. Property owned or used by public utilities.
 - b. Property classified as personal property.
 - c. A sale when the grantor and the grantee are of the same family or corporate affiliate, if known.
 - d. A sale that resulted as a settlement of an estate.
 - e. All sales to or from a government or governmental agency.
 - f. All forced sales, mortgage foreclosures, and tax sales.
 - g. All sales to or from religious, charitable, or nonprofit organizations.
 - h. All sales when there is an indicated change of use by the new owners.
 - i. All transfer of ownership of property for which is given a quitclaim deed.
 - j. Sales of property not assessable by law.
 - k. Agricultural lands of less than eighty acres [32.37 hectares].
 - l. A transfer that is pursuant to a judgment.
8. ~~The state board of equalization shall guard the secrecy of information contained on statements filed with the board under subsection 1 or subsection 2, and any information contained on statements and any information provided by local officials must be limited to data necessary to perform official duties and may not include the names of any grantors or grantees to deeds or of any parties to affidavits of affixation. Any reports made available to the public must be made in a manner that will not reveal the names of any grantors, grantees, or parties. The recorder shall guard the secrecy of information contained on reports filed in the recorder's office under subdivision b of subsection 1 or subdivision b of subsection 2.~~
9. Any person that, in the statements provided for in subsection 1 or subsection 2, willfully falsifies the consideration paid for the transferred real property or the manufactured home, as applicable, or interest therein or

that falsely certifies that the person has filed a report of full consideration with the state board of equalization is guilty of a class B misdemeanor."

Renumber accordingly



HOUSE FINANCE AND TAXATION COMMITTEE

Senate Bill 2101

1/18/2013

House Finance and Taxation Committee

TO: HON. Representative Wes Belter, Committee Chairman and members of House Finance and Taxation Committee

FROM: Kevin Ternes, Minot City Assessor

Thank you for accepting my testimony related to the administration of this bill if it would become statute as written. I would like to support the elimination of confidential sales information that this bill was amended to include, but I believe the confidentiality issue has already been resolved with a previous bill that came out of the house. It would seem this bill's remaining purpose is to allow preference for an abatement of assessment to be given to a property owner if their real estate appraisal completed by a licensed appraiser differs at least 5% less of the current assessment. Currently, any property owner is encouraged to bring in a recently completed appraisal to provide additional information to the assessor and board of equalization or abatement hearing already. Some appraisals are done quite well and provide good information for an assessor and can be used in arriving at a fair and equitable assessment that may in fact resemble the appraisal's estimate. However after reading and examining many appraisals that were performed for financing purposes over the last 20 years and then having several of them provided for additional information for assessments I have found the following:

There are numerous errors on many appraisals from wrong square footage to a lack of adequate research on the comparable sales data. We just received one appraisal with numerous mistakes starting with the first page that had the wrong picture of the house on it.

Numerous adjustments made by some appraisers I do not believe can be supported in the market and are oftentimes used to make "the numbers work".

Recently out of state or out of area appraisers have found work in a community and attempt to perform an appraisal without adequate knowledge of the local area.

My question is this bill on page 4, line 8 uses the word "may" so what does this bill offer that is currently not allowed? Currently the township, city, or county board can do all of this. Generally when an appraisal isn't accepted or considered as an indicator of value its because the date of the appraisal is not recent, maybe the appraisal is old....3 months or more, or the appraiser didn't use sales that they were not aware of like the assessor was, or the appraisal has a number of mistakes or flaws in the analysis. But with all that said, the township, city or county board can already do what the bill mandates already. Up till the following part, Page 4, starting at line 14...the property owner can now hire a second appraisal...:"under the direction of the state supervisor of assessments". What does this mean? The state supervisor is not even required to be licensed but is going to direct a new appraisal? Nobody is

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allowed to “direct” an appraiser or direct them as to how they are going to do an appraisal. A private appraiser’s client provides a scope of work to the appraiser and then the licensed appraiser determines the course of action, the amount of data required, the type of analysis they will perform to fulfill the scope of work. The new appraisal under this subsection is final and non-appealable according to this bill. What if there are significant errors in this second appraisal? That will be the final assessment that could throw one parcel on the street or several parcels in the same neighborhood or condo development out of equity with each other. Anything the assessor does who represents the public can be appealed to another board even to the state or district court. But a private appraiser who represents no one, is responsible to no one, has the final input on an assessment that could affect the equity of all the other assessments in the same neighborhood?

Exhibit Let’s review an example of an appraisal that would be non-appealable

Also, there would be considerable confusion about the bill if enacted for the following reasons:

-The bill doesn’t say how old the appraisal can be or what date it must have been completed by or for what purpose the appraisal is being completed for. An appraisal that is over 3, 6 months or 2 years old is generally not considered by a bank as useable and for our purpose, the market could have changed up or down in that amount of time. Assessments are done with consideration to market value as of February 1st for the year of assessment. If an appraisal is brought in that was done several months after that date, or several months prior to that date, the numbers could very well be different because the appraiser and assessor would be using to different sets of data.

-larger jurisdictions have numerous private licensed appraisers that perform work for lending purposes. They all have different opinions, different sets of adjustments, different collections of data and ways of analyzing their data. There is no question that similar properties in the same neighborhood will be appraised at different market value estimates depending on the time of the year, wintertime equals less value, then spring and fall when people are buying and selling, more value.etc.....whereas the assessor takes all of the data, from the ENTIRE year and analyzes it and arrives at an estimate of market value for the following year “consistent and equitable” across the whole condo development, neighborhood, city, or county.

-This statute will result in somebody buying a condo in the winter when sales are slow and an appraisal coming in that usually resembles the sale price and that appraisal then being presented to the assessor as proof of what the property should be assessed at. But the assessor will be using that sale, plus numerous other sales that happened after this particular owner purchased their home that could show numerous properties that sold for more in the spring and fall. To use one appraisal to set somebody’s assessment different from all the other assessments won’t be fair or equitable for the other properties. This proposal isn’t far from the idea of assessing everybody at what they just paid. Because most bank appraisals for financing or refinancing come in at that number anyhow.

Exhibit of inequality

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-The bill doesn't indicate who must have licensed the appraiser. Which board, what state board etc.?

-Private appraisers may consider the value of fences, sprinkling systems, financing points, landscaping differently than assessors do or are allowed to do.

I'm concerned this bill sets up numerous inequities based on dates and deadlines of when the assessment and the appraisal will be done, differences in different sales data for the assessor and the appraiser, different analysis and assumptions, and the fact that with different appraisers using different data, homes that have a recent sale price or appraisal will be considered differently than those that don't have a recent sale or appraisal. I might add that two different private appraisers will come up with a different appraised value. But now the private appraisal will be the standard of the assessment? Completed by a person who isn't certified by the state supervisor?

I believe SB 2101 is trying to legislate something that is already allowed for in state law already and could possibly take what are now equitable assessments and give some people a lower assessment than their friends and neighbors.

Thank you for your consideration

Exhibit of eastern city

#2

Sale Price

Private Appraisal

Assessment

Assessment difference

Condo sells for \$128,000 in Feb (Appraised \$128,000) Assessed \$135,000 5.5% more

Condo sells for \$135,000 in June (Appraised \$135,000) Assessed \$135,000 0% less

Condo sells for \$137,000 in August (Appraised \$137,000) Assessed \$135,000 1.5% less

Condo sells for \$130,000 in October (Appraised \$130,000) Assessed \$135,000 3.8% more

Illustration regarding unfairness of SB 2101 for property owners.

I recently asked several assessors what they would foresee happening under SB2101.

I received the following true scenario from an assessor in eastern ND. They had a request from a taxpayer who recently had their townhome appraised for a bank refinance loan. The refi-appraisal came in at \$121,000 and they wanted the assessor to "correct" the obvious error on the assessor's part because the townhome is assessed in the \$131,000 range.

There were 41 sales of twinhomes in the area in 2011 and 2012. The average selling price is \$132,455. The assessments are at \$131,700. Is it the legislature's intent to have the assessor lower one property based on a refi-appraisal that was basically \$10,000 less than what 41 other sales are saying these things are worth? Or does the assessor ignore the 41 sales, and lower all 175 townhomes based on this one appraisal? Whoops, we can't do that because state statute 57-02-11 says we are supposed to be at market value. Yet now one individual gets about an 8% break over his friends and neighbors.

Now, maybe this unit is all beat up and really isn't worth what the others are assessed at. If that's the case, there is already a system in place to solve this problem without it being mandated that somebody gets a reduction and 175 other twin homes don't. The homeowner simply fills out an abatement form that takes less than 2 minutes to complete. There is no cost and if there is a problem, the assessor will take care of it and NOW has a reason to explain to others why one unit is assessed less than the other units.

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NORTH DAKOTA HOUSE
FINANCE AND TAXATION COMMITTEE

Senate Bill 2101
Testimony of Ben Hushka
Fargo City Assessor
March 18, 2013

Mr. Chairman and members of the House Finance and Taxation Committee, my name is Ben Hushka. I am the City Assessor for Fargo. I have been with the Fargo Assessment Department for more than 36 years. I am very concerned about fair and equitable assessment practices in this state.

I have two main concerns about certain provisions of this bill. They both relate to the appeal of an assessment where an independent appraisal by a state certified or licensed appraiser (which, by the way, I am) is presented to support that appeal.

The main concern relates to the equity of valuations for assessment among similar properties. Assessors apply mass appraisal methodologies to arrive at their values. Mass appraisal evolved out of the need for uniformity and consistency in ad valorem appraisals and consists of appraising groups of properties, as of a given date, using standardized procedures and statistical testing. Single-property, or fee appraisal, in contrast is the valuation of a particular property as of a given date,

Mass appraisal, unlike single-property appraisal, requires the development of valuation models that replicate the forces of supply and demand over a large area. Single-property appraisers conduct market analysis and develop one or more valuation models to estimate the value of a single property. The single-property appraiser doesn't, and has no need to, have a concern with arriving at similar values on similar properties. The assessment, or mass appraiser, is constantly aware of that issue.

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I guarantee, that by adjusting assessment values of select properties based on appraisals that were not completed in the context of mass appraisal, will result in more inequities. The cornerstone of mass appraisal is equity. This assures that the values of similar properties are comparable and, the ultimate tax assessed, is uniform among like properties.

My other concern regards the specifics of the intricate differences and nuances that distinguish mass appraisals for assessment from single-property appraisals.

Licensed and certified appraisers must disclose, identify, support, and document certain information in their appraisal reports in order to comply with the *Uniform Standards of Professional Appraisal Practice (USPAP)*. Failure to do so could result in censure, or in the extreme, revocation of their license.

There are certain basic expectations that a client in need of appraisal services of real estate desires and should receive. The appraisal industry has defined those components in order to standardize, monitor, and regulate the industry. Much of this has come from federal regulation dating back to the first “bank bailout” of the early 1980’s.

One of those components is known as the “as of” date of the appraisal. Every appraisal, which is an opinion of value, is as of one point in time. An opinion of value today can be much different tomorrow, next month, or next year. That is especially true in a rapidly increasing or decreasing market.

This bill only refers to the consideration of an appraisal that was prepared by a licensed or certified appraiser. It is completely void of any reference to the “as of” date of that appraisal. By statute, the assessment date for property tax is February 1st of each year. Assessment officials are required to appraise properties according to their status “as of” that date.

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Two other important elements of an appraisal engagement are the intended use and intended user of the appraisal.

Appraisals are ordered and used by many different people, for many different reasons. Those reasons may include (among many others) financing, purchasing, leasing, estate purposes, divorce, insurance, divisions of property, etc.

The intended use of an appraisal may warrant different definitions of the value opinion to be rendered. In the case of a division of property, the value opinion desired may be for only a partial interest in the property. In a lease situation, the appraisal may be ordered for only the leased fee interest (owner) and may include none of the improvements that the leasehold interest (tenant) added to the property.

It is widely understood and accepted in North Dakota, by statute and case history, that all rights and interests in property are to be valued for property tax purposes, unless expressly exempted by law.

This bill does not address the issue of appraisals submitted in an appeal that do not adhere to the assessment date or that may not include a value opinion of all taxable interests and rights in the property.

All appraisals performed by independent (certified or licensed) appraisers have an intended user and client (the one who engaged the services of the appraiser). The two can be the same, but not always are. Most often, due to the fact that many appraisals are performed for financing purposes, the client and intended user is the mortgage company and/or appraisal management company.

These appraisals are performed by the appraiser, for those clients and users, for the purposes agreed upon.

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Rarely is the owner of a property the client or intended user of an appraisal. However, they may obtain a copy of the appraisal that was performed as a requirement to obtain their financing. If they submit their copy of the appraisal as a basis to appeal their assessment, it would most likely be without the knowledge or consent of the appraiser, client, or intended user of that appraisal.

I do not believe that adjusting assessment values based on appraisals, performed for completely different purposes, will serve to better the assessment process in the state.

This concludes my testimony. Thank you for your consideration.

House Finance and Taxation Committee

SB 2101 - Representative Wesley R. Belter, Chairman

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Dear Chairman Belter,

My name is Kathy Maier. I am a certified residential appraiser who has an appraisal company located in Bismarck. I am concerned that this bill will promote a double standard for valuation of property which is used for assessment and taxation. It is my opinion that using 1 appraisal methodology for determining assessed value provides a level playing field for all tax payers. However, if passed, this legislation should clearly prohibit the use of an unauthorized appraisal report for assessment appeal.

I would estimate that 95% of my clients are lenders. Although lenders provide a copy of each appraisal report to their borrower, the client and intended user is the lender (as required by federal regulation when the appraisal is used for financing purposes). Unless otherwise stated by the appraiser, property owners who have copies of appraisals in their possession (that were developed for financing purposes) are not authorized to use that report.

My concern is that a property owner may not be aware that a report which was completed for financing purposes should not be re-used as a tool for property assessment appeal, unless the appraiser has reported this as an intended use, has stated that the property owner is an intended user and has stated that the property owner is the intended client. To avoid unauthorized use of appraisal reports, legislation should clearly require appraisals for appeal to state the appropriate intended use and state the property owner as the intended user and client.

The following are specific Standards Rules which apply to intended use, intended user, intended client and scope of work:

1. According to the Uniform Standards of Professional Appraisal Practice, the appraiser is required to identify the **intended use** of the appraisal opinions and conclusions (Refer to Statement on Appraisal Standards No. 9, SMT-9).
2. According to the Uniform Standards of Professional Appraisal Practice, the appraiser is required to identify the **intended user** of the appraisal report (Standards Rules 2-2, 6-2, 8-2, or 10-2 as applicable).
3. According to the Uniform Standards of Professional Appraisal Practice, the appraiser is required to identify the **intended client** for which the appraisal assignment was completed (Refer to Statement on Appraisal Standards No. 9, SMT-9).

For clarity, the following is typical verbiage that would appear in an appraisal completed for financing:
Intended User - The Intended User of this appraisal report is the Lender/Client. No additional users are identified by the appraiser and the appraiser is not responsible for unauthorized use of this report. **Intended Appraisal Use** - The Intended Use of the appraisal report is to evaluate the property that is the subject of this appraisal for a mortgage finance transaction, subject to stated Scope of Work, purpose of the appraisal, reporting requirements of this appraisal report form, and Definition of Market Value. **Scope of Work** - The scope of this assignment is specific to the needs of the Lender/Client stated above, who is the only intended user. All other parties that choose to rely on the appraisal for any use whatsoever should recognize that the appraisal was not developed or reported in a manner consistent with the needs or uses of parties other than the identified intended user. The appraiser is not responsible for unauthorized use of this report.

Respectfully Submitted, Kathy J. Maier, ND Certified Residential Appraiser, CR2908