

2009 HOUSE POLITICAL SUBDIVISIONS

HB 1282

# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. HB 1282

### House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: January 29, 2009

Recorder Job Number: 8157

Committee Clerk Signature



Minutes:

**Chairman Wrangham** opened the hearing on HB 1282.

**Handed out testimony #1 from Ben Hushka who could not attend.**

**Rep. Thorpe:** Introduced the bill. The substance of the bill is on page 2 lines 11-17. Its aim is to keep property values at true rate of inflation without the added costs of the sales commission. Right now the way the calculate property valuations by the sale report that is turned in, presently it includes the net price that the seller receives and it also includes the commission. I tried a similar draft of this bill last session and fell 12 votes short getting it out of the house and sending it on to the senate.

**Rep. Koppelman:** If you reduce the market value by the amount of the real estate commission; what about houses where a person sold the house themselves without the realtor fee. Would it value two houses differently by the use of a realtor?

**Rep. Thorpe:** I have been asked that questions several times before. It is my understanding that most of the sales reports that we use come from the agency. If that is a hang up on the bill I have no problem with you making an amendment to this bill.

**Rep. Klemin:** There is a tax burden form and I think it might be helpful for the committee to see that form. Can we get that form?

**Rep. Nancy Johnson:** shouldn't it have a fiscal note?

**Rep. Thorpe:** I don't know if it should. I realize this bill is not going to lower property taxes. Just trying to level taxes to a normal.

**Rep. Jerry Kelsh:** Is it possible that one county reads it one way and another county reads it another way?

Opposition:

**Claus Lembke: Government Affairs Director, NDAR:** (see testimony #2). This bill would clearly have a financial impact. It penalizes those that don't sell their homes. It would be impossible for the assessor to find that information. When you purchase a home you don't get to find out what the seller's costs are. It is privileged information and you cannot get this information. We would have to change the law to get the information that we wanted to do this.

**Kevin Ternes, City Assessor, City of Minot:** (see testimony #3).

**Rep. Koppelman:** If there is a way to determine the correct selling price, would you have an objection to this bill?

**Kevin Ternes:** My testimony explains this. We would be combining two different selling prices. People want to know what the true market valuation is and we would not know anymore since it is now artificial with a 7-10% reduction.

**Howard Malloy: ND Land Title Association:** We oppose this bill. How would you report it? In regards to the information; the fee that would be deducted from the sales price, we are prevented from giving that information out. That is seller confidentiality and we certainly could not provide to the buyer. The buyer would have to disclose what they paid for the house.

When the buyer buys the house there are costs to them for their acquisition and a total cost is provided. Does that increase the value of the property?

**Rep. Koppelman:** Is there an exception for assessors around the state?

**Howard Malloy:** The confidentiality of the commission that is paid by the seller. We are banded by the privacy laws. It would be the buyer that would have to know what that number was.

No neutral.

Hearing closed.

# 2009 HOUSE STANDING COMMITTEE MINUTES


## Bill No. HB 1282

### House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8759

Committee Clerk Signature 

Minutes:

**Chairman Wrangham** reopened the hearing on HB 1282.

**Rep. Klemin:** Brought the ND State Board of Equalization form for the committee to see.

When the property is sold specifically there is a settlement statement that sets out the purchase price. Basically it is divided into two parts; one relates to the sellers expenses and the other is for the buyers expenses. Neither one sees what the other has paid. If there is a Realtor involved that amount is no business of the buyer. Typically the buyer doesn't see the seller's expenses and the seller doesn't see the buyer's expenses. This is confidential information. When the property has been sold the tax department wants to know something about the purchase price was so we have a requirement now that says on the deed we either have to show the full purchase price paid for the property or #2 they can put \$1 down and not state the purchase price because that deed gets recorded to the county recorder and that becomes public information. If it is not on the deed then it is required that you report that information to the state tax department, which is the reason for this form that I handed out. The buyer submits this form. The issue in this bill is reporting some of this information that is considered confidential; who is going to report that? Under this bill the buyer would be able to report some other expenses of the seller like the commission and things like that. The buyer

does not know this now. Sellers and brokers do not want to make this all public information.

So we have a conflict here.

**Do Not Pass Motion Made By Rep. Hatlestad: Seconded By Rep. Kretschmar**

**Vote: 13 Yes      0 No      0 Absent    Carrier: Rep. Hatlestad**

**Hearing closed.**

Date: 2/5  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1282

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS DO NOT PASS AS AMENDED

Motion Made By Rep. Hatlestad Seconded By Rep. Kretschmar

| Representatives                       | Yes | No | Representatives         | Yes | No |
|---------------------------------------|-----|----|-------------------------|-----|----|
| Rep. Dwight Wrangham,<br>Chairman     | ✓   |    | Rep. Kari Conrad        | ✓   |    |
| Rep. Craig Headland, Vice<br>Chairman | ✓   |    | Rep. Jerry Kelsh        | ✓   |    |
| Rep. Patrick Hatlestad                | ✓   |    | Rep. Robert Kilichowski | ✓   |    |
| Rep. Nancy Johnson                    | ✓   |    | Rep. Corey Mock         | ✓   |    |
| Rep. Lawrence Klemin                  | ✓   |    | Rep. Steve Zaiser       | ✓   |    |
| Rep. Kim Koppelman                    | ✓   |    |                         |     |    |
| Rep. William Kretschmar               | ✓   |    |                         |     |    |
| Rep. Vonnie Pietsch                   | ✓   |    |                         |     |    |
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Total (Yes) 13 No 0

Absent 0

Carrier: Rep. Hatlestad

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

**REPORT OF STANDING COMMITTEE**

**HB 1282: Political Subdivisions Committee (Rep. Wrangham, Chairman)** recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1282 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1282

# /

**NORTH DAKOTA HOUSE OF REPRESENTATIVES**  
**POLITICAL SUBDIVISIONS COMMITTEE**

**House Bill 1282**  
**Testimony of Ben Hushka**  
**Fargo City Assessor**  
**January 29, 2009**

Mr. Chairman and members of the House Political Subdivisions Committee, my name is Ben Hushka. I am the City Assessor for Fargo.

The official position taken by the Fargo City Commission is to oppose this bill.

North Dakota statute defines true and full value for assessment purposes as, basically, market value. Market value is widely accepted to be the total consideration, in terms of dollars, paid to acquire property under conditions typical in the marketplace.

The majority of real estate transactions involve the use of providers of services related to the exchange of properties. These can include providing consulting, marketing, and other technical services related to the sale. Most people who sell or purchase property, especially residential property, do not possess the expertise of these service providers and must engage them to exchange properties.

As with any other commodity, part of the cost of acquiring real estate includes exposing the product to the market and facilitating the interaction of buyers and sellers. And when that is what typically takes place in the market, that cost becomes a part of the market value of the real estate.

This bill calls for the exclusion of part of the cost of acquiring real estate when reporting the statement of full consideration to be recorded with the property deed.

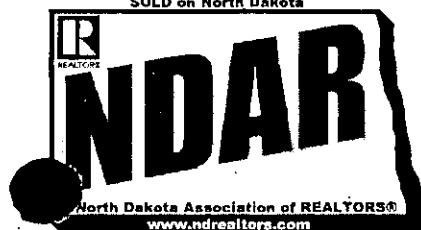
The standard of valuation for assessment under existing law is market value. However, statements of full consideration reported to the State Board of Equalization would become something less than market value if this bill were to be enacted.

That would create a different standard of monitoring the assessments by the State Board of Equalization than the law dictates by which those assessments are to be created. It would also create inequities in assessments because it would make available market data much more difficult for assessors to acquire.

If the intent of this legislation is to simply value properties at something less than they are currently being valued for assessment, the net effect to the taxpayer would be negative and not positive. Market value is generally understandable by most people. They are aware of sale prices of properties and can compare assessments to those sale prices to determine if an assessment is fair. If the standard of value changes to something different than market value, the taxpayer would not have that check and balance available to them.

Additionally, simply adopting a method of valuation at something less than market value will not reduce property taxes. The amount of taxes levied are determined by the approved budgets, not the taxable valuation of a jurisdiction.

This concludes my testimony. Thank you for your consideration.



# North Dakota Association of REALTORS®

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2009

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January 29, 2009

Testimony on HB 1282

To: House Political Subdivisions Committee

From: Claus Lembke, Government Affairs Director, NDAR

Chairman Wrangham and members of the House Political Subdivisions Committee, my name is Claus Lembke. I am the Government Affairs Director for the North Dakota Association of REALTORS®. Our membership consists of 1500 individual REALTOR® members and roughly 500 affiliate members.

Although it does not affect our members directly, we see some inequities that are being proposed under 1282. The inequity of 1282 is clear. Our property tax is based on the "Ad Valorem" system – meaning "according to value." A home that was sold two or three times in the last fifteen year would be taxed less than a home that was not sold in the last fifteen years. 1282 penalizes those who do not sell their home.

It will also be impossible for the assessor to find the exact amount of commissions or what expenses a seller or seller's agent occurred in connection with the sale. The amount of a commission on a sale is not public information. In many cases the purchaser does not even know the amount of the commission. How would the assessor find out what was spent on advertising by the seller or the seller's agent? No one is obligated to keep track or publicize such information.

This bill is inequitable and not workable. We urge you to vote for a do not pass motion.

**Testimony to the House Political Subdivisions Committee,  
Chairman Rep. D. Wrangham 1/29/2009 by  
Kevin Ternes, City Assessor  
City of Minot  
kevin.ternes@minotnd.org**

House Bill 1282

Mr. Chairman, my name is Kevin Ternes and I am the City Assessor in Minot.

With your permission Mr. Chairman, I would like to testify in opposition to this bill. This bill's intent is to subtract any sales commission or other remuneration paid for services provided in connection with the sale of real estate when reporting the sale price to the state board of equalization. There are a number of reasons why this proposal would be unworkable for those of us who have to verify the information and unfair and inequitable to all property taxpayers.

1. The assessor isn't always able to determine the actual sales commission a realtor or agent may charge. Many times deductions or discounts are arranged to "make a deal" or complete the sale. The sales agreement or closing statement would need to be reviewed for each transaction that was arranged by a realtor/sales agent and there is currently no requirement to provide such information. So you wouldn't be able to assume the same fee was charged for the transaction of a sale.
2. All services that may be part of a real estate transaction listed in this bill as remuneration have not been defined. Would this include the closing costs and the list of fees that are charged to a buyer when closing a loan? And if not, why would these fees not be considered but the fees charged by a sales agent/realtor would be? Currently licensed real estate appraisers are not allowed to deduct a sales commission from the sale price as appraisal theory does not support such a deduction. Assessors are appraisers and follow the same guidelines as appraisers. In addition to assessors having to be certified by the state tax department, many of us are licensed real estate appraisers also.
3. *Market Value* is the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arms-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion. If a prudent and knowledgeable buyer finds a home and decides that the price is fair and is consistent with other prices in the market for similar homes, it doesn't matter whether the home has been marketed by the seller directly or whether the seller had someone do the marketing and showing of the home for him.
4. Deducting the sales commission and other fees that are not defined in this bill from homes that had a realtor/sale agent involved would give an unfair advantage to these homes during the assessment process at the expense of those homes where no realtor/agent was involved. For example, two similar homes on the same street are for sale for \$100,000. However one is offered by the owner directly and the 2<sup>nd</sup> is

listed with a realty company. Both are advertised in the local paper, both have for sale signs in the yard, and they both end up selling within a few weeks of each other for the asking prices of \$100,000. This bill proposes that the sales commission be discounted from the one sale that involved a realtor for the statement of full consideration that is reported to the state board. Yet the home sold directly by the owner would be reported as sold for \$100,000? They are similar homes in the same location that sold for the same amount. Why would these two sales be handled 7% to 10% differently in the state board sales study. Should they also then be assessed at different levels? How can they be when they are similar properties? To study homes that have been sold with the assistance of a realtor/sales agent with different rules than those homes that were sold directly by the owner is not equitable to all.

5. Banks and real estate appraisers that do appraisals for loans do not deduct sales commissions or expenses of a sale from the price paid for real estate when estimating the market value for lending purposes. To do so in the state board of equalization study would skew the study and give a discount to the actual market that would not be reflective of actual transactions between buyers and sellers. In Minot, approximately 70% of residential real estate is sold with the assistance of a sales agent. If the average sale price of these homes is \$125,000, is that not an indicator of the actual market? What would be the purpose of deducting sales expenses other than to provide a false indicator of the price that is being paid for real property.

In summation, to discount actual prices of homes that were sold with the help of a realtor/sales agent and mix those statistics in with actual prices of homes sold without a realtor will never provide us a true indication of assessed value to actual market value. It would only present something less than what is truly happening between buyer and seller.

I would like to thank the committee for their consideration.

**The Information on  
This Form Is  
Confidential**  
N.D.C.C. Sec. 11-18-02.2(7)

North Dakota State Board of Equalization  
Statement of Real Estate Full Consideration

#1

Mail to: **State Board of Equalization**  
**North Dakota Office of State Tax Commissioner**  
**State Capitol, 600 E. Boulevard Ave.**  
**Bismarck, ND 58505-0599**

|   |  |                                   |  |
|---|--|-----------------------------------|--|
| 1. Name of Grantee (Purchaser)  |  | 2. Address of Grantee (Purchaser) |  |
| 3. Name of Grantor (Seller)   |  |                                   |  |
| 4. Location of Property Transferred (Number and Street or R.R.)   | 5. <input type="checkbox"/> City <input type="checkbox"/> Township | 6. County                         |  |
| 7. Legal Description (fill in legal description below or attach a copy of legal description from instrument of conveyance.) |  |                                   |  |

Lot No.: \_\_\_\_\_ Block No.: \_\_\_\_\_ Plat Name: \_\_\_\_\_  
Or: \_\_\_\_\_

8. Date on which purchase agreement was made: \_\_\_\_\_ Month: \_\_\_\_\_ Year: \_\_\_\_\_

9. Total Purchase price (fill in amount paid or to be paid exclusive of any interest payments) ..... \$ \_\_\_\_\_

10. Total value of personal property included in purchase price:  
(Furniture, appliances not built in, machinery, crops, livestock, etc.) ..... \$ \_\_\_\_\_

11. Kind of Property: ☐ Land Only ☐ New Building ☐ Building Previously Used

12. Principal Intended Use: ☐ Agricultural ☐ Commercial/Industrial ☐ Residential

☐ Other (explain): \_\_\_\_\_

a. If agricultural, was property used to expand present farming unit? ☐ Yes ☐ No

b. If agricultural, the number of acres purchased was: \_\_\_\_\_

c. If agricultural, did purchase include buildings ☐ Yes ☐ No If yes, estimate the value of buildings \_\_\_\_\_

13. Was the property purchased from relative, a gift, an exchange, a forced or tax sale, or sold to settle an estate? ☐ Yes ☐ No

14. In your opinion, was the sale or transfer made at fair market value (willing buyer, willing seller)? ☐ Yes ☐ No  
If "no," briefly explain why \_\_\_\_\_

I (\_\_\_\_\_) certify under penalty of law that this statement, including the legal description in "7" above, has been examined by \_\_\_\_\_ (s) and to the best of my (our) knowledge and belief it is true, correct and complete.

Sign Here: \_\_\_\_\_  
Signature of Grantee (Purchaser) or Authorized Agent

\_\_\_\_\_  
Date