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The fate of the property tax element in LB 701 now rests with the Nebraska Supreme Court.

The state's highest court heard oral arguments on the case earlier this month.

Nebraska's Legislature passed LB 701 in 2007. The bill provided natural resource districts (NRDs) in the Republican Basin with additional taxing authority to pay for compact compliance efforts.

The bill allowed basin NRDs to levy an additional property tax levy of up to 10 cents per $100 of valuation.

In addition, it allowed the NRDs to implement a per-irrigated-acre occupation tax of up to $10 per acre.

These funds were to be used to pay off bonds issued by the NRDs for the purchase of surface water to keep Nebraska in compliance with its compact with Kansas.

However, no bonds were ever issued because a McCook-based group called Friends of the River (FOTR) filed suit in Lancaster County District Court.

FOTR challenged the constitutionality of the property tax portion of the bill.

They filed against the Nebraska Department of Natural Resources (DNR), basin NRDs and county officials in charge of collecting the tax.

Two of the FOTR plaintiffs included two former Upper Republican NRD board members, Robert Ambrosek and Kenny Fraiser, both of Dundy County.

FOTR claimed the bill was closed-class legislation, meaning that bill only applied to Republican Basin NRDs.

They also challenged that the local property tax was being raised to pay a state obligation. They claimed the compact was a state agreement and that the entire state should help pay for it.

They also said the payment of property taxes under the bill unjustly enriched other taxpayers in the state.

They claimed other taxpayers were benefitting because Republican Basin taxpayers were picking up the tab they felt should be a state obligation.

When the district court judge ruled, he said the law was unconstitutional because he believed the class to be closed and that no other NRD in the state could qualify under the requirements of LB 701.

However, the judge did rule that the property tax was constitutional, saying it was not a state obligation and that other taxpayers were not being unjustly enriched.

Initial ruling sets up appeals

The DNR and NRDs appealed the district court's ruling on the closed class while the FOTR appealed the judge's decisions on the property taxes.

Attorneys on both sides of the case say it's difficult to judge how the high court will rule.

Both LeRoy Sievers, representing FOTR, and Don Blankenau, who represents the NRDs, said they couldn't predict how the court will rule.

However, both said they felt good about their arguments before the high court.

When a ruling will come from the court is anybody's guess.

Blankenau said eight weeks is a likely time frame for a decision.

If the ruling comes before February, and it goes against the state and the NRDs, the issue could go back before this year's legislature to make the bill constitutional.

Sievers said he personally believes the property taxes in LB 701

benefit everyone in the state, even though it's only being paid by property taxpayers in the Republican Basin.

He added he believes compact compliance is a state issue, not one that should be left to basin NRDs.

Both attorneys said the worst thing that could happen would be for the state to take over compliance issues.

Under such a scenario, Gov. Dave Heineman and DNR representatives have said previously that compliance would likely be met with significant cuts in groundwater pumping allocations.

Both Sievers and Blankenau said those draconian measures would be devastating to the economy throughout the basin.

To listen to an audio .wav file of the arguments presented, go to: www.supremecourt.ne.gov/oral-arguments/sc/archive/12-08-sc-oral-arguments.shtml.

Occupation tax challenged

FOTR are awaiting the Supreme Court ruling which will give them direction on their challenge to the occupation tax in LB 701.

They have already filed suit in Lancaster County District Court, challenging the constitutionality of that portion of LB 701.