

E AND R AMENDMENTS TO LB 167

Introduced by Enrollment and Review Committee: McGill, 26,
Chairperson

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 25-1901, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 25-1901 A judgment rendered or final order made by any
6 tribunal, board, or officer exercising judicial functions and
7 inferior in jurisdiction to the district court may be reversed,
8 vacated, or modified by the district court, except that the
9 district court shall not have jurisdiction over (1) appeals from
10 a juvenile court as defined in section 43-245, (2) ~~or~~ appeals
11 from a county court in matters arising under the Nebraska Probate
12 Code or the Nebraska Uniform Trust Code, in matters involving
13 adoption or inheritance tax, or in domestic relations matters, or
14 (3) appeals within the jurisdiction of the Tax Equalization and
15 Review Commission.

16 Sec. 2. Section 77-1504, Revised Statutes Cumulative
17 Supplement, 2006, is amended to read:

18 77-1504 The county board of equalization may meet on or
19 after June 1 and on or before July 25, or on or before August
20 10 if the ~~county~~ board has adopted a resolution to extend the
21 deadline for hearing protests under section 77-1502, to consider
22 and correct the current year's assessment of any real property
23 which has been undervalued or overvalued. The board shall give

1 notice of the assessed value to the record owner or agent at his or
2 her last-known address.

3 The county board of equalization in taking action
4 pursuant to this section may only consider the report of the county
5 assessor pursuant to section 77-1315.01.

6 Action of the county board of equalization pursuant to
7 this section shall be for the current assessment year only.

8 The action of the county board of equalization may be
9 protested to the board within thirty days after the mailing of
10 the notice required by this section. If no protest is filed, the
11 action of the board shall be final. If a protest is filed, the
12 county board of equalization shall hear the protest in the manner
13 prescribed in section 77-1502, except that all protests shall be
14 heard and decided on or before September 15 or on or before
15 September 30 if the county has adopted a resolution to extend
16 the deadline for hearing protests under section 77-1502. Within
17 seven days after the county board of equalization's final decision,
18 the county clerk shall mail to the protester written notice of
19 the decision. The notice shall contain a statement advising the
20 protester that a report of the decision is available at the county
21 clerk's or county assessor's office, whichever is appropriate, and
22 that a copy of the report may be used to complete an appeal to the
23 Tax Equalization and Review Commission.

24 The action of the county board of equalization upon a
25 protest filed pursuant to this section may be appealed to the Tax
26 Equalization and Review Commission on or before October 15 or on or
27 before October 30 if the county has adopted a resolution to extend

1 the deadline for hearing protests under section 77-1502.

2 Sec. 3. Section 77-1507.01, Revised Statutes Cumulative
3 Supplement, 2006, is amended to read:

4 77-1507.01 Any person otherwise having a right to appeal
5 may petition the Tax Equalization and Review Commission in
6 accordance with section 77-5013, on or before December 31 of each
7 year, to determine the actual value, special value, or recapture
8 value of real property for that year if a failure to give notice
9 prevented timely filing of a protest or appeal provided for in
10 sections 77-1501 to ~~77-1507.~~ 77-1510.

11 Sec. 4. Section 77-5003, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 77-5003 (1) The Tax Equalization and Review Commission
14 is created. The Tax Commissioner has no supervision, authority,
15 or control over the actions or decisions of the commission
16 relating to its duties prescribed by law. The commission shall
17 have three commissioners, one from each congressional district, and
18 beginning on and after January 1, 2002, the commission shall have
19 four commissioners. One at-large commissioner shall be appointed
20 in addition to the commissioners representing the congressional
21 districts. All commissioners shall be appointed by the Governor
22 with the approval of a majority of the members of the Legislature.

23 (2) The term of the commissioner from district 1 expires
24 ~~two years after the first appointment under this section,~~ January
25 1, 2010, the term of the commissioner from district 2 expires ~~four~~
26 ~~years after the first appointment under this section,~~ January 1,
27 2012, and the term of the commissioner from district 3 expires

1 ~~six years after the first appointment under this section.~~ January
2 1, 2008. The ~~initial~~ term of the at-large commissioner expires
3 on January 1, 2008. After the ~~initial~~ terms of the commissioners
4 are completed as provided in this section, each subsequent term
5 shall be for six years beginning and ending on January 1 of the
6 applicable year. Vacancies occurring during a term shall be filled
7 by appointment for the unexpired term. Upon the expiration of his
8 or her term of office, a commissioner shall continue to serve until
9 his or her successor has been appointed.

10 (3) The Governor shall designate one commissioner, who
11 is an attorney admitted to practice before the Nebraska Supreme
12 Court, to serve as the chairperson of the commission from January
13 1, 2002, through December 31, 2003. Beginning on January 1, 2004,
14 the commission shall designate pursuant to rule and regulation
15 its chairperson and vice-chairperson on a two-year, rotating basis
16 among the commissioners who are attorneys admitted to practice
17 before the Nebraska Supreme Court.

18 (4) A commissioner may be removed by the Governor for
19 misfeasance, malfeasance, or willful neglect of duty or other cause
20 after notice and a public hearing unless notice and hearing are
21 expressly waived in writing by the commissioner.

22 Sec. 5. Section 77-5011, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-5011 The chairperson may call special meetings of the
25 commission at such times as its business requires. The chairperson
26 may also administer oaths and affirmations and sign all orders,
27 certificates, and process in the name of the commission. The

1 chairperson shall attest all orders, certificates, and process
2 with the official seal of the commission. In the absence of the
3 chairperson the vice-chairperson may perform the duties of the
4 chairperson. Orders, certificates, and process under the official
5 seal of the commission may be enforced by the district court for
6 Lancaster County.

7 Sec. 6. Section 77-5016, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 77-5016 Any hearing or proceeding of the commission shall
10 be conducted as an informal hearing unless a formal hearing is
11 granted as determined by the commission according to its rules and
12 regulations. In any hearing or proceeding heard by the commission
13 or a panel of commissioners:

14 (1) The commission may admit and give probative
15 effect to evidence which possesses probative value commonly
16 accepted by reasonably prudent persons in the conduct of their
17 affairs excluding incompetent, irrelevant, immaterial, and unduly
18 repetitious evidence and shall give effect to the privilege rules
19 of evidence in sections 27-501 to 27-513 but shall not otherwise be
20 bound by the usual common-law or statutory rules of evidence except
21 during a formal hearing. Any party to an appeal filed under section
22 77-5007 may request a formal hearing by delivering a written
23 request to the commission not more than thirty days after the
24 appeal is filed. ~~The request shall include the requesting party's~~
25 ~~agreement to be liable for the payment of costs incurred and~~
26 ~~upon any appeal or review, including the cost of court reporting~~
27 ~~services which the requesting party shall procure for the hearing.~~

1 ~~The commission shall be bound by the rules of evidence applicable~~
2 ~~in district court in any formal hearing held by the commission.~~
3 All costs of a formal hearing shall be paid by the party or
4 parties against whom a final decision is rendered; The requesting
5 party shall be liable for the payment of fees and costs of a
6 court reporter pending a final decision. The commission shall be
7 bound by the rules of evidence applicable in district court in any
8 formal hearing held by the commission. Fees and costs of a court
9 reporter shall be paid by the party or parties against whom a final
10 decision is rendered, and all other costs shall be allocated as
11 the commission may determine;

12 (2) The commission may administer oaths, issue subpoenas,
13 and compel the attendance of witnesses and the production of
14 any papers, books, accounts, documents, statistical analysis, and
15 testimony. The commission may adopt and promulgate necessary rules
16 for discovery which are consistent with the rules adopted by the
17 Supreme Court pursuant to section 25-1273.01;

18 (3) The commission may consider and utilize the
19 provisions of the Constitution of the United States, the
20 Constitution of Nebraska, the laws of the United States, the
21 laws of Nebraska, the Code of Federal Regulations, the Nebraska
22 Administrative Code, any decision of the several courts of the
23 United States or the State of Nebraska, and the legislative history
24 of any law, rule, or regulation, without making the document
25 a part of the record. The commission may without inclusion in
26 the record consider and utilize published treatises, periodicals,
27 and reference works pertaining to the valuation or assessment of

1 real or personal property or the meaning of words and phrases
2 if the document is identified in the commission's rules and
3 regulations. All other evidence, including records and documents
4 in the possession of the commission of which it desires to avail
5 itself, shall be offered and made a part of the record in the case.
6 No other factual information or evidence other than that set forth
7 in this section shall be considered in the determination of the
8 case. Documentary evidence may be received in the form of copies or
9 excerpts or by incorporation by reference;

10 (4) Every party shall have the right of cross-examination
11 of witnesses who testify and shall have the right to submit
12 rebuttal evidence;

13 (5) The commission may take notice of judicially
14 cognizable facts and in addition may take notice of general,
15 technical, or scientific facts within its specialized knowledge
16 or statistical information regarding general levels of assessment
17 within a county or a class or subclass of real property within
18 a county and measures of central tendency within such county or
19 classes or subclasses within such county which have been made
20 known to the commission. Parties shall be notified either before
21 or during the hearing or by reference in preliminary reports or
22 otherwise of the material so noticed. They shall be afforded
23 an opportunity to contest the facts so noticed. The commission
24 may utilize its experience, technical competence, and specialized
25 knowledge in the evaluation of the evidence presented to it;

26 (6) Any person testifying under oath at a hearing
27 who knowingly and intentionally makes a false statement to the

1 commission or its designee is guilty of perjury. For the purpose of
2 this section, perjury is a Class I misdemeanor;

3 ~~(7) The commission shall hear appeals and cross appeals~~
4 ~~as in equity and without a jury and determine de novo all~~
5 ~~questions raised in the proceedings upon which the order, decision,~~
6 ~~determination, or action appealed from is based;~~

7 (7) The commission may determine any question raised in
8 the proceeding upon which an order, decision, determination, or
9 action appealed from is based. The commission may consider all
10 questions necessary to determine taxable value of property as it
11 hears an appeal or cross appeal;

12 (8) In all appeals, excepting those arising under
13 section 77-1606, if the appellant presents no evidence to show
14 that the order, decision, determination, or action appealed
15 from is incorrect, the commission shall deny the appeal. If
16 the appellant presents any evidence to show that the order,
17 decision, determination, or action appealed from is incorrect,
18 such order, decision, determination, or action shall be affirmed
19 unless evidence is adduced establishing that the order, decision,
20 determination, or action was unreasonable or arbitrary;

21 ~~(9) Any decision rendered by the commission shall be~~
22 ~~certified to the parties and, if applicable, to the county~~
23 ~~treasurer and the official charged with the duty of preparing~~
24 ~~the tax list. When such decision becomes final, the officials shall~~
25 ~~correct their records accordingly;~~

26 ~~(10)~~ (9) If the appeal concerns a decision by the county
27 board of equalization that property is, in whole or in part, exempt

1 from taxation, the decision to be rendered by the commission shall
2 only determine the exemption status of the property. The decision
3 shall not determine the taxable value of the property unless
4 stipulated by the parties according to subsection (2) of section
5 77-5017;

6 ~~(11)~~ (10) If the appeal concerns a decision by the
7 county board of equalization that property owned by the state
8 or a political subdivision is or is not exempt and there has
9 been no final determination of the value of the property, the
10 decision to be rendered by the commission shall only determine the
11 exemption status of the property. The decision shall not determine
12 the taxable value of the property unless stipulated by the parties
13 according to subsection (2) of section 77-5017;

14 ~~(12)~~ (11) The costs of any appeal, including the costs of
15 witnesses, may be taxed by the commission as it deems just, except
16 costs payable by the appellant pursuant to section 77-1510.01,
17 unless the appellant is the county assessor or county clerk in
18 which case the costs shall be paid by the county; and

19 ~~(13)~~ (12) The commission shall deny relief to the
20 appellant or petitioner in any hearing or proceeding unless a
21 majority of the commissioners present determine that the relief
22 should be granted.

23 Sec. 7. Section 77-5017, Revised Statutes Cumulative
24 Supplement, 2006, is amended to read:

25 77-5017 (1) In resolving an appeal or petition, the
26 commission may make such orders as are appropriate for resolving
27 the dispute but in no case shall the relief be excessive compared

1 to the problems addressed. The commission may make prospective
2 orders requiring changes in assessment practices which will improve
3 assessment practices or affect the general level of assessment or
4 the measures of central tendency in a positive way. If no other
5 relief is adequate to resolve disputes, the commission may order a
6 reappraisal of property within a county, an area within a county,
7 or classes or subclasses of property within a county.

8 (2) In an appeal specified in subdivision ~~(10)~~ ~~or~~ ~~(11)~~
9 (9) or (10) of section 77-5016 for which the commission determines
10 exempt property to be taxable, the commission shall order the
11 county board of equalization to determine the taxable value of
12 the property, unless the parties stipulate to such taxable value
13 during the hearing before the commission. The order shall require
14 the county board of equalization to (a) assess such property
15 using procedures for assessing omitted property, (b) determine
16 such taxable value within ninety days after the issuance of the
17 commission's order, and (c) apply interest, but not penalty, to the
18 taxable value as of the date the commission's order was issued or
19 the date the taxes were delinquent, whichever is later.

20 (3) A determination of the taxable value of the property
21 made by the county board of equalization pursuant to subsection (2)
22 of this section may be appealed to the commission within thirty
23 days after the board's decision.

24 Sec. 8. Section 77-5020, Revised Statutes Cumulative
25 Supplement, 2006, is amended to read:

26 77-5020 The commission, subject to rules and regulations,
27 shall have the power to invalidate or suspend the certificate

1 issued pursuant to section 77-422 of any county assessor or deputy
2 assessor who willfully fails or refuses to comply with any order
3 of the commission. No certificate shall be ~~revoked~~ invalidated or
4 suspended except upon a ~~proper~~ hearing before the commission.

5 ~~After due notice,~~ if the county assessor certificate of
6 a person serving as county assessor or deputy assessor is ~~revoked,~~
7 such person shall be removed from office, the office declared
8 vacant, and such person shall not be eligible to hold that office
9 for a period of five years from the date of removal. Any county
10 assessor or deputy assessor whose certificate has been so ~~revoked~~
11 invalidated or suspended may appeal the decision to the Court of
12 Appeals in accordance with section 77-5019.

13 No action shall be brought under this section more than
14 two years after the date of the act, last date of a series of
15 actions complained of, or the last date the county assessor or
16 deputy assessor could have acted to comply, whichever is later.

17 Sec. 9. Section 77-5023, Revised Statutes Cumulative
18 Supplement, 2006, is amended to read:

19 77-5023 (1) Pursuant to section 77-5022, the commission
20 shall have the power to increase or decrease the value of a class
21 or subclass of real property in any county or taxing authority
22 or of real property valued by the state so that all classes
23 or subclasses of real property in all counties fall within an
24 acceptable range.

25 (2) An acceptable range is the percentage of variation
26 from a standard for valuation as measured by an established
27 indicator of central tendency of assessment. Acceptable ranges are:

1 (a) For agricultural land and horticultural land as defined in
2 section 77-1359, sixty-nine to seventy-five percent of actual
3 value; (b) for lands receiving special valuation, sixty-nine
4 to seventy-five percent of special valuation as defined in
5 section 77-1343 and sixty-nine to seventy-five percent of recapture
6 valuation as defined in section 77-1343; and (c) for all other real
7 property, ninety-two to one hundred percent of actual value.

8 (3) Any increase or decrease shall cause the ~~indicator of~~
9 ~~central tendency of assessment utilized~~ level of value determined
10 by the commission to be at the midpoint of the applicable
11 acceptable range.

12 (4) Any decrease or increase to a subclass of property
13 shall also cause the ~~indicator of central tendency utilized~~ level
14 of value determined by the commission for the class from which the
15 subclass is drawn to be within the applicable acceptable range.

16 (5) Whether or not an ~~established indicator of central~~
17 ~~tendency~~ the level of value determined by the commission falls
18 within an acceptable range or at the midpoint of an acceptable
19 range may be determined to a reasonable degree of certainty relying
20 upon generally accepted mass appraisal techniques.

21 Sec. 10. Section 77-5026, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

23 77-5026 Pursuant to section 77-5023, if the commission
24 finds that the level of ~~assessment~~ value of a class or subclass of
25 real property fails to satisfy the requirements of section 77-5023,
26 the commission shall issue a notice to the counties which it deems
27 either undervalued or overvalued and shall set a date for hearing

1 at least five days following the mailing of the notice unless
2 notice is waived. The notice unless waived shall be mailed to the
3 county clerk, county assessor, and chairperson of the county board.
4 At the hearing the county assessor or other legal representatives
5 of the county may appear and show cause why the value of a
6 class or subclass of real property of the county should not be
7 adjusted. A county assessor or other legal representative of the
8 county may waive notice of the hearing or consent to entry of an
9 order adjusting the value of a class or subclass of real property
10 without further notice. At the hearing, the commission may receive
11 testimony from any interested person.

12 Sec. 11. Section 77-5028, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 77-5028 After a hearing conducted pursuant to section
15 77-5026, the commission shall enter its order based on information
16 presented to it at the hearing. The order of the commission shall
17 be sent by certified mail to the county assessor and by regular
18 mail to the county clerk and chairperson of the county board on or
19 before May 15 of each year or the date determined by the Property
20 Tax Administrator if an extension is ordered pursuant to section
21 77-1514, unless the offices of the commission are closed, then
22 the order of the commission shall be sent by the end of the next
23 day the commission's offices are open. The order shall specify the
24 percentage increase or decrease and the class or subclass of real
25 property affected or the corrections or adjustments to be made to
26 ~~the class or subclass~~ each parcel of real property in the class
27 or subclass affected. The specified changes shall be made by the

1 county assessor to each ~~item~~ parcel of real property in the county
2 so affected.

3 Sec. 12. Original sections 77-5003 and 77-5011, Reissue
4 Revised Statutes of Nebraska, and sections 25-1901, 77-1504,
5 77-1507.01, 77-5016, 77-5017, 77-5020, 77-5023, 77-5026, and
6 77-5028, Revised Statutes Cumulative Supplement, 2006, are
7 repealed.

8 Sec. 13. The following section is outright repealed:
9 Section 77-5014, Reissue Revised Statutes of Nebraska.

10 Sec. 14. Since an emergency exists, this act takes effect
11 when passed and approved according to law.

12 2. On page 1, line 4, strike "77-5022,"; in line 9 strike
13 "and"; and in line 10 after "Nebraska" insert "; and to declare an
14 emergency".