

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 167

FINAL READING

Introduced by Revenue Committee: Janssen, 15, Chairperson; Burling, 33; Cornett, 45; Dierks, 40; Langemeier, 23; Raikes, 25

Read first time January 8, 2007

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-5003 and 77-5011, Reissue Revised Statutes of
3 Nebraska, and sections 25-1901, 77-1504, 77-1507.01,
4 77-5016, 77-5017, 77-5020, 77-5023, 77-5026, and
5 77-5028, Revised Statutes Cumulative Supplement, 2006;
6 to change and eliminate provisions relating to appeals,
7 equalization, the Tax Equalization and Review Commission,
8 and assessor certification; to harmonize provisions; to
9 repeal the original sections; to outright repeal section
10 77-5014, Reissue Revised Statutes of Nebraska; and to
11 declare an emergency.

12 Be it enacted by the people of the State of Nebraska,

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

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

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

16 77-1504 The county board of equalization may meet on or
17 after June 1 and on or before July 25, or on or before August
18 10 if the ~~county~~ board has adopted a resolution to extend the
19 deadline for hearing protests under section 77-1502, to consider
20 and correct the current year's assessment of any real property
21 which has been undervalued or overvalued. The board shall give
22 notice of the assessed value to the record owner or agent at his or
23 her last-known address.

24 The county board of equalization in taking action
25 pursuant to this section may only consider the report of the county

1 assessor pursuant to section 77-1315.01.

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

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

20 The action of the county board of equalization upon a
21 protest filed pursuant to this section may be appealed to the Tax
22 Equalization and Review Commission on or before October 15 or on or
23 before October 30 if the county has adopted a resolution to extend
24 the deadline for hearing protests under section 77-1502.

25 Sec. 3. Section 77-1507.01, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2 77-1507.01 Any person otherwise having a right to appeal
3 may petition the Tax Equalization and Review Commission in
4 accordance with section 77-5013, on or before December 31 of each
5 year, to determine the actual value, special value, or recapture
6 value of real property for that year if a failure to give notice
7 prevented timely filing of a protest or appeal provided for in
8 sections 77-1501 to ~~77-1507.~~ 77-1510.

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

11 77-5003 (1) The Tax Equalization and Review Commission
12 is created. The Tax Commissioner has no supervision, authority,
13 or control over the actions or decisions of the commission
14 relating to its duties prescribed by law. The commission shall
15 have three commissioners, one from each congressional district, and
16 beginning on and after January 1, 2002, the commission shall have
17 four commissioners. One at-large commissioner shall be appointed
18 in addition to the commissioners representing the congressional
19 districts. All commissioners shall be appointed by the Governor
20 with the approval of a majority of the members of the Legislature.

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

1 may also administer oaths and affirmations and sign all orders,
2 certificates, and process in the name of the commission. The
3 chairperson shall attest all orders, certificates, and process
4 with the official seal of the commission. In the absence of the
5 chairperson the vice-chairperson may perform the duties of the
6 chairperson. Orders, certificates, and process under the official
7 seal of the commission may be enforced by the district court for
8 Lancaster County.

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

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

16 (1) The commission may admit and give probative
17 effect to evidence which possesses probative value commonly
18 accepted by reasonably prudent persons in the conduct of their
19 affairs excluding incompetent, irrelevant, immaterial, and unduly
20 repetitious evidence and shall give effect to the privilege rules
21 of evidence in sections 27-501 to 27-513 but shall not otherwise be
22 bound by the usual common-law or statutory rules of evidence except
23 during a formal hearing. Any party to an appeal filed under section
24 77-5007 may request a formal hearing by delivering a written
25 request to the commission not more than thirty days after the

1 appeal is filed. The request shall include the requesting party's
 2 agreement to be liable for the payment of costs incurred and
 3 upon any appeal or review, including the cost of court reporting
 4 services which the requesting party shall procure for the hearing.
 5 The commission shall be bound by the rules of evidence applicable
 6 in district court in any formal hearing held by the commission.
 7 All costs of a formal hearing shall be paid by the party or
 8 parties against whom a final decision is rendered; The requesting
 9 party shall be liable for the payment of fees and costs of a
 10 court reporter pending a final decision. The commission shall be
 11 bound by the rules of evidence applicable in district court in any
 12 formal hearing held by the commission. Fees and costs of a court
 13 reporter shall be paid by the party or parties against whom a final
 14 decision is rendered, and all other costs shall be allocated as
 15 the commission may determine;

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

22 (3) The commission may consider and utilize the
 23 provisions of the Constitution of the United States, the
 24 Constitution of Nebraska, the laws of the United States, the
 25 laws of Nebraska, the Code of Federal Regulations, the Nebraska

1 Administrative Code, any decision of the several courts of the
2 United States or the State of Nebraska, and the legislative history
3 of any law, rule, or regulation, without making the document
4 a part of the record. The commission may without inclusion in
5 the record consider and utilize published treatises, periodicals,
6 and reference works pertaining to the valuation or assessment of
7 real or personal property or the meaning of words and phrases
8 if the document is identified in the commission's rules and
9 regulations. All other evidence, including records and documents
10 in the possession of the commission of which it desires to avail
11 itself, shall be offered and made a part of the record in the case.
12 No other factual information or evidence other than that set forth
13 in this section shall be considered in the determination of the
14 case. Documentary evidence may be received in the form of copies or
15 excerpts or by incorporation by reference;

16 (4) Every party shall have the right of cross-examination
17 of witnesses who testify and shall have the right to submit
18 rebuttal evidence;

19 (5) The commission may take notice of judicially
20 cognizable facts and in addition may take notice of general,
21 technical, or scientific facts within its specialized knowledge
22 or statistical information regarding general levels of assessment
23 within a county or a class or subclass of real property within
24 a county and measures of central tendency within such county or
25 classes or subclasses within such county which have been made

1 known to the commission. Parties shall be notified either before
2 or during the hearing or by reference in preliminary reports or
3 otherwise of the material so noticed. They shall be afforded
4 an opportunity to contest the facts so noticed. The commission
5 may utilize its experience, technical competence, and specialized
6 knowledge in the evaluation of the evidence presented to it;

7 (6) Any person testifying under oath at a hearing
8 who knowingly and intentionally makes a false statement to the
9 commission or its designee is guilty of perjury. For the purpose of
10 this section, perjury is a Class I misdemeanor;

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

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

20 (8) In all appeals, excepting those arising under
21 section 77-1606, if the appellant presents no evidence to show
22 that the order, decision, determination, or action appealed
23 from is incorrect, the commission shall deny the appeal. If
24 the appellant presents any evidence to show that the order,
25 decision, determination, or action appealed from is incorrect,

1 such order, decision, determination, or action shall be affirmed
2 unless evidence is adduced establishing that the order, decision,
3 determination, or action was unreasonable or arbitrary;

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

9 ~~(10)~~ (9) If the appeal concerns a decision by the county
10 board of equalization that property is, in whole or in part, exempt
11 from taxation, the decision to be rendered by the commission shall
12 only determine the exemption status of the property. The decision
13 shall not determine the taxable value of the property unless
14 stipulated by the parties according to subsection (2) of section
15 77-5017;

16 ~~(11)~~ (10) If the appeal concerns a decision by the
17 county board of equalization that property owned by the state
18 or a political subdivision is or is not exempt and there has
19 been no final determination of the value of the property, the
20 decision to be rendered by the commission shall only determine the
21 exemption status of the property. The decision shall not determine
22 the taxable value of the property unless stipulated by the parties
23 according to subsection (2) of section 77-5017;

24 ~~(12)~~ (11) The costs of any appeal, including the costs of
25 witnesses, may be taxed by the commission as it deems just, except

1 costs payable by the appellant pursuant to section 77-1510.01,
2 unless the appellant is the county assessor or county clerk in
3 which case the costs shall be paid by the county; and

4 ~~(13)~~ (12) The commission shall deny relief to the
5 appellant or petitioner in any hearing or proceeding unless a
6 majority of the commissioners present determine that the relief
7 should be granted.

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

10 77-5017 (1) In resolving an appeal or petition, the
11 commission may make such orders as are appropriate for resolving
12 the dispute but in no case shall the relief be excessive compared
13 to the problems addressed. The commission may make prospective
14 orders requiring changes in assessment practices which will improve
15 assessment practices or affect the general level of assessment or
16 the measures of central tendency in a positive way. If no other
17 relief is adequate to resolve disputes, the commission may order a
18 reappraisal of property within a county, an area within a county,
19 or classes or subclasses of property within a county.

20 (2) In an appeal specified in subdivision ~~(10)~~ ~~or~~ ~~(11)~~
21 (9) or (10) of section 77-5016 for which the commission determines
22 exempt property to be taxable, the commission shall order the
23 county board of equalization to determine the taxable value of
24 the property, unless the parties stipulate to such taxable value
25 during the hearing before the commission. The order shall require

1 the county board of equalization to (a) assess such property
2 using procedures for assessing omitted property, (b) determine
3 such taxable value within ninety days after the issuance of the
4 commission's order, and (c) apply interest, but not penalty, to the
5 taxable value as of the date the commission's order was issued or
6 the date the taxes were delinquent, whichever is later.

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

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

13 77-5020 The commission, subject to rules and regulations,
14 shall have the power to invalidate or suspend the certificate
15 issued pursuant to section 77-422 of any county assessor or deputy
16 assessor who willfully fails or refuses to comply with any order
17 of the commission. No certificate shall be ~~revoked~~ invalidated or
18 suspended except upon a ~~proper~~ hearing before the commission.

19 ~~After due notice, if the county assessor certificate of~~
20 ~~a person serving as county assessor or deputy assessor is revoked,~~
21 ~~such person shall be removed from office, the office declared~~
22 ~~vacant, and such person shall not be eligible to hold that office~~
23 ~~for a period of five years from the date of removal.~~ Any county
24 assessor or deputy assessor whose certificate has been so ~~revoked~~
25 invalidated or suspended may appeal the decision to the Court of

1 Appeals in accordance with section 77-5019.

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

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

8 77-5023 (1) Pursuant to section 77-5022, the commission
9 shall have the power to increase or decrease the value of a class
10 or subclass of real property in any county or taxing authority
11 or of real property valued by the state so that all classes
12 or subclasses of real property in all counties fall within an
13 acceptable range.

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

17 (a) For agricultural land and horticultural land as defined in
18 section 77-1359, sixty-nine to seventy-five percent of actual
19 value; (b) for lands receiving special valuation, sixty-nine
20 to seventy-five percent of special valuation as defined in
21 section 77-1343 and sixty-nine to seventy-five percent of recapture
22 valuation as defined in section 77-1343; and (c) for all other real
23 property, ninety-two to one hundred percent of actual value.

24 (3) Any increase or decrease shall cause the ~~indicator of~~
25 ~~central tendency of assessment utilized~~ level of value determined

1 by the commission to be at the midpoint of the applicable
2 acceptable range.

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

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

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

14 77-5026 Pursuant to section 77-5023, if the commission
15 finds that the level of ~~assessment~~ value of a class or subclass of
16 real property fails to satisfy the requirements of section 77-5023,
17 the commission shall issue a notice to the counties which it deems
18 either undervalued or overvalued and shall set a date for hearing
19 at least five days following the mailing of the notice unless
20 notice is waived. The notice unless waived shall be mailed to the
21 county clerk, county assessor, and chairperson of the county board.
22 At the hearing the county assessor or other legal representatives
23 of the county may appear and show cause why the value of a
24 class or subclass of real property of the county should not be
25 adjusted. A county assessor or other legal representative of the

1 county may waive notice of the hearing or consent to entry of an
2 order adjusting the value of a class or subclass of real property
3 without further notice. At the hearing, the commission may receive
4 testimony from any interested person.

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

7 77-5028 After a hearing conducted pursuant to section
8 77-5026, the commission shall enter its order based on information
9 presented to it at the hearing. The order of the commission shall
10 be sent by certified mail to the county assessor and by regular
11 mail to the county clerk and chairperson of the county board on or
12 before May 15 of each year or the date determined by the Property
13 Tax Administrator if an extension is ordered pursuant to section
14 77-1514, unless the offices of the commission are closed, then
15 the order of the commission shall be sent by the end of the next
16 day the commission's offices are open. The order shall specify the
17 percentage increase or decrease and the class or subclass of real
18 property affected or the corrections or adjustments to be made to
19 ~~the class or subclass~~ each parcel of real property in the class
20 or subclass affected. The specified changes shall be made by the
21 county assessor to each ~~item~~ parcel of real property in the county
22 so affected.

23 Sec. 12. Original sections 77-5003 and 77-5011, Reissue
24 Revised Statutes of Nebraska, and sections 25-1901, 77-1504,
25 77-1507.01, 77-5016, 77-5017, 77-5020, 77-5023, 77-5026, and

1 77-5028, Revised Statutes Cumulative Supplement, 2006, are
2 repealed.

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

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