

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 964

Introduced by Revenue Committee: Janssen, 15, Chairperson; Burling, 33; Cornett, 45; Dierks, 40; Langemeier, 23; Preister, 5; Raikes, 25; White, 8.

Read first time January 15, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-1345.01 and 77-5019, Revised Statutes Cumulative
3 Supplement, 2006, and sections 77-5004 and 81-1316,
4 Revised Statutes Supplement, 2007; to change property
5 valuation appeal provisions; to change provisions
6 relating to members and employees of the Tax Equalization
7 and Review Commission; and to repeal the original
8 sections.

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

1 Section 1. Section 77-1345.01, Revised Statutes
2 Cumulative Supplement, 2006, is amended to read:

3 77-1345.01 (1) On or before July 15 in the year of
4 application, the county assessor shall approve or deny the
5 application for special valuation filed pursuant to section
6 77-1345. On or before July 22, the county assessor shall issue
7 notice of approval or denial.

8 (2) If the application is approved by the county
9 assessor, the land shall be valued as provided in section 77-1344
10 and, on or before July 22, the county board of equalization shall
11 send a property valuation notice for special value and recapture
12 value to the owner and, if not the same, the applicant. Within
13 thirty days after the mailing of the notice, a written protest of
14 the special value or recapture value may be filed.

15 (3)(a) If the application is denied by the assessor, a
16 written protest of the denial of the application may be filed
17 within thirty days after the mailing of the denial.

18 (b) If the denial of an application for special valuation
19 is reversed on appeal and the application is approved, the land
20 shall be valued as provided in section 77-1344 and the county
21 board of equalization shall send the property valuation notice for
22 special value and recapture value to the owner and, if not the
23 same, the applicant or his or her successor in interest, within
24 fourteen days after the date of the final order. Within thirty days
25 after the mailing of the notice, a written protest of the special

1 value or recapture value may be filed.

2 (4) If the county board of equalization takes action
3 pursuant to section 77-1504 or 77-1507 and the applicant filed
4 an application for special valuation pursuant to subsection (3)
5 of section 77-1345, the county assessor shall approve or deny the
6 application within fifteen days after the filing of the application
7 and issue notice of the approval or denial as prescribed in
8 subsection (1) of this section. If the application is denied by
9 the county assessor, a written protest of the denial may be filed
10 within thirty days of the mailing of the denial.

11 (5) The assessor shall mail notice of any action taken
12 by him or her on an application to the owner and the applicant if
13 different than the owner.

14 (6) All provisions of section 77-1502 except dates for
15 filing of a protest, the period for hearing protests, and the date
16 for mailing notice of the county board of equalization's decision
17 are applicable to any protest filed pursuant to this section.

18 (7) The county board of equalization shall decide any
19 protest filed pursuant to this section within thirty days after the
20 filing of the protest.

21 (8) The clerk shall mail a copy of any decision made by
22 the county board of equalization on a protest filed pursuant to
23 this section to the owner and the applicant if different than the
24 owner within seven days after the board's decision.

25 (9) Any decision of the county board of equalization

1 may be appealed to the Tax Equalization and Review Commission, in
2 accordance with section 77-5013, within thirty days after the date
3 of the decision.

4 (10) ~~Any~~ If a failure to give notice as prescribed
5 by this section prevented timely filing of a protest or appeal
6 provided for in this section, any applicant may petition the
7 Tax Equalization and Review Commission in accordance with section
8 77-5013, on or before December 31 of each year, to determine
9 whether the land will receive special valuation for that year,
10 to determine special value for that year or years, or for 2009
11 and prior years to determine recapture value for that year. if
12 a failure to give notice as prescribed by this section prevented
13 timely filing of a protest or appeal provided for in this section.

14 Sec. 2. Section 77-5004, Revised Statutes Supplement,
15 2007, is amended to read:

16 77-5004 (1) Each commissioner shall be a qualified voter
17 and resident of the state and, for each commissioner representing
18 a congressional district, a domiciliary of the district he or she
19 represents.

20 (2) Each commissioner shall devote his or her full time
21 and efforts to the discharge of his or her duties and shall not
22 hold any other office under the laws of this state, any city or
23 county in this state, or the United States Government while serving
24 on the commission. Each commissioner shall possess:

25 (a) Appropriate knowledge of terms commonly used in or

1 related to real property appraisal and of the writing of appraisal
2 reports;

3 (b) Adequate knowledge of depreciation theories, cost
4 estimating, methods of capitalization, and real property appraisal
5 mathematics;

6 (c) An understanding of the principles of land economics,
7 appraisal processes, and problems encountered in the gathering,
8 interpreting, and evaluating of data involved in the valuation of
9 real property, including complex industrial properties and mass
10 appraisal techniques;

11 (d) Knowledge of the law relating to taxation, civil and
12 administrative procedure, due process, and evidence in Nebraska;

13 (e) At least thirty hours of successfully completed
14 class hours in courses of study, approved by the Real Property
15 Appraiser Board, which relate to appraisal and which include the
16 fifteen-hour National Uniform Standards of Professional Appraisal
17 Practice Course. If a commissioner has not received such training
18 prior to his or her appointment, such training shall be completed
19 within one year after appointment; and

20 (f) Such other qualifications and skills as reasonably
21 may be requisite for the effective and reliable performance of the
22 commission's duties.

23 (3) One commissioner shall possess any certification or
24 training required to become a licensed real property appraiser as
25 set forth in section 76-2230.

1 (4) Prior to January 1, 2002, the chairperson, and on and
2 after January 1, 2002, at least two commissioners, shall have been
3 engaged in the practice of law in the State of Nebraska for at
4 least five years, which may include prior service as a judge, and
5 shall be currently admitted to practice before the Nebraska Supreme
6 Court.

7 (5) No commissioner or employee of the commission shall
8 hold any position of profit or engage in any occupation or business
9 interfering with or inconsistent with his or her duties as a
10 commissioner or employee. A person is not eligible for appointment
11 and may not hold the office of commissioner or be appointed by the
12 commission to or hold any office or position under the commission
13 if he or she holds any official office or position.

14 (6) (a) Each commissioner who meets the requirements of
15 subsection (4) of this section on or after January 1, 2002, shall
16 annually attend a seminar or class of at least two days' duration
17 that is:

18 (i) Sponsored by a recognized assessment or appraisal
19 organization, in each of these areas: Utility and railroad
20 appraisal; appraisal of complex industrial properties; appraisal
21 of other hard to assess properties; and mass appraisal, residential
22 or agricultural appraisal, or assessment administration; or

23 (ii) Pertaining to management, law, civil or
24 administrative procedure, or other knowledge or skill necessary for
25 performing the duties of the office.

1 (b) Each commissioner who does not meet the requirements
2 of subsection (4) of this section on or after January 1, 2002,
3 shall within two years after his or her appointment attend at least
4 thirty hours of instruction that constitutes training for judges or
5 administrative law judges.

6 (7) The commissioners shall be considered employees of
7 the state for purposes of sections ~~81-1301 to 81-1391~~ 81-1320 to
8 81-1328 and 84-1601 to 84-1615.

9 (8) The commissioners shall be reimbursed as prescribed
10 in sections 81-1174 to 81-1177 for their actual and necessary
11 expenses in the performance of their official duties pursuant to
12 the Tax Equalization and Review Commission Act.

13 Sec. 3. Section 77-5019, Revised Statutes Cumulative
14 Supplement, 2006, is amended to read:

15 77-5019 (1) Any party aggrieved by a final decision in
16 a case appealed to the commission, any party aggrieved by a final
17 decision of the commission on a petition, or any party aggrieved
18 by an order of the commission issued pursuant to section 77-5020
19 or sections 77-5023 to 77-5028 shall be entitled to judicial
20 review in the Court of Appeals. Upon request of the county, the
21 Attorney General may appear and represent the county or political
22 subdivision in cases in which the commission is not a party.
23 Nothing in this section shall be deemed to prevent resort to other
24 means of review, redress, or relief provided by law.

25 (2)(a) Proceedings for review shall be instituted by

1 filing a petition and the appropriate docket fees in the Court
2 of Appeals within thirty days after the date on which a final
3 appealable order is entered by the commission. All parties of
4 record shall be made parties to the proceedings for review. The
5 commission shall only be made a party of record if the action
6 complained of is an order issued by the commission pursuant to
7 section 77-1504.01 or 77-5020 or sections 77-5023 to 77-5028.
8 Summons shall be served on all parties within thirty days after
9 the filing of the petition in the manner provided for service
10 of a summons in section 25-510.02. The court, in its discretion,
11 may permit other interested persons to intervene. No bond or
12 undertaking is required for an appeal to the Court of Appeals.

13 (b) A petition for review shall set forth: (i) The name
14 and mailing address of the petitioner; (ii) the name and mailing
15 address of the county whose action is at issue or the commission;
16 (iii) identification of the final decision at issue together with
17 a duplicate copy of the final decision; (iv) the identification of
18 the parties in the case that led to the final decision; (v) the
19 facts to demonstrate proper venue; (vi) the petitioner's reasons
20 for believing that relief should be granted; and (vii) a request
21 for relief, specifying the type and extent of the relief requested.

22 (3) The filing of the petition or the service of summons
23 upon the commission shall not stay enforcement of a decision. The
24 commission may order a stay. The court may order a stay after
25 notice of the application for the stay to the commission and to

1 all parties of record. The court may require the party requesting
2 the stay to give bond in such amount and conditioned as the court
3 directs.

4 (4) Upon receipt of a petition the date for submission
5 of the official record shall be determined by the court. The
6 commission shall prepare a certified copy of the official record of
7 the proceedings had before the commission in the case. The official
8 record, ~~unless limited by the written request of the petitioner,~~
9 shall include: (a) Notice of all proceedings; (b) any pleadings,
10 motions, requests, preliminary or intermediate rulings and orders,
11 and similar correspondence to or from the commission pertaining to
12 the case; (c) the transcribed record of the hearing before the
13 commission, including all exhibits and evidence introduced during
14 the hearing, a statement of matters officially noticed by the
15 commission during the proceeding, and all proffers of proof and
16 objections and rulings thereon; and (d) the final order appealed
17 from. The official record in an appeal of a commission decision
18 issued pursuant to sections 77-5023 to 77-5028 may be limited by
19 the request of a petitioner to those parts of the record pertaining
20 to a specific county. The commission shall charge the petitioner
21 with the reasonable direct cost or require the petitioner to pay
22 the cost for preparing the official record for transmittal to the
23 court in all cases except when the petitioner is not required to
24 pay a filing fee. If payment is required, payment of the cost,
25 as estimated by the commission, for preparation of the official

1 record shall be paid to the commission prior to preparation of the
2 official record and the commission shall not transmit the official
3 record to the court until payment of the actual costs of its
4 preparation is received.

5 (5) The review shall be conducted by the court for error
6 on the record of the commission. If the court determines that
7 the interest of justice would be served by the resolution of any
8 other issue not raised before the commission, the court may remand
9 the case to the commission for further proceedings. The court may
10 affirm, reverse, or modify the decision of the commission or remand
11 the case for further proceedings.

12 (6) Appeals under this section shall be given precedence
13 over all civil cases.

14 Sec. 4. Section 81-1316, Revised Statutes Supplement,
15 2007, is amended to read:

16 81-1316 (1) All agencies and personnel of state
17 government shall be covered by sections 81-1301 to 81-1319 and
18 shall be considered subject to the State Personnel System, except
19 the following:

20 (a) All personnel of the office of the Governor;

21 (b) All personnel of the office of the Lieutenant
22 Governor;

23 (c) All personnel of the office of the Secretary of
24 State;

25 (d) All personnel of the office of the State Treasurer;

- 1 (e) All personnel of the office of the Attorney General;
- 2 (f) All personnel of the office of the Auditor of Public
3 Accounts;
- 4 (g) All personnel of the Legislature;
- 5 (h) All personnel of the court systems;
- 6 (i) All personnel of the Board of Educational Lands and
7 Funds;
- 8 (j) All personnel of the Public Service Commission;
- 9 (k) All personnel of the Nebraska Brand Committee;
- 10 (l) All personnel of the Commission of Industrial
11 Relations;
- 12 (m) All personnel of the State Department of Education;
- 13 (n) All personnel of the Nebraska state colleges and the
14 Board of Trustees of the Nebraska State Colleges;
- 15 (o) All personnel of the University of Nebraska;
- 16 (p) All personnel of the Coordinating Commission for
17 Postsecondary Education;
- 18 (q) All personnel of the Governor's Policy Research
19 Office, but not to include personnel within the State Energy
20 Office;
- 21 (r) All personnel of the Commission on Public Advocacy;
- 22 (s) All agency heads;
- 23 (t) (i) The Director of Behavioral Health of the Division
24 of Behavioral Health; (ii) the Director of Children and Family
25 Services of the Division of Children and Family Services; (iii)

1 the Director of Developmental Disabilities of the Division of
2 Developmental Disabilities; (iv) the Director of Medicaid and
3 Long-Term Care of the Division of Medicaid and Long-Term Care; (v)
4 the Director of Public Health of the Division of Public Health; and
5 (vi) the Director of Veterans' Homes of the Division of Veterans'
6 Homes;

7 (u) The chief medical officer established under section
8 81-3115, the Administrator of the Office of Juvenile Services, and
9 the chief executive officers of the Beatrice State Developmental
10 Center, Lincoln Regional Center, Norfolk Regional Center, Hastings
11 Regional Center, Grand Island Veterans' Home, Norfolk Veterans'
12 Home, Eastern Nebraska Veterans' Home, Western Nebraska Veterans'
13 Home, Youth Rehabilitation and Treatment Center-Kearney, and Youth
14 Rehabilitation and Treatment Center-Geneva;

15 (v) All personnel employed as pharmacists, physicians,
16 psychiatrists, psychologists, service area administrators, or
17 facility operating officers of the Department of Health and Human
18 Services; and

19 (w) Deputies and examiners of the Department of Banking
20 and Finance and the Department of Insurance as set forth in
21 sections 8-105 and 44-119, except for those deputies and examiners
22 who remain in the State Personnel System; and -

23 (x) All personnel of the Tax Equalization and Review
24 Commission.

25 (2) At each agency head's discretion, up to the following

1 number of additional positions may be exempted from the State
 2 Personnel System, based on the following agency size categories:

3	Number of Agency	Number of Noncovered
4	Employees	Positions
5	less than 25	0
6	25 to 100	1
7	101 to 250	2
8	251 to 500	3
9	501 to 1000	4
10	1001 to 2000	5
11	2001 to 3000	8
12	3001 to 4000	11
13	4001 to 5000	14
14	over 5000	25

15 The purpose of having such noncovered positions shall
 16 be to allow agency heads the opportunity to recruit, hire,
 17 and supervise critical, confidential, or policymaking personnel
 18 without restrictions from selection procedures, compensation rules,
 19 career protections, and grievance privileges. Persons holding the
 20 noncovered positions shall serve at the pleasure of the agency head
 21 and shall be paid salaries set by the agency head.

22 (3) No changes to this section or to the number of
 23 noncovered positions within an agency shall affect the status
 24 of personnel employed on the date the changes become operative
 25 without their prior written agreement. A state employee's career

1 protections or coverage by personnel rules and regulations shall
2 not be revoked by redesignation of the employee's position as a
3 noncovered position without the prior written agreement of such
4 employee.

5 Sec. 5. Original sections 77-1345.01 and 77-5019, Revised
6 Statutes Cumulative Supplement, 2006, and sections 77-5004 and
7 81-1316, Revised Statutes Supplement, 2007, are repealed.