

AMENDMENTS TO LB 1079

Introduced by Revenue.

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

3           Section 1. Section 77-1502, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           77-1502 (1) The county board of equalization shall meet  
6 for the purpose of reviewing and deciding written protests filed  
7 pursuant to this section beginning on or after June 1 and ending  
8 on or before July 25 of each year. Protests regarding real property  
9 shall be signed and filed after the county assessor's completion  
10 of the real property assessment roll required by section 77-1315  
11 and on or before June 30. For protests of real property, a protest  
12 shall be filed for each parcel. Protests regarding taxable tangible  
13 personal property returns filed pursuant to section 77-1229 from  
14 January 1 through May 1 shall be signed and filed on or before June  
15 30. The county board in a county with a population of more than  
16 one hundred thousand inhabitants based upon the most recent federal  
17 decennial census may adopt a resolution to extend the deadline for  
18 hearing protests from July 25 to August 10. The resolution must  
19 be adopted before July 25 and it will affect the time for hearing  
20 protests for that year only. By adopting such resolution, such  
21 county waives any right to petition the Tax Equalization and Review  
22 Commission for adjustment of a class or subclass of real property  
23 under section 77-1504.01 for that year.

1           (2) Each protest shall be signed and filed with the  
2 county clerk of the county where the property is assessed. The  
3 protest shall contain or have attached a statement of the reason or  
4 reasons why the requested change should be made and a description  
5 of the property to which the protest applies. If the property is  
6 real property, a description of each parcel shall be provided. If  
7 the property is tangible personal property, a physical description  
8 of the property under protest shall be provided. If the protest  
9 does not contain or have attached the statement of the reason or  
10 reasons for the protest or the description of the property, the  
11 protest shall be dismissed by the county board of equalization.

12           (3) For a protest regarding real property, each protester  
13 shall be afforded the opportunity to meet in person with the  
14 county board of equalization or a referee appointed under section  
15 77-1502.01 to provide information relevant to the protested parcel  
16 value.

17           ~~(3)~~ (4) No hearing of the county board of equalization on  
18 a protest filed under this section shall be held before a single  
19 commissioner or supervisor.

20           ~~(4)~~ (5) The county clerk or county assessor shall prepare  
21 a separate report on each protest. The report shall include (a) a  
22 description of the property to which the protest applies, (b) any  
23 recommendation of the county assessor for action on the protest,  
24 (c) if a referee is used, the recommendation of the referee, (d)  
25 the date the county board of equalization heard the protest, (e)  
26 the decision made by the county board of equalization, (f) the date  
27 of the decision, and (g) the date notice of the decision was mailed

1 to the protester. The report shall contain, or have attached to  
2 it, a statement, signed by the chairperson of the county board of  
3 equalization, describing the basis upon which the board's decision  
4 was made. The report shall have attached to it a copy of that  
5 portion of the property record file which substantiates calculation  
6 of the protested value unless the county assessor certifies to the  
7 county board of equalization that a copy is maintained in either  
8 electronic or paper form in his or her office. One copy of the  
9 report, if prepared by the county clerk, shall be given to the  
10 county assessor on or before August 2. The county assessor shall  
11 have no authority to make a change in the assessment rolls until  
12 there is in his or her possession a report which has been completed  
13 in the manner specified in this section. If the county assessor  
14 deems a report submitted by the county clerk incomplete, the county  
15 assessor shall return the same to the county clerk for proper  
16 preparation.

17 ~~(5)~~ (6) On or before August 2, or on or before August 18  
18 in a county that has adopted a resolution to extend the deadline  
19 for hearing protests, the county clerk shall mail to the protester  
20 written notice of the board's decision. The notice shall contain  
21 a statement advising the protester that a report of the board's  
22 decision is available at the county clerk's or county assessor's  
23 office, whichever is appropriate, and that a copy of the report may  
24 be used to complete an appeal to the Tax Equalization and Review  
25 Commission.

26 Sec. 2. Section 77-1510, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1           77-1510 Any action of the county board of equalization  
2 pursuant to section 77-1502 may be appealed to the Tax Equalization  
3 and Review Commission in accordance with section 77-5013 on or  
4 before ~~August 24 or on or before September 10~~ if the county has  
5 adopted a resolution to extend the deadline for hearing protests  
6 ~~under section 77-1502.~~ October 1.

7           Sec. 3. (1) The county board of equalization may change  
8 the value of a parcel of real property after hearing and deciding  
9 a protest concerning the taxable value of that parcel pursuant to  
10 section 77-1502 without further hearing and with the agreement of  
11 the property owner and the county assessor until October 1 or until  
12 an appeal of its decision is filed with the Tax Equalization and  
13 Review Commission, whichever occurs first.

14           (2) If the county board of equalization changes the  
15 taxable value of a parcel of real property under subsection  
16 (1) of this section after August 20 and before October 1, any  
17 such change shall not require an adjustment in or have any  
18 effect on the current year's certified taxable value under section  
19 13-509 or allowable growth under section 13-518 or be taken into  
20 consideration for purposes of the current year's levy under section  
21 77-1601. Such change shall instead be taken into consideration the  
22 following year. The county board of equalization shall order the  
23 county assessor, county clerk, and county treasurer to revise the  
24 assessment books, unit valuation ledgers, and any other tax records  
25 accordingly and send a corrected tax statement to the property  
26 owner.

27           Sec. 4. Section 77-5001, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           77-5001 Sections 77-5001 to 77-5031 and section 7 of this  
3 act shall be known and may be cited as the Tax Equalization and  
4 Review Commission Act.

5           Sec. 5. Section 77-5004, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           77-5004 (1) Each commissioner shall be a qualified voter  
8 and resident of the state and, for each commissioner representing  
9 a congressional district, a domiciliary of the district he or she  
10 represents.

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

16           (a) Appropriate knowledge of terms commonly used in or  
17 related to real property appraisal and of the writing of appraisal  
18 reports;

19           (b) Adequate knowledge of depreciation theories, cost  
20 estimating, methods of capitalization, and real property appraisal  
21 mathematics;

22           (c) An understanding of the principles of land economics,  
23 appraisal processes, and problems encountered in the gathering,  
24 interpreting, and evaluating of data involved in the valuation of  
25 real property, including complex industrial properties and mass  
26 appraisal techniques;

27           (d) Knowledge of the law relating to taxation, civil and

1 administrative procedure, due process, and evidence in Nebraska;

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

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

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

15 (4) ~~Prior to January 1, 2002, the chairperson, and on and~~  
16 ~~after January 1, 2002, at~~ At least two commissioners, shall have  
17 been engaged in the practice of law in the State of Nebraska for at  
18 least five years, which may include prior service as a judge, and  
19 shall be currently admitted to practice before the Nebraska Supreme  
20 Court.

21 (5) No commissioner or employee of the commission shall  
22 hold any position of profit or engage in any occupation or business  
23 interfering with or inconsistent with his or her duties as a  
24 commissioner or employee. A person is not eligible for appointment  
25 and may not hold the office of commissioner or be appointed by the  
26 commission to or hold any office or position under the commission  
27 if he or she holds any official office or position.

1           (6) (a) Each commissioner who meets the requirements of  
2 subsection (4) of this section ~~en or after January 1, 2002,~~ shall  
3 annually attend a seminar or class of at least two days' duration  
4 that is:

5           (i) Sponsored by a recognized assessment or appraisal  
6 organization, in each of these areas: Utility and railroad  
7 appraisal; appraisal of complex industrial properties; appraisal  
8 of other hard to assess properties; and mass appraisal, residential  
9 or agricultural appraisal, or assessment administration; or

10           (ii) Pertaining to management, law, civil or  
11 administrative procedure, or other knowledge or skill necessary for  
12 performing the duties of the office.

13           (b) Each commissioner who does not meet the requirements  
14 of subsection (4) of this section ~~en or after January 1, 2002,~~  
15 shall within two years after his or her appointment attend at least  
16 thirty hours of instruction that constitutes training for judges or  
17 administrative law judges.

18           (7) The commissioners shall be considered employees of  
19 the state for purposes of sections 81-1320 to 81-1328 and 84-1601  
20 to 84-1615.

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

25           Sec. 6. Section 77-5005, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27           77-5005 (1) Within ten days after appointment, the

1 commissioners shall meet at their office in Lincoln, Nebraska,  
2 and enter upon the duties of their office.

3 (2) A majority of the commission or, in cases when a  
4 panel of three commissioners hears a case, a majority of the  
5 panel shall at all times constitute a quorum to transact business,  
6 and one vacancy shall not impair the right of the remaining  
7 commissioners to exercise all the powers of the commission.

8 (3) Any investigation, inquiry, or hearing held or  
9 undertaken by the commission may be held or undertaken by or  
10 before a panel of three commissioners or by a single commissioner  
11 in those appeals designated for hearing pursuant to section 7 of  
12 this act.

13 (4) All investigations, inquiries, hearings, and  
14 decisions of a panel of commissioners and every order made by a  
15 panel of commissioners or by a single commissioner pursuant to  
16 section 7 of this act shall be deemed to be the order of the  
17 commission. The full commission, on an application made within  
18 thirty days after the date of an order, shall ~~may~~ grant a rehearing  
19 and determine de novo any decisions of or orders made by a panel  
20 of commissioners or by a single commissioner, except an order  
21 dismissing an appeal or petition for failure of the appellant or  
22 petitioner to appear at a hearing on the merits. The thirty-day  
23 filing period for appeals under subsection (2) of section 77-5019  
24 shall be tolled while a motion for rehearing is pending.

25 (5) All hearings or proceedings of the commission shall  
26 be open to the public.

27 (6) The Open Meetings Act applies only to hearings or



1 proceedings of the commission held pursuant to the rulemaking  
2 authority of the commission.

3           Sec. 7. (1) A single commissioner may hear an appeal and  
4 appeals consolidated with it when:

5           (a) The taxable value of each parcel is one million  
6 dollars or less as determined by the county board of equalization;  
7 and

8           (b) The appeal has been designated for hearing pursuant  
9 to this section by the chairperson of the commission upon the  
10 request of a party to the appeal or in such other manner as the  
11 commission may provide in its rules and regulations.

12           (2) A proceeding held before a single commissioner shall  
13 be informal. Any party to the proceeding may appear through an  
14 authorized representative. The usual common-law or statutory rules  
15 of evidence, including rules of hearsay, shall not apply, and the  
16 commissioner shall consider and utilize all matter presented at the  
17 proceeding in making his or her determination.

18           (3) Any party to an appeal designated for hearing before  
19 a single commissioner pursuant to this section or the commission's  
20 rules and regulations may, prior to a hearing, elect in writing to  
21 have the appeal heard by a panel of commissioners. The commissioner  
22 conducting a proceeding pursuant to this section may at any time  
23 designate the appeal for hearing by a panel of commissioners.

24           (4) Documents necessary to establish jurisdiction shall  
25 constitute the record of a proceeding by a single commissioner. No  
26 recording of the proceeding shall be made of a hearing held before  
27 a single commissioner.

1           (5) A request for rehearing before the full commission of  
2 an appeal heard pursuant to this section shall be made as provided  
3 in section 77-5005.

4           (6) An order entered by a single commissioner pursuant to  
5 this section may not be appealed pursuant to section 77-5019.

6           Sec. 8. Section 77-5016, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           77-5016 Any hearing or proceeding of the commission shall  
9 be conducted as an informal hearing unless a formal hearing is  
10 granted as determined by the commission according to its rules and  
11 regulations. In any hearing or proceeding heard by the commission  
12 or a panel of commissioners, except for hearings before a single  
13 commissioner pursuant to section 7 of this act:

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  
20 be bound by the usual common-law or statutory rules of evidence  
21 except during a formal hearing. Any party to an appeal filed  
22 under section 77-5007 may request a formal hearing by delivering a  
23 written request to the commission not more than thirty days after  
24 the appeal is filed. The requesting party shall be liable for the  
25 payment of fees and costs of a court reporter pending a final  
26 decision. The commission shall be bound by the rules of evidence  
27 applicable in district court in any formal hearing held by the

1 commission. Fees and costs of a court reporter shall be paid by the  
2 party or parties against whom a final decision is rendered, and all  
3 other costs shall be allocated as the commission may determine;

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

10 (3) The commission may consider and utilize the  
11 provisions of the Constitution of the United States, the  
12 Constitution of Nebraska, the laws of the United States, the  
13 laws of Nebraska, the Code of Federal Regulations, the Nebraska  
14 Administrative Code, any decision of the several courts of the  
15 United States or the State of Nebraska, and the legislative history  
16 of any law, rule, or regulation, without making the document  
17 a part of the record. The commission may without inclusion in  
18 the record consider and utilize published treatises, periodicals,  
19 and reference works pertaining to the valuation or assessment of  
20 real or personal property or the meaning of words and phrases  
21 if the document is identified in the commission's rules and  
22 regulations. All other evidence, including records and documents  
23 in the possession of the commission of which it desires to avail  
24 itself, shall be offered and made a part of the record in the case.  
25 No other factual information or evidence other than that set forth  
26 in this section shall be considered in the determination of the  
27 case. Documentary evidence may be received in the form of copies or

1 excerpts or by incorporation by reference;

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

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

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

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

27 ~~(8) In all appeals, excepting those arising under~~

1 section 77-1606, if the appellant presents no evidence to show  
2 that the order, decision, determination, or action appealed  
3 from is incorrect, the commission shall deny the appeal. If  
4 the appellant presents any evidence to show that the order,  
5 decision, determination, or action appealed from is incorrect,  
6 such order, decision, determination, or action shall be affirmed  
7 unless evidence is adduced establishing that the order, decision,  
8 determination, or action was unreasonable or arbitrary;

9 (8) The commission may dismiss an appeal or cross appeal  
10 if there is no evidence to show that the order, decision,  
11 determination, or action appealed from is erroneous. The order,  
12 decision, determination, or action appealed from shall be affirmed  
13 unless evidence before the commission establishes that the order,  
14 decision, determination, or action was unreasonable, arbitrary, or  
15 unlawful. An order, decision, determination, or action determining  
16 taxable value is unreasonable or arbitrary if a different taxable  
17 value is proven by the greater weight of the evidence. This  
18 subdivision is not applicable to appeals or cross appeals arising  
19 under section 77-202.04 or 77-1606;

20 (9) If the appeal concerns a decision by the county board  
21 of equalization that property is, in whole or in part, exempt from  
22 taxation, the decision to be rendered by the commission shall only  
23 determine the exemption status of the property. The decision shall  
24 not determine the taxable value of the property unless stipulated  
25 by the parties according to subsection (2) of section 77-5017;

26 (10) If the appeal concerns a decision by the county  
27 board of equalization that property owned by the state or a

1 political subdivision is or is not exempt and there has been no  
2 final determination of the value of the property, the decision to  
3 be rendered by the commission shall only determine the exemption  
4 status of the property. The decision shall not determine the  
5 taxable value of the property unless stipulated by the parties  
6 according to subsection (2) of section 77-5017;

7 (11) The costs of any appeal, including the costs of  
8 witnesses, may be taxed by the commission as it deems just, except  
9 costs payable by the appellant pursuant to section 77-1510.01,  
10 unless the appellant is the county assessor or county clerk in  
11 which case the costs shall be paid by the county; and

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

15 Sec. 9. The Revisor of Statutes shall assign section 3 of  
16 this act to Chapter 77, article 15.

17 Sec. 10. This act becomes operative on January 1, 2011.

18 Sec. 11. Original sections 77-1502, 77-1510, 77-5001,  
19 77-5004, 77-5005, and 77-5016, Reissue Revised Statutes of  
20 Nebraska, are repealed.