

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 877**

Introduced by Cornett, 45.

Read first time January 11, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-701, 77-1363, 77-1502, 77-1507, 77-3517, 77-5007,  
3 77-5013, and 77-5016, Reissue Revised Statutes of  
4 Nebraska; to authorize appeals by the Tax Commissioner  
5 and Property Tax Administrator as prescribed; to  
6 change provisions relating to soil surveys; to change  
7 provisions relating to descriptions of property for  
8 property tax purposes; to change provisions relating to  
9 homestead exemptions; to change powers and duties of  
10 the Tax Equalization and Review Commission; to harmonize  
11 provisions; to repeal the original sections; and to  
12 declare an emergency.  
13 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-701, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           77-701 (1) A division of state government to be known  
4 as the property assessment division of the Department of Revenue  
5 is established. The Property Tax Administrator shall be the chief  
6 administrative officer of the division but shall be under the  
7 general supervision of the Tax Commissioner.

8           (2) The goals and functions of the division shall be  
9 to: (a) Execute faithfully the property tax laws of the State of  
10 Nebraska; (b) provide for efficient, updated methods and systems  
11 of property tax reporting, enforcement, and related activities; and  
12 (c) continually seek to improve its system of administration.

13           (3) All employees, budget requirements, appropriations,  
14 encumbrances, and assets and liabilities of the Department of  
15 Property Assessment and Taxation for the administration of property  
16 valuation and equalization shall be transferred and delivered to  
17 the division. The transferred employees shall not lose any accrued  
18 benefits or status due to the transfer and shall receive the same  
19 benefits as other state employees, including participation in the  
20 State Employees Retirement Act.

21           (4) The Tax Commissioner or Property Tax Administrator  
22 may appeal any actions or decisions of a county board of  
23 equalization or the Tax Equalization and Review Commission  
24 pertaining to the exemption of real and personal property or any  
25 actions or decisions of a county board of equalization or the Tax

1 Equalization and Review Commission pertaining to the valuation and  
2 equalization of real property.

3 ~~(4) In any litigation pending on July 1, 2007, at 12:01~~  
4 ~~a.m., in any court in this state, any contested case pending on~~  
5 ~~such date and time under the Administrative Procedure Act, or any~~  
6 ~~appeal pending on such date and time before the Tax Equalization~~  
7 ~~and Review Commission, in which the Property Tax Administrator is a~~  
8 ~~party, the Tax Commissioner shall be substituted for the Property~~  
9 ~~Tax Administrator as the party in such litigation, contested case,~~  
10 ~~or appeal.~~

11 Sec. 2. Section 77-1363, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 77-1363 Agricultural land and horticultural land shall  
14 be divided into classes and subclasses of real property under  
15 section 77-103.01, including, but not limited to, irrigated  
16 cropland, dryland cropland, grassland, wasteland, nurseries,  
17 feedlots, and orchards, so that the categories reflect uses  
18 appropriate for the valuation of such land according to law.  
19 Classes shall be inventoried by subclasses of real property based  
20 on soil classification standards developed by the Natural Resources  
21 Conservation Service of the United States Department of Agriculture  
22 as converted into land capability groups by the Property Tax  
23 Administrator. County assessors shall utilize and implement soil  
24 surveys in the assessment year after the soil survey maps become  
25 available from the Natural Resources Conservation Service of the

1 United States Department of Agriculture as directed by the Property  
2 Tax Administrator. Nothing in this section shall be construed to  
3 limit the classes and subclasses of real property that may be used  
4 by county assessors or the Tax Equalization and Review Commission  
5 to achieve more uniform and proportionate valuations.

6 Sec. 3. Section 77-1502, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

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

1 under section 77-1504.01 for that year.

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

14 (3) No hearing of the county board of equalization on  
15 a protest filed under this section shall be held before a single  
16 commissioner or supervisor.

17 (4) The county clerk or county assessor shall prepare a  
18 separate report on each protest. The report shall include (a) a the  
19 legal description of the real property or a physical description  
20 of the tangible personal property to which the protest applies,  
21 (b) any recommendation of the county assessor for action on the  
22 protest, (c) if a referee is used, the recommendation of the  
23 referee, (d) the date the county board of equalization heard the  
24 protest, (e) the decision made by the county board of equalization,  
25 (f) the date of the decision, and (g) the date notice of the

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

17 (5) 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.

1           Sec. 4. Section 77-1507, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           77-1507 (1) The county board of equalization may meet at  
4 any time for the purpose of assessing any omitted real property  
5 that was not reported to the county assessor pursuant to section  
6 77-1318.01 and for correction of clerical errors as defined in  
7 section 77-128 that result in a change of assessed value. The  
8 county board of equalization shall give notice of the assessed  
9 value of the real property to the record owner or agent at his or  
10 her last-known address. For real property which has been omitted in  
11 the current year, the county board of equalization shall not send  
12 notice pursuant to this section on or before June 1.

13           Protests of the assessed value proposed for omitted real  
14 property pursuant to this section or a correction for clerical  
15 errors shall be filed with the county board of equalization within  
16 thirty days after the mailing of the notice. All provisions of  
17 section 77-1502 except dates for filing a protest, the period for  
18 hearing protests, and the date for mailing notice of the county  
19 board of equalization's decision are applicable to any protest  
20 filed pursuant to this section.

21           (2) The county clerk shall, within seven days after the  
22 board's final decision, send:

23           (a) For protested action, a notification to the protester  
24 of the board's final action advising the protester that a report  
25 of the board's final decision is available at the county clerk's

1 or county assessor's office, whichever is appropriate, and that a  
2 copy of the report may be used to complete an appeal to the Tax  
3 Equalization and Review Commission; and

4 (b) For protested and nonprotested action, a report  
5 to the Property Tax Administrator which shall state the legal  
6 description of the property, the reason such property was not  
7 assessed pursuant to section 77-1301, and a statement of the  
8 board's justification for its action. A copy of the report shall be  
9 available for public inspection in the office of the county clerk.

10 (3) The action of the county board of equalization upon  
11 a protest filed pursuant to this section may be appealed to the  
12 Tax Equalization and Review Commission within thirty days after the  
13 board's final decision.

14 (4) Improvements to real property which were properly  
15 reported to the county assessor pursuant to section 77-1318.01 for  
16 the current year and were not added to the assessment roll by the  
17 county assessor on or before March 19 shall only be added to the  
18 assessment roll by the county board of equalization from June 1  
19 through July 25. In counties that have adopted a resolution to  
20 extend the deadline for hearing protests under section 77-1502, the  
21 deadline of July 25 shall be extended to August 10.

22 Sec. 5. Section 77-3517, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 77-3517 (1) On or before August 1 of each year,  
25 the county assessor shall forward the approved applications for



1 homestead exemptions and a copy of the certification of disability  
2 status that have been examined pursuant to section 77-3516 to  
3 the Tax Commissioner. The Tax Commissioner ~~who~~ shall determine if  
4 the applicant meets the income requirements and may also review  
5 any other application information he or she deems necessary in  
6 order to determine whether the application should be approved. The  
7 Tax Commissioner shall, on or before November 1, certify his or  
8 her determinations to the county assessor. If the application is  
9 approved, the county assessor shall make the proper deduction on  
10 the assessment rolls. If the application is denied or approved in  
11 part, the Tax Commissioner shall notify the applicant of the denial  
12 or partial approval by mailing written notice to the applicant at  
13 the address shown on the application. The applicant may appeal the  
14 Tax Commissioner's denial or partial approval pursuant to section  
15 77-3520. Late applications authorized by the county board shall  
16 be processed in a similar manner after approval by the county  
17 assessor.

18 (2)(a) Upon his or her own action or upon a request by  
19 an applicant, a spouse, or an owner-occupant, the Tax Commissioner  
20 may review ~~the income information of applicants.~~ any information  
21 necessary to determine whether an application is in compliance  
22 with sections 77-3501 to 77-3529. Any action taken by the Tax  
23 Commissioner pursuant to this subsection shall be taken within  
24 three years after December 31 of the year in which the exemption  
25 was claimed.

1           (b) If after completion of the review the Tax  
2 Commissioner determines that an exemption should have been approved  
3 or increased, ~~for reasons of the income requirements,~~ the Tax  
4 Commissioner shall notify the applicant, spouse, or owner-occupant  
5 and the county treasurer and assessor of his or her determination.  
6 The applicant, spouse, or owner-occupant shall receive a refund of  
7 the tax, if any, that was paid as a result of the exemption being  
8 denied, in whole or in part. The county treasurer shall make the  
9 refund and shall amend the county's claim for reimbursement from  
10 the state.

11           (c) If after completion of the review the Tax  
12 Commissioner determines that an exemption should have been denied  
13 or reduced, ~~for reasons of the income requirements,~~ the Tax  
14 Commissioner shall notify the applicant, spouse, or owner-occupant  
15 of such denial or reduction. The applicant, the spouse, and  
16 any owner-occupant may appeal the Tax Commissioner's denial or  
17 reduction pursuant to section 77-3520. Upon the expiration of the  
18 appeal period in section 77-3520, the Tax Commissioner shall notify  
19 the county assessor of the denial or reduction and the county  
20 assessor shall remove or reduce the exemption from the tax rolls of  
21 the county. Upon notification by the Tax Commissioner to the county  
22 assessor, the amount of tax due as a result of the action of the  
23 Tax Commissioner shall become a lien on the homestead until paid.  
24 Upon attachment of the lien, the county treasurer shall refund  
25 to the Tax Commissioner the amount of tax equal to the denied

1 or reduced exemption for deposit into the General Fund. No lien  
2 shall be created if a change in ownership of the homestead or  
3 death of the applicant, the spouse, and all other owner-occupants  
4 has occurred prior to the Tax Commissioner's notice to the county  
5 assessor.

6 Sec. 6. Section 77-5007, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 77-5007 The commission has the power and duty to hear and  
9 determine appeals of:

10 (1) Decisions of any county board of equalization  
11 equalizing the value of individual tracts, lots, or parcels of  
12 real property so that all real property is assessed uniformly and  
13 proportionately;

14 (2) Decisions of any county board of equalization  
15 granting or denying tax-exempt status for real or personal property  
16 or an exemption from motor vehicle taxes and fees;

17 (3) Decisions of the Tax Commissioner, and decisions  
18 of the Property Tax Administrator made before July 1, 2007,  
19 determining the taxable property of a railroad company, car  
20 company, public service entity, or air carrier within the state;

21 (4) Decisions of the Tax Commissioner, and decisions  
22 of the Property Tax Administrator made before July 1, 2007,  
23 determining adjusted valuation pursuant to section 79-1016;

24 (5) Decisions of any county board of equalization on  
25 the valuation of personal property or any penalties imposed under

1 sections 77-1233.04 and 77-1233.06;

2 (6) Decisions of any county board of equalization on  
3 claims that a levy is or is not for an unlawful or unnecessary  
4 purpose or in excess of the requirements of the county;

5 (7) Decisions of any county board of equalization  
6 granting or rejecting an application for a homestead exemption;

7 (8) Decisions of the Department of Motor Vehicles  
8 determining the taxable value of motor vehicles pursuant to section  
9 60-3,188;

10 (9) Decisions of the Tax Commissioner, and decisions of  
11 the Property Tax Administrator made before July 1, 2007, made under  
12 section 77-1330;

13 (10) Any other decision of any county board of  
14 equalization;

15 (11) Any other decision of the Property Tax Administrator  
16 made before July 1, 2007, and decisions made by the Tax  
17 Commissioner regarding property valuation, exemption, or taxation  
18 made on or after July 1, 2007;

19 (12) Decisions of the Tax Commissioner pursuant to  
20 section 77-3520; and

21 (13) Decisions of a county board of equalization appealed  
22 by the Tax Commissioner or Property Tax Administrator pursuant to  
23 section 77-701; and

24 ~~(13)~~ (14) Any other decision, determination, action, or  
25 order from which an appeal to the commission is authorized.

1           The commission has the power and duty to hear and grant  
2 or deny relief on petitions.

3           Sec. 7. Section 77-5013, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           77-5013 (1) The commission obtains exclusive jurisdiction  
6 over an appeal or petition when:

7           (a) The commission has the power or authority to hear the  
8 appeal or petition;

9           (b) An appeal or petition is timely filed;

10           (c) The filing fee, if applicable, is timely received and  
11 thereafter paid; and

12           (d) In the case of an appeal, a copy of the decision,  
13 order, determination, or action appealed from, or other information  
14 that documents the decision, order, determination, or action  
15 appealed from, is timely filed.

16           Only the requirements of this subsection shall be deemed  
17 jurisdictional.

18           (2) A petition, an appeal, or the information required by  
19 subdivision (1)(d) of this section is timely filed and the filing  
20 fee, if applicable, is timely received if placed in the United  
21 States mail, postage prepaid, with a legible postmark for delivery  
22 to the commission, or received by the commission, on or before the  
23 date specified by law for filing the appeal or petition. If no date  
24 is otherwise provided by law, then an appeal shall be filed within  
25 thirty days after the decision, order, determination, or action

1 appealed from is made.

2 (3) The filing fee for each appeal or petition filed  
3 with the commission is twenty-five dollars, except that no filing  
4 fee shall be required for an appeal by a county assessor, the Tax  
5 Commissioner, or the Property Tax Administrator acting in his or  
6 her official capacity or a county board of equalization acting in  
7 its official capacity.

8 (4) The form and requirements for execution of an appeal  
9 or petition may be specified by the commission in its rules and  
10 regulations.

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

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

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

1 under section 77-5007 may request a formal hearing by delivering a  
2 written request to the commission not more than thirty days after  
3 the appeal is filed. The requesting party shall be liable for the  
4 payment of fees and costs of a court reporter pending a final  
5 decision. The commission shall be bound by the rules of evidence  
6 applicable in district court in any formal hearing held by the  
7 commission. Fees and costs of a court reporter shall be paid by the  
8 party or parties against whom a final decision is rendered, and all  
9 other costs shall be allocated as the commission may determine;

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

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



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

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

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

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

25          (10) If the appeal concerns a decision by the county

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

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

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

18 Sec. 9. Original sections 77-701, 77-1363, 77-1502,  
19 77-1507, 77-3517, 77-5007, 77-5013, and 77-5016, Reissue Revised  
20 Statutes of Nebraska, are repealed.

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