

## LEGISLATIVE BILL 271

Approved by the Governor May 20, 1985

Introduced by Revenue Committee, V. Johnson, 8,  
Chairperson; Landis, 46; Miller, 37;  
Rogers, 41; Hartnett, 45; Hefner, 19;  
Sieck, 24

AN ACT relating to revenue and taxation; to amend section 77-1346, Reissue Revised Statutes of Nebraska, 1943, sections 77-1330, 77-1343 to 77-1345, 77-1347, and 77-1348, Revised Statutes Supplement, 1984, section 77-112, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 30, Eighty-ninth Legislature, First Session, 1985, and section 77-201, Reissue Revised Statutes of Nebraska, 1943, as amended by section 2, Legislative Bill 30, Eighty-ninth Legislature, First Session, 1985; to state intent; to define and redefine terms; to change provisions relating to the valuation of agricultural land and horticultural land as prescribed; to create a board; to provide powers and duties; to authorize the implementation of property appraisal and reappraisal corrective measures for the current tax year; to harmonize provisions; to provide operative dates; and to repeal the original sections.

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

Section 1. That section 77-112, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 30, Eighty-ninth Legislature, First Session, 1985, be amended to read as follows:

77-112. (1) Except as provided in subsection (2) of this section, actual value of property for taxation shall mean and include the value of property for taxation that is ascertained by using the following formula where applicable: (a) Earning capacity of the property; (b) relative location; (c) desirability and functional use; (d) reproduction cost less depreciation; (e) comparison with other properties of known or recognized value; (f) market value in the ordinary course of trade; and (g) existing zoning of the property.

(2) The term actual value when applied to agricultural land and horticultural land for purposes of taxation shall mean that value determined pursuant to ~~section 77-201~~ sections 3 to 13 of this act.

Sec. 2. That section 77-201, Reissue Revised

Statutes of Nebraska, 1943, as amended by section 2, Legislative Bill 30, Eighty-ninth Legislature, First Session, 1985, be amended to read as follows:

77-201. ~~(1)~~ Except as provided in subsection ~~(2)~~ of this section sections 3 to 13 of this act, all tangible property and real property in this state, not expressly exempt therefrom, shall be subject to taxation and shall be valued at its actual value. Such actual value shall be taken and considered as the taxable value on which the levy shall be made.

~~(2)~~ Agricultural land and horticultural land used solely for agricultural or horticultural purposes shall constitute a separate and distinct class of property for purposes of property taxation. For tax year 1985, agricultural land and horticultural land shall be valued using the agricultural land valuation manual issued by the Tax Commissioner pursuant to section 77-1330 for use in tax year 1984.

~~(3)~~ For purposes of subsection ~~(2)~~ of this section, agricultural land and horticultural land shall mean any parcel of land valued by the county assessor as agricultural land or horticultural land in the tax year prior to January 1, 1985, unless the principal use, zoning, or ownership of such land changes, at which time the classification of such land shall be reviewed by the county assessor.

~~(4)~~ Nothing in subsection ~~(2)~~ of this section shall be construed to eliminate the requirement that county assessors utilize and implement soil surveys completed for tax year 1985.

Sec. 3. (1) The Legislature finds that the historical system of valuation of agricultural land and horticultural land for purposes of taxation has been rejected by a Supreme Court decision and that subsequently the voters have adopted a constitutional amendment authorizing the Legislature to place agricultural land and horticultural land in a separate class of property for purposes of taxation. The Legislature finds that it is desirable to adopt a different method of valuing agricultural land and horticultural land in order to preserve the historical relationship between agricultural land and horticultural land and all other real property.

(2) The Legislature finds that such different method is necessary because: (a) Speculation in agricultural land and horticultural land creates excessive and speculative values for land used for agricultural and horticultural purposes; (b) farmers must own large amounts of land to generate adequate incomes and the ability to pay property taxes is a function of both land value and income; (c) farmers in other states, including adjoining states, selling on the same markets as Nebraska farmers, pay property taxes that reflect the earning capacity of agricultural land and horticultural land; (d) agricultural

land and horticultural land values based upon a market approach would impose a heavy tax burden upon agricultural and horticultural properties which would harm the economy of the state; and (e) in order to preserve land for agricultural and horticultural use, it is in the public interest to value agricultural land and horticultural land using a valuation method based on the earning capacity of such land.

(3) It is the intent of the Legislature that the earning capacity valuation method used to value agricultural land and horticultural land shall be rationally based on accurate crop yields, prices, and patterns, expenses, and rate of return data. The method shall use nominal interest rates and average income data in order to maintain the historical valuation relationship between agricultural land and horticultural land and all other real property.

Sec. 4. As used in sections 3 to 13 of this act, unless the context otherwise requires:

(1) Agricultural land and horticultural land shall mean a parcel of land (a) over twenty acres in size which is used for the production of agricultural products, (b) which is wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural products, or (c) of twenty acres or less in size when such land (i) is managed in conjunction with other agricultural land or horticultural land which when totalled exceeds twenty acres in size or (ii) meets the requirements of section 5 of this act. Such land shall have been used for production of agricultural products in at least two of the last three previous years, unless such land is certified using a form prescribed by the Department of Revenue as participating in an agricultural land use retirement program authorized by federal law or as land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the Conservation and Preservation Easements Act. Land that is zoned predominantly for purposes other than agricultural or horticultural use shall not be assessed as agricultural land or horticultural land; and

(2) Agricultural products shall include, but not be limited to, grain and feed crops; forages and sod crops; animal production including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry; and fruits, vegetables, flowers, seeds, grasses, trees, and other horticultural crops.

Sec. 5. A parcel of land of twenty acres or less in size that is not managed as part of an agricultural or horticultural operation exceeding twenty acres in size shall qualify for assessment as agricultural land or horticultural land only upon submission of proof by the owner that sales of agricultural products of a gross value

of more than one thousand dollars were produced from the land or from feeding products grown upon such land in two of the three previous years or upon submission of proof that such land is under the land use requirements or restrictions required in subsection (1) of section 4 of this act. The owner shall annually certify on a form prescribed and subject to audit by the Department of Revenue that the land meets the requirements of this section.

Sec. 6. (1) Agricultural land and horticultural land used solely for agricultural or horticultural purposes shall constitute a separate and distinct class of property for purposes of property taxation. For tax year 1986, and each year thereafter, agricultural land and horticultural land shall be valued using the agricultural land valuation manual issued by the Tax Commissioner pursuant to section 77-1330 which shall be developed using the methods prescribed in sections 3 to 13 of this act.

(2) No residential, commercial, industrial, or agricultural building or enclosed structure or the directly associated land or site of the building or enclosed structure shall be assessed as agricultural land or horticultural land.

(3) No area of land directly associated with an improvement or structure described in subsection (2) of this section shall apply in determining compliance with the twenty-acre requirement of sections 4 and 5 of this act.

Sec. 7. (1) An agricultural land valuation manual shall be developed by the Tax Commissioner using the following method to determine actual value of agricultural land and horticultural land for taxable years beginning on or after January 1, 1986. Except as otherwise provided in subsection (3) of section 9 of this act, the actual value of agricultural land and horticultural land shall be determined by: (a) Dividing agricultural land and horticultural land into major use categories and such categories into subclasses based on soil classifications; (b) computing a typical income stream based on historical gross receipts and landowner share determined using the method described in section 9 of this act; and (c) dividing the derived income stream by a capitalization rate determined using the method described in section 10 of this act.

(2) The agricultural land valuation manual shall contain allowances to adjust actual values for irrigation costs and land productivity cost variations. Adjustments shall be based on empirical data and apply to areas with uniform characteristics which are within or which cross county lines. Upon written application to and approval from the Tax Commissioner a county assessor may apply such adjustments to specific parcels of agricultural land and horticultural land. No other site specific adjustments

shall be made. The provisions of this subsection shall be strictly construed to maintain the concept of statewide mass appraisal of agricultural land and horticultural land.

Sec. 8. Agricultural land and horticultural land shall be divided into five major categories including irrigated cropland, dryland cropland, pasture, rangeland, and wasteland. Intensive agricultural uses, such as nurseries, feedlots, and orchards, shall be categorized as either irrigated cropland or dryland cropland. Such categories shall be divided into subclasses based on soil classification standards developed by the United States Department of Agriculture Soil Conservation Service. County assessors shall utilize and implement soil surveys in the tax year after the soil survey maps become available.

Sec. 9. (1) Income streams for irrigated and dryland cropland shall be computed by multiplying gross receipts by landowner share by county. Gross receipts shall be computed by multiplying the most recent five-year average price of a crop by the most recent five-year average yield of a crop and weighting the result by the most recent five-year average cropping pattern. The cropping pattern shall, as data is available, include, but not be limited to, the following crops: Continuous cropland wheat, summer fallow wheat, corn for grain, dry beans, sorghum for grain, sugar beets, soybeans for beans, oats, and alfalfa. The source of cropping patterns and yields by county and prices by crop reporting district shall be as reported by the Nebraska Crop and Livestock Reporting Service or as published by other state or federal agencies.

For purposes of this section, landowner share shall mean the proportion of the gross receipts less landowner expenses paid to the landowner. Landowner share shall be computed based on representative leasing arrangements as determined from surveys conducted or authorized by the Department of Revenue or as published by other state or federal agencies. Landowner share shall be derived at least at each crop reporting district for each of the following: (a) Gravity irrigated cropland; (b) center pivot irrigated cropland; and (c) dryland cropland.

(2)(a) Income streams for rangeland and pastureland shall be computed by multiplying the carrying capacity in terms of animal unit months by representative rental value per animal unit month. Carrying capacity, by subclass, shall be based on productivity estimates published by the United States Soil Conservation Service or other state or federal agencies. Rental values per animal unit month shall be based on the most recent five-year average published by the Department of Agricultural Economics of the University of Nebraska or other state or federal agencies or developed from surveys

performed by or for the Department of Revenue.

(b) For counties or subclasses where animal unit month data is not available, the income stream shall be computed by using the average of the most recent five-year prevailing cash rental rates per acre less representative landowner expenses. The annual prevailing cash rental rates per acre shall be based on data developed by the Department of Agricultural Economics of the University of Nebraska or as published by other state or federal agencies.

(3) Actual values for wasteland, including, but not limited to, forest land and shelter belts, shall be computed based on five per cent of the average actual value of all agricultural land and horticultural land in the crop reporting district within which such wasteland is located.

Sec. 10. (1) Capitalization rates for the determination of actual value of agricultural land and horticultural land shall be computed using two components consisting of a debt portion and an equity portion. The relative proportion of the debt and equity components shall be based on the relationship of real estate debt to owner equity for the farm sector in Nebraska. Commencing January 1, 1986, the relative proportion of the debt and equity components shall be twenty per cent and eighty per cent respectively. After January 1, 1987, when the relative proportion of the debt and equity components changes five per cent or more, as determined by data published annually by the United States Department of Agriculture relating to economic indicators of the farming sector or other data as available, the Department of Revenue shall adjust the relative proportion used based on the most recent data available. The Department of Revenue shall adjust the actual relative proportions so that they are divisible by five.

(2) The amount determined to be the percentage of debt shall be multiplied by a number equal to the most recent five-year average of the Federal Land Bank interest rates in the Omaha district. The product of such multiplication shall be the weighted debt capitalization rate.

(3) The amount determined to be the percentage of owner equity shall be multiplied by a number equal to the most recent five-year average of six-month United State Treasury bill interest rates. The product of such multiplication shall be the weighted equity capitalization rate.

The sum of the weighted debt capitalization rate and the weighted equity capitalization rate shall be the capitalization rate to be used in determining the actual value of agricultural land and horticultural land.

Sec. 11. (1) There is hereby created the Agricultural Land Valuation Advisory Board, which shall consist of eight members, seven of whom shall be appointed

by the Governor with the approval of the Legislature. The seven members appointed by the Governor shall be chosen from the following categories:

- (a) One person involved in livestock production;
- (b) One person involved in agricultural crop production;
- (c) One person representing residential property owners;
- (d) One person representing commercial or industrial property owners;
- (e) One county assessor;
- (f) One county board member; and
- (g) An agricultural economist from the University of Nebraska at Lincoln.

The Director of Agriculture shall serve as the eighth member and as chairperson of the advisory board and shall have the same right to vote as other members.

(2) Board members shall receive actual and necessary expenses while engaged in the duties of the board as provided in sections 84-306.01 to 84-306.05 for state employees.

(3) The initial appointments shall be made by the Governor on or before July 1, 1985. The appointed members shall serve for four-year terms, except that of the initial members appointed those specified in subdivisions (a), (c), and (e) of subsection (1) of this section shall serve until December 1, 1986, and the remaining initial members shall serve until December 1, 1988.

(4) The board shall meet at least twice annually or more often at the call of the chairperson.

Sec. 12. The Agricultural Land Valuation Advisory Board shall:

(1) Review the agricultural land valuation manual developed by the Department of Revenue;

(2) Review the data sources used by the Department of Revenue;

(3) Review the values for agricultural land and horticultural land developed by the Department of Revenue for implementation in the agricultural land valuation manual;

(4) Make written recommendations to the Tax Commissioner as to improvements or refinements in the data used in developing and updating the agricultural land valuation manual;

(5) Make a written report to the Tax Commissioner stating whether the method used to value agricultural land and horticultural land set forth in sections 7 to 10 of this act was properly applied in developing and updating the agricultural land manual;

(6) Make recommendations to the Legislature as to improvements or refinements in the method of valuing agricultural land and horticultural land; and

(7) Participate in a public hearing with the Tax

Commissioner on each revised version of the agricultural land valuation manual.

Sec. 13. The Tax Commissioner shall adopt and promulgate the agricultural land valuation manual in accordance with the procedures set forth in Chapter 84, article 9.

The Department of Revenue shall update the information used in the agricultural land valuation manual annually. Commencing January 1, 1987, a new statewide agricultural land valuation manual shall be prepared and adopted by the Tax Commissioner when the commissioner determines that the actual value of all agricultural land and horticultural land in any crop reporting district exceeds one hundred five per cent or is less than ninety-five per cent of the actual value of all such land as determined using the most recently adopted and promulgated version of the agricultural land valuation manual.

Sec. 14. That section 77-1330, Revised Statutes Supplement, 1984, be amended to read as follows:

77-1330. (1) The Tax Commissioner shall prepare, issue, and annually revise guides for county assessors in the form of handbooks of rules and regulations, appraisal manuals, special manuals and studies, cost and price schedules, news and reference bulletins, property tax laws, and memorandums. County assessors shall continually use such guides in the performance of their duties. All appraisals or reappraisals of property for tax purposes shall be in compliance with such manuals and guides.

(2) At any time after an examination has been conducted of the county books and records by the Department of Revenue and when it is apparent that the county has failed or neglected to implement any guide prescribed or issued pursuant to subsection (1) of this section, the Tax Commissioner may, after notice and a hearing conducted in accordance with Chapter 84, article 9, order whatever corrective measures the Tax Commissioner deems necessary to secure compliance with subsection (1) of this section. The values resulting from such corrective measures shall be placed upon the assessment rolls and used as a basis for taxation for the current tax year if deemed possible by the Tax Commissioner, otherwise for the next calendar year. Each property owner shall be notified of the valuations to be used, in the manner required by section 77-1315, and individual protests may be taken from such valuations in the manner prescribed by section 77-1502, except that if the Tax Commissioner determines that corrective measures are able to be made for the current tax year, the Tax Commissioner shall have authority to extend statutory due dates and filing requirements corresponding to the correction. Any current year corrections shall be completed no later than August 10. The performance of such



corrective measures shall be a charge on the county and, upon completion, thereof the Tax Commissioner shall notify the county board of the cost and make demand for such cost. If payment is not received within sixty days after the mailing of such demand, the Tax Commissioner shall forthwith report such fact to the State Treasurer. The State Treasurer shall immediately make payment to the Department of Revenue for the costs incurred by the department for such corrective measures. The payment shall be made out of any money to which such county may be entitled under the provisions of Chapter 77, articles 27 2 and 35, and Chapter 66, articles 4 and 6.

Sec. 15. That section 77-1343, Revised Statutes Supplement, 1984, be amended to read as follows:

77-1343. As used in sections 77-1343 to 77-1348, unless the context otherwise requires:

(1) Agricultural use shall mean the use of land for the purpose of obtaining a profit by raising, harvesting, and selling crops or by the feeding, breeding, management, and sale of, or the produce of, livestock, poultry, fur-bearing animals, or honey bees, or for dairying and the sale of dairy products, or any other agricultural or horticultural use. Agricultural use shall not be construed to include any parcel of land of less than twenty acres or any nonagricultural commercial or industrial development as defined in section 4 of this act; and

(2) Agricultural use zone Zoned for agricultural use shall mean any land designated designation of any land predominantly for agricultural use by any political subdivision pursuant to Chapter 14, article 4, Chapter 15, article 9, Chapter 16, article 9, Chapter 17, article 10, Chapter 18, article 13, or Chapter 23, article 1. The primary objective of the agricultural use zone zoning shall be to preserve and protect agricultural activities and the potential for the agricultural or open use of land. Uses to be allowed on such lands shall include primarily agricultural-related uses, and nonagricultural industrial, commercial, or residential uses allowed on such lands shall be restricted so that they do not conflict with or detract from this objective.

Sec. 16. That section 77-1344, Revised Statutes Supplement, 1984, be amended to read as follows:

77-1344. (1) Any land which has an actual value, as defined in subsection (1) of section 77-112, reflecting a potential use other than agricultural use, is located outside the corporate boundaries of any sanitary and improvement district, city, or village, is used exclusively for agricultural use, and located within an is zoned for agricultural use zone shall be assessed valued at its actual value for agricultural use pursuant to sections 3 to 10 of this act and not at the actual value it would have if applied to other than agricultural use if

application for such special assessment valuation is made pursuant to sections 77-1343 to 77-1348, except ; PROVIDED, that the special assessment valuation provisions shall not be applicable to that portion of lands zoned predominantly for agricultural use if such lands have been subdivided for residential use.

(2) The eligibility of agricultural land for the special assessment valuation provisions of this section shall be determined as of January 1, but if land so qualified becomes disqualified prior to July 1 of the same year, it shall be assessed valued at its actual value as defined by subsection (1) of section 77-112, without regard to this section. If the land becomes disqualified after July 1, its assessment valuation for that year shall continue as provided in this section.

Sec. 17. That section 77-1345, Revised Statutes Supplement, 1984, be amended to read as follows:

77-1345. (1) Any owner of agricultural lands eligible for special assessment valuation under subsection (1) of section 77-1344 shall, to secure such assessment valuation, make application to the county assessor on or before May 1 of the first year in which such assessment valuation is requested.

(2)(a) The application shall be made upon forms prepared by the Department of Revenue and supplied by the county assessor and shall include such information as may reasonably be required to determine the eligibility of the applicant.

(b) The application may be signed by any one of the following:

(i) The owner of the farmland who holds an estate in fee simple or for life;

(ii) Any one of tenants in common or joint tenants, holding an estate in the farmland in fee simple or for life;

(iii) Any person of legal age duly authorized in writing to sign an application on behalf of any person described in subdivisions (b)(i) and (ii) of this subsection;

(iv) The guardian or conservator of an owner, or the executor or administrator of an owner's estate; or

(v) The purchaser of the fee simple or life estate of an owner under a contract of sale.

(c) The assessor or his or her deputy shall not approve an application signed by a person whose authority to sign is not a matter of public record unless there is filed with the assessor a true copy of the deed, contract of sale, power of attorney, or other appropriate instrument evidencing the signer's interest or authority. When filed with the assessor only, such instrument shall not constitute a public record.

(3) There shall be annexed to each application the affidavit or affirmation of the applicant that the

statements contained therein are true.

Sec. 18. That section 77-1346, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1346. The Tax Commissioner shall, by rule, establish standards to be used by county assessors in determining eligibility for special assessment valuation under subsection (1) of section 77-1344. Such standards shall not be designed to exclude from the special assessment valuation those lands which are in agricultural use as defined in section 77-1343 for which tax relief is intended.

Sec. 19. That section 77-1347, Revised Statutes Supplement, 1984, be amended to read as follows:

77-1347. Upon approval of an application, the county assessor shall assess value the land as provided in subsection (1) of section 77-1344, and shall also enter on the assessment valuation the notation and potential additional tax liability until the land becomes disqualified for such assessment valuation by:

(1) Notification by the taxpayer to the assessor to remove such special assessment valuation;

(2) ~~Sale or transfer to a new owner who does not make a new application as to such land within sixty days of the sale or transfer, except as provided in subdivision (3) of this section;~~

(3) ~~Transfer by reason of death of the former owner to a new owner who does not make application as to such land within one hundred twenty days of the transfer;~~

(4) (2) Sale or transfer to an ownership making it exempt from ad valorem property taxation; or

(5) ~~The occurrence of any event which would prevent the application of the special assessment to such land under sections 77-1343 to 77-1348.~~

(3) A change in zoning so that the land is no longer zoned for agricultural use as defined in subdivision (2) of section 77-1343;

(4) Subdivision of the land;

(5) Inclusion of the land within the corporate boundaries of any sanitary and improvement district, city, or village; or

(6) The land no longer being in agricultural use as defined in subdivision (1) of section 77-1343.

Sec. 20. That section 77-1348, Revised Statutes Supplement, 1984, be amended to read as follows:

77-1348. (1) Whenever land which has received special assessment as agricultural use land valuation under subsection (1) of section 77-1344 becomes disqualified for such assessment valuation pursuant to section 77-1347, the assessor shall notify the owner and there shall be added to the tax extended against the land on the next general property tax roll, to be collected and distributed in the same manner as other taxes levied upon real estate, an amount equal to the sum of the following:

(a) The total amount by which the taxes assessed against the land would have been increased if it had been valued without regard to subsection (1) of section 77-1344 during the last five or lesser number of years in which such agricultural use assessment valuation was in effect for the land; and

(b) Interest upon the amounts of additional tax from each year included in subdivision (1)(a) of this section at the rate of six per cent from the dates at which such additional taxes would have been payable if no special assessment as agricultural use land valuation under subsection (1) of section 77-1344 had been in effect.

(2) In cases ~~where~~ when the designation of specially assessed agricultural valued land is removed as a result of a sale or transfer described in subdivision (2), ~~(3), or (4)~~ of section 77-1347, the lien for such increased taxes and interest shall attach as of the day preceding such sale or transfer.

(3) Land receiving special assessment as agricultural use land immediately prior to August 26, 1983, which becomes disqualified on August 26, 1983, solely because of the amendment of sections 77-1343, 77-1344, and 77-1347 by Laws 1983, LB26, shall not be subject to subsection (1) of this section at that time, but shall be subject to subsection (1) of this section if any other event occurs which would disqualify such land if it were ~~still~~ receiving the special assessment as agricultural use land valuation under subsection (1) of section 77-1344.

Sec. 21. Sections 1, 2, 15 to 20, and 22 of this act shall become operative on January 1, 1986. The remaining sections of this act shall become operative on their effective date.

Sec. 22. That original section 77-1346, Reissue Revised Statutes of Nebraska, 1943, sections 77-1343 to 77-1345, 77-1347, and 77-1348, Revised Statutes Supplement, 1984, section 77-112, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 30, Eighty-ninth Legislature, First Session, 1985, and section 77-201, Reissue Revised Statutes of Nebraska, 1943, as amended by section 2, Legislative Bill 30, Eighty-ninth Legislature, First Session, 1985, are repealed.

Sec. 23. That original section 77-1330, Revised Statutes Supplement, 1984, is repealed.