

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 294**

Introduced By: Mines, 18

Read first time: January 10, 2007

Committee: Revenue

A BILL

1       FOR   AN   ACT   relating   to   the   Tax   Equalization   and   Review  
2                   Commission;   to   amend   section   77-5016,   Revised   Statutes  
3                   Cumulative   Supplement,   2006;   to   change   the   standard   of  
4                   review   for   appeals;   and   to   repeal   the   original   section.  
5       Be   it   enacted   by   the   people   of   the   State   of   Nebraska,

1           Section 1. Section 77-5016, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           77-5016. Any hearing or proceeding of the commission shall  
4 be conducted as an informal hearing unless a formal hearing is granted  
5 as determined by the commission according to its rules and  
6 regulations. In any hearing or proceeding heard by the commission or a  
7 panel of commissioners:

8           (1) The commission may admit and give probative effect to  
9 evidence which possesses probative value commonly accepted by  
10 reasonably prudent persons in the conduct of their affairs excluding  
11 incompetent, irrelevant, immaterial, and unduly repetitious evidence  
12 and shall give effect to the privilege rules of evidence in sections  
13 27-501 to 27-513 but shall not otherwise be bound by the usual  
14 common-law or statutory rules of evidence except during a formal  
15 hearing. Any party to an appeal filed under section 77-5007 may  
16 request a formal hearing by delivering a written request to the  
17 commission not more than thirty days after the appeal is filed. The  
18 request shall include the requesting party's agreement to be liable  
19 for the payment of costs incurred and upon any appeal or review,  
20 including the cost of court reporting services which the requesting  
21 party shall procure for the hearing. The commission shall be bound by  
22 the rules of evidence applicable in district court in any formal  
23 hearing held by the commission. All costs of a formal hearing shall be  
24 paid by the party or parties against whom a final decision is  
25 rendered;

26           (2) The commission may administer oaths, issue subpoenas,  
27 and compel the attendance of witnesses and the production of any

1 papers, books, accounts, documents, statistical analysis, and  
2 testimony. The commission may adopt and promulgate necessary rules for  
3 discovery which are consistent with the rules adopted by the Supreme  
4 Court pursuant to section 25-1273.01;

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

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

26 (5) The commission may take notice of judicially cognizable  
27 facts and in addition may take notice of general, technical, or

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

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

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

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

1 arbitrary; The order, decision, determination, or action appealed  
2 from shall be affirmed unless the appellant adduces evidence, and  
3 demonstrates by the greater weight of the evidence, that the order,  
4 decision, determination, or action appealed from is incorrect. Upon a  
5 determination by the commission that an order, decision,  
6 determination, or action appealed from was incorrect, taxable value  
7 shall be redetermined by the commission based upon the greater weight  
8 of the evidence;

9 (9) Any decision rendered by the commission shall be  
10 certified to the parties and, if applicable, to the county treasurer  
11 and the official charged with the duty of preparing the tax list. When  
12 such decision becomes final, the officials shall correct their records  
13 accordingly;

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

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

1           (12) The costs of any appeal, including the costs of  
2 witnesses, may be taxed by the commission as it deems just, except  
3 costs payable by the appellant pursuant to section 77-1510.01, unless  
4 the appellant is the county assessor or county clerk in which case the  
5 costs shall be paid by the county; and

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

9           Sec. 2. Original section 77-5016, Revised Statutes  
10 Cumulative Supplement, 2006, is repealed.