

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 384

Introduced by Cornett, 45; at the request of the Governor.

Read first time January 13, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-5001, 77-5003, and 77-5005, Reissue Revised Statutes
3 of Nebraska, and sections 77-5004, 77-5016, and 77-5018,
4 Revised Statutes Cumulative Supplement, 2010; to
5 eliminate a commissioner of the Tax Equalization and
6 Review Commission; to change provisions relating to the
7 Tax Equalization and Review Commission; to authorize
8 single commissioner hearings of the Tax Equalization and
9 Review Commission; to harmonize provisions; to provide an
10 operative date; and to repeal the original sections.

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

1 Section 1. Section 77-5001, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-5001 Sections 77-5001 to 77-5031 and section 5 of this
4 act shall be known and may be cited as the Tax Equalization and
5 Review Commission Act.

6 Sec. 2. Section 77-5003, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-5003 (1) The Tax Equalization and Review Commission is
9 created. The Tax Commissioner has no supervision, authority, or
10 control over the actions or decisions of the commission relating to
11 its duties prescribed by law. ~~The~~ Prior to the operative date of this
12 act, the commission shall have four commissioners, one commissioner
13 from each congressional district and one at-large commissioner. On
14 the operative date of this act, the term of the at-large commissioner
15 shall expire, and thereafter the commission shall have three
16 commissioners, one from each congressional district., ~~and beginning~~
17 ~~on and after January 1, 2002, the commission shall have four~~
18 ~~commissioners. One at large commissioner shall be appointed in~~
19 ~~addition to the commissioners representing the congressional~~
20 ~~districts.~~ All commissioners shall be appointed by the Governor with
21 the approval of a majority of the members of the Legislature.

22 (2) The term of the commissioner from district 1 expires
23 January 1, 2010, the term of the commissioner from district 2 expires
24 January 1, 2012, and the term of the commissioner from district 3
25 expires January 1, 2008. ~~The term of the at-large commissioner~~

1 ~~expires on January 1, 2008.~~ After the terms of the commissioners are
2 completed as provided in this ~~section,~~ subsection, each subsequent
3 term shall be for six years beginning and ending on January 1 of the
4 applicable year. Vacancies occurring during a term shall be filled by
5 appointment for the unexpired term. Upon the expiration of his or her
6 term of office, a commissioner shall continue to serve until his or
7 her successor has been appointed.

8 (3) The Governor shall designate one commissioner, ~~who is~~
9 ~~an attorney admitted to practice before the Nebraska Supreme Court,~~
10 to serve as the chairperson of the commission, ~~from January 1, 2002,~~
11 ~~through December 31, 2003.~~ Beginning on January 1, 2004, the
12 ~~commission shall designate pursuant to rule and regulation its~~
13 ~~chairperson and vice chairperson on a two-year, rotating basis among~~
14 ~~the commissioners who are attorneys admitted to practice before the~~
15 ~~Nebraska Supreme Court.~~

16 (4) ~~A commissioner may be removed by the Governor for~~
17 ~~misfeasance, malfeasance, or willful neglect of duty or other cause~~
18 ~~after notice and a public hearing unless notice and hearing are~~
19 ~~expressly waived in writing by the commissioner.~~

20 Sec. 3. Section 77-5004, Revised Statutes Cumulative
21 Supplement, 2010, is amended to read:

22 77-5004 (1) Each commissioner shall be a qualified voter
23 and resident of the state and, ~~for each commissioner representing a~~
24 ~~congressional district,~~ a domiciliary of the district he or she
25 represents.

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

6 (a) Appropriate knowledge of terms commonly used in or
7 related to real property appraisal and of the writing of appraisal
8 reports;

9 (b) Adequate knowledge of depreciation theories, cost
10 estimating, methods of capitalization, and real property appraisal
11 mathematics;

12 (c) An understanding of the principles of land economics,
13 appraisal processes, and problems encountered in the gathering,
14 interpreting, and evaluating of data involved in the valuation of
15 real property, including complex industrial properties and mass
16 appraisal techniques;

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

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

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

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

7 ~~(4) Prior to January 1, 2002, the chairperson, and on and~~
8 ~~after January 1, 2002, at least two commissioners, One commissioner~~
9 shall have been engaged in the practice of law in the State of
10 Nebraska for at least five years, which may include prior service as
11 a judge, and shall be currently admitted to practice before the
12 Nebraska Supreme Court.

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

20 (6)(a) Each commissioner who ~~meets~~ does not meet the
21 requirements of subsection ~~(4)~~ (3) of this section ~~on or after~~
22 ~~January 1, 2002,~~ shall annually attend a seminar or class of at least
23 two days' duration that is:

24 (i) Sponsored by a recognized assessment or appraisal
25 organization, in each of these areas: Utility and railroad appraisal;

1 appraisal of complex industrial properties; appraisal of other hard
2 to assess properties; and mass appraisal, residential or agricultural
3 appraisal, or assessment administration; or

4 (ii) Pertaining to management, law, civil or
5 administrative procedure, or other knowledge or skill necessary for
6 performing the duties of the office.

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

12 (7) The commissioners shall be considered employees of
13 the state for purposes of sections 81-1320 to 81-1328 and 84-1601 to
14 84-1615.

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

19 Sec. 4. Section 77-5005, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 77-5005 (1) Within ten days after appointment, the
22 commissioners shall meet at their office in Lincoln, Nebraska, and
23 enter upon the duties of their office.

24 (2) A majority of the commission ~~or, in cases when a~~
25 ~~panel of three commissioners hears a case, a majority of the panel~~

1 shall at all times constitute a quorum to transact business, and one
2 vacancy shall not impair the right of the remaining commissioners to
3 exercise all the powers of the commission.

4 (3) Any investigation, inquiry, or hearing held or
5 undertaken by the commission may be held or undertaken by ~~or before a~~
6 ~~panel of three commissioners.~~ a single commissioner in those appeals
7 designated for hearing pursuant to section 5 of this act.

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

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

21 (6) The Open Meetings Act applies only to hearings or
22 proceedings of the commission held pursuant to the rulemaking
23 authority of the commission.

24 Sec. 5. (1) A single commissioner may hear an appeal and
25 appeals consolidated with such appeal if:

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

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

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

14 (3) Any party to an appeal designated for hearing before
15 a single commissioner pursuant to this section may, prior to a
16 hearing, elect in writing to have the appeal heard by the commission.
17 The single commissioner conducting a proceeding pursuant to this
18 section may at any time designate the appeal for hearing by the
19 commission.

20 (4) Documents necessary to establish jurisdiction shall
21 constitute the record of a proceeding by a single commissioner. No
22 recording of the proceeding shall be made of a hearing held before a
23 single commissioner.

24 (5) A request for rehearing before the commission of an
25 appeal heard pursuant to this section may be made as provided in

1 section 77-5005.

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

4 Sec. 6. Section 77-5016, Revised Statutes Cumulative
5 Supplement, 2010, is amended to read:

6 77-5016 Any hearing or proceeding of the commission shall
7 be conducted as an informal hearing unless a formal hearing is
8 granted as determined by the commission according to its rules and
9 regulations. In any hearing or proceeding heard by the commission ~~or~~
10 ~~a panel of commissioners:~~ other than a hearing or proceeding heard by
11 a single commissioner pursuant to section 5 of this act:

12 (1) The commission may admit and give probative effect to
13 evidence which possesses probative value commonly accepted by
14 reasonably prudent persons in the conduct of their affairs excluding
15 incompetent, irrelevant, immaterial, and unduly repetitious evidence
16 and shall give effect to the privilege rules of evidence in sections
17 27-501 to 27-513 but shall not otherwise be bound by the usual
18 common-law or statutory rules of evidence except during a formal
19 hearing. Any party to an appeal filed under section 77-5007 may
20 request a formal hearing by delivering a written request to the
21 commission not more than thirty days after the appeal is filed. The
22 requesting party shall be liable for the payment of fees and costs of
23 a court reporter pending a final decision. The commission shall be
24 bound by the rules of evidence applicable in district court in any
25 formal hearing held by the commission. Fees and costs of a court

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

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

1 determination of the case. Documentary evidence may be received in
2 the form of copies or excerpts or by incorporation by reference;

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

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

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

23 (7) The commission may determine any question raised in
24 the proceeding upon which an order, decision, determination, or
25 action appealed from is based. The commission may consider all

1 questions necessary to determine taxable value of property as it
2 hears an appeal or cross appeal;

3 (8) In all appeals, excepting those arising under section
4 77-1606, if the appellant presents no evidence to show that the
5 order, decision, determination, or action appealed from is incorrect,
6 the commission shall deny the appeal. If the appellant presents any
7 evidence to show that the order, decision, determination, or action
8 appealed from is incorrect, such order, decision, determination, or
9 action shall be affirmed unless evidence is adduced establishing that
10 the order, decision, determination, or action was unreasonable or
11 arbitrary;

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

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

1 (11) 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 (a) the appellant is the county assessor or county clerk in which
5 case the costs shall be paid by the county or (b) the appellant is
6 the Tax Commissioner or Property Tax Administrator in which case the
7 costs shall be paid by the state; and

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

11 Sec. 7. Section 77-5018, Revised Statutes Cumulative
12 Supplement, 2010, is amended to read:

13 77-5018 (1) The commission may issue decisions and orders
14 which are supported by the evidence and appropriate for resolving the
15 matters in dispute. Every final decision and order adverse to a party
16 to the proceeding, rendered by the commission in a case appealed to
17 the commission, shall be in writing or stated in the record and shall
18 be accompanied by findings of fact and conclusions of law. The
19 findings of fact shall consist of a concise statement of the
20 conclusions upon each contested issue of fact. Parties to the
21 proceeding shall be notified of the decision and order in person or
22 by mail. A copy of the decision and order shall be delivered or
23 mailed to each party or his or her attorney of record. Within seven
24 days of issuing a decision and order, the commission shall
25 electronically publish such decision and order on a web site

1 maintained by the commission that is accessible to the general
2 public. The full text of final decisions and orders ~~entered after a~~
3 ~~hearing by the commission or a panel of commissioners~~ shall be
4 published on the web site, except that final. ~~Final~~ decisions and
5 orders that are entered (a) on a dismissal by the appellant or
6 petitioner, (b) on a default order when the appellant or petitioner
7 failed to appear, or (c) by agreement of the parties may be published
8 on the web site in a summary manner identifying the parties, the case
9 number, and the basis for the final decision and order. Any decision
10 rendered by the commission shall be certified to the county treasurer
11 and to the officer charged with the duty of preparing the tax list,
12 and if and when such decision becomes final, such officers shall
13 correct their records accordingly and the tax list pursuant to
14 section 77-1613.02.

15 (2) The commission may, on its own motion, modify or
16 change its findings or orders, at any time before an appeal and
17 within ten days after the date of such findings or orders, for the
18 purpose of correcting any ambiguity, clerical error, or patent or
19 obvious error. The time for appeal shall not be lengthened because of
20 the correction unless the correction substantially changes the
21 findings or order.

22 (3) The Tax Commissioner or the Property Tax
23 Administrator shall have thirty days after a final decision of the
24 commission to appeal the commission's decision.

25 Sec. 8. This act becomes operative on October 1, 2011.

1 Sec. 9. Original sections 77-5001, 77-5003, and 77-5005,
2 Reissue Revised Statutes of Nebraska, and sections 77-5004, 77-5016,
3 and 77-5018, Revised Statutes Cumulative Supplement, 2010, are
4 repealed.