LEGISLATURE OF NEBRASKA ONE HUNDRED FOURTH LEGISLATURE SECOND SESSION

LEGISLATIVE BILL 995

Introduced by Davis, 43. Read first time January 15, 2016 Committee: Revenue

1	A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2	46-294.03, 77-201, 77-1507.01, 77-5023, 79-1016, and 79-1036,
3	Reissue Revised Statutes of Nebraska, and sections 77-1327, 77-1359,
4	77-1371, and 77-5022, Revised Statutes Cumulative Supplement, 2014;
5	to repeal provisions relating to the special valuation of
6	agricultural land; to provide for agricultural value of agricultural
7	land; to harmonize provisions; to provide an operative date; to
8	repeal the original sections; and to outright repeal sections
9	77-1343, 77-1344, 77-1345, 77-1345.01, 77-1346, and 77-1347.01,
10	Reissue Revised Statutes of Nebraska, and section 77-1347, Revised
11	Statutes Cumulative Supplement, 2014.

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

-1-

Section 1. Section 46-294.03, Reissue Revised Statutes of Nebraska,
 is amended to read:

3 46-294.03 For purposes of assessment pursuant to sections 77-1359 4 and 77-1343 to 77-1363, neither the temporary transfer or change of an 5 appropriation nor any resulting land-use changes on the land to which the appropriation was appurtenant prior to the transfer or change shall cause 6 7 the land to be reclassified to a lower value use or the valuation of the land to be reduced, but the land may be reclassified to a higher value 8 9 use and its valuation may be increased if a higher value use is made of the land while the temporary transfer or change is in effect. Land from 10 which an appropriation has been permanently transferred shall be 11 classified and valued for tax purposes in accordance with the use of the 12 13 land after the transfer.

14 Sec. 2. Section 77-201, Reissue Revised Statutes of Nebraska, is 15 amended to read:

16 77-201 (1) Except as provided in subsections (2) <u>and (3)</u> through (4) 17 of this section, all real property in this state, not expressly exempt 18 therefrom, shall be subject to taxation and shall be valued at its actual 19 value.

(2) Agricultural land and horticultural land as defined in section
77-1359 shall constitute a separate and distinct class of property for
purposes of property taxation, shall be subject to taxation, unless
expressly exempt from taxation, and shall be valued at seventy-five
percent of its <u>agricultural actual</u> value <u>as defined in section 77-1359</u>.

25 (3) Agricultural land and horticultural land actively devoted to 26 agricultural or horticultural purposes which has value for purposes other 27 than agricultural or horticultural uses and which meets the 28 qualifications for special valuation under section 77-1344 shall 29 constitute a separate and distinct class of property for purposes of 30 property taxation, shall be subject to taxation, and shall be valued for 31 taxation at seventy-five percent of its special value as defined in

-2-

1 section 77-1343.

2 (<u>3</u> 4) Historically significant real property which meets the 3 qualifications for historic rehabilitation valuation under sections 4 77-1385 to 77-1394 shall be valued for taxation as provided in such 5 sections.

(4 5) Tangible personal property, not including motor vehicles 6 registered for operation on the highways of this state, shall constitute 7 a separate and distinct class of property for purposes of property 8 9 taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at its net book value. Tangible personal 10 property transferred as a gift or devise or as part of a transaction 11 which is not a purchase shall be subject to taxation based upon the date 12 13 the property was acquired by the previous owner and at the previous 14 owner's Nebraska adjusted basis. Tangible personal property acquired as replacement property for converted property shall be subject to taxation 15 16 based upon the date the converted property was acquired and at the 17 Nebraska adjusted basis of the converted property unless insurance proceeds are payable by reason of the conversion. For purposes of this 18 19 subsection, (a) converted property means tangible personal property which is compulsorily or involuntarily converted as a result of its destruction 20 in whole or in part, theft, seizure, requisition, or condemnation, or the 21 threat or imminence thereof, and no gain or loss is recognized for 22 23 federal or state income tax purposes by the holder of the property as a 24 result of the conversion and (b) replacement property means tangible 25 personal property acquired within two years after the close of the calendar year in which tangible personal property was converted and which 26 is, except for date of construction or manufacture, substantially the 27 28 same as the converted property.

Sec. 3. Section 77-1327, Revised Statutes Cumulative Supplement,
2014, is amended to read:

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-3-

77-1327 (1) It is the intent of the Legislature that accurate and

1 comprehensive information be developed by the Property Tax Administrator 2 and made accessible to the taxing officials and property owners in order 3 to ensure the uniformity and proportionality of the assessments of real 4 property valuations in the state in accordance with law and to provide 5 the statistical and narrative reports pursuant to section 77-5027.

(2) All transactions of real property for which the statement 6 required in section 76-214 is filed shall be available for development of 7 a sales file by the Property Tax Administrator. All transactions with 8 9 stated consideration of more than one hundred dollars or upon which more than two dollars and twenty-five cents in documentary stamp taxes are 10 paid shall be considered sales. All sales shall be deemed to be arm's 11 transactions determined 12 length unless to be otherwise under 13 professionally accepted mass appraisal techniques. The Department of 14 Revenue shall not overturn a determination made by a county assessor regarding the qualification of a sale unless the department reviews the 15 16 sale and determines through the review that the determination made by the 17 county assessor is incorrect.

(3) The Property Tax Administrator annually shall make and issue 18 19 comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity, and the overall 20 compliance with assessment requirements for each major class of real 21 property subject to the property tax in each county. The comprehensive 22 23 ratio studies shall be developed in compliance assessment with 24 professionally accepted mass appraisal techniques and shall employ such 25 statistical analysis as deemed appropriate by the Property Тах Administrator, including measures of central tendency and dispersion. The 26 comprehensive assessment ratio studies shall be based upon the sales file 27 as developed in subsection (2) of this section and shall be used by the 28 Property Tax Administrator for the analysis of the level of value and 29 quality of assessment for purposes of section 77-5027 and by the Property 30 Tax Administrator in establishing the adjusted valuations required by 31

- 4 -

section 79-1016. Such studies may also be used by assessing officials in
 establishing assessed valuations.

3 (4) For purposes of determining the level of value of agricultural and horticultural land subject to special valuation under sections 4 77-1343 to 77-1347.01, the Property Tax Administrator shall annually make 5 study developed in 6 and issue a comprehensive compliance with professionally accepted mass appraisal techniques to establish the level 7 8 of value if in his or her opinion the level of value cannot be developed 9 through the use of the comprehensive assessment ratio studies developed in subsection (3) of this section. 10

(5) County assessors and other taxing officials shall electronically 11 report data on the assessed valuation and other features of the property 12 assessment process for such periods and in such form and content as the 13 14 Property Tax Administrator shall deem appropriate. The Property Tax Administrator shall so construct and maintain the system used to collect 15 16 and analyze the data to enable him or her to make intracounty comparisons of assessed valuation, including school districts and other political 17 subdivisions, as well as intercounty comparisons of assessed valuation, 18 including school districts and other political subdivisions. The Property 19 Tax Administrator shall include analysis of real property sales pursuant 20 to land contracts and similar transfers at the time of execution of the 21 22 contract or similar transfer.

Sec. 4. Section 77-1359, Revised Statutes Cumulative Supplement,
24 2014, is amended to read:

25 77-1359 The Legislature finds and declares that agricultural land 26 and horticultural land shall be a separate and distinct class of real 27 property for purposes of assessment. The assessed value of agricultural 28 land and horticultural land shall not be uniform and proportionate with 29 all other real property, but the assessed value shall be uniform and 30 proportionate within the class of agricultural land and horticultural 31 land.

-5-

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For purposes of this section and section 77-1363:

2 (1) Agricultural land and horticultural land means a parcel of land, 3 excluding land associated with a building or enclosed structure located 4 on the parcel, which is primarily used for agricultural or horticultural 5 purposes, including wasteland lying in or adjacent to and in common 6 ownership or management with other agricultural land and horticultural 7 land;

8 (2) Agricultural or horticultural purposes means used for the 9 commercial production of any plant or animal product in a raw or 10 unprocessed state that is derived from the science and art of 11 agriculture, aquaculture, or horticulture. Agricultural or horticultural 12 purposes includes the following uses of land:

(a) Land retained or protected for future agricultural or
horticultural purposes under a conservation easement <u>approved as required</u>
<u>by section 76-2,112, as provided in the Conservation and Preservation</u>
<u>Easements Act</u> except when the parcel or a portion thereof is being used
for purposes other than agricultural or horticultural purposes; and

(b) Land enrolled in a federal or state program in which payments
are received for removing such land from agricultural or horticultural
production;

(3) Agricultural value means the actual value of land for
 agricultural and horticultural purposes or uses without regard to the
 actual value the land would have for other purposes or uses.

 $(\underline{4} \ \underline{3})$ Farm home site means land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside a platted and zoned subdivision; and

(5 4) Farm site means the portion of land contiguous to land
 actively devoted to agriculture which includes improvements that are
 agricultural or horticultural in nature, including any uninhabitable or
 unimproved farm home site.

-6-

Sec. 5. Section 77-1371, Revised Statutes Cumulative Supplement,
 2014, is amended to read:

77-1371 Comparable sales are recent sales of properties that are 3 4 to the property being assessed in significant physical, similar functional, and location characteristics and in their contribution to 5 value. When using comparable sales in determining actual value of an 6 individual property under the sales comparison approach provided in 7 section 77-112, the following guidelines shall be considered 8 in 9 determining what constitutes a comparable sale:

(1) Whether the sale was financed by the seller and included any
 special financing considerations or the value of improvements;

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(2) Whether zoning affected the sale price of the property;

(3) For sales of agricultural land or horticultural land as defined
in section 77-1359, whether a premium was paid to acquire property. A
premium may be paid when proximity or tax consequences cause the buyer to
pay more than actual value for agricultural land or horticultural land;

(4) Whether sales or transfers made in connection with foreclosure,
bankruptcy, or condemnations, in lieu of foreclosure, or in consideration
of other legal actions should be excluded from comparable sales analysis
as not reflecting current market value;

(5) Whether sales between family members within the third degree of consanguinity include considerations that fail to reflect current market value;

(6) Whether sales to or from federal or state agencies or local
 political subdivisions reflect current market value;

(7) Whether sales of undivided interests in real property or parcels
 less than forty acres or sales conveying only a portion of the unit
 assessed reflect current market value;

(8) Whether sales or transfers of property in exchange for other
 real estate, stocks, bonds, or other personal property reflect current
 market value;

-7-

(9) Whether deeds recorded for transfers of convenience, transfers
 of title to cemetery lots, mineral rights, and rights of easement reflect
 current market value;

4 (10) Whether sales or transfers of property involving railroads or
5 other public utility corporations reflect current market value;

6 (11) Whether sales of property substantially improved subsequent to 7 assessment and prior to sale should be adjusted to reflect current market 8 value or eliminated from such analysis;

9 (12) For agricultural land or horticultural land as defined in 10 section 77-1359 which is or has been receiving the special valuation 11 pursuant to sections 77-1343 to 77-1347.01, whether the sale price 12 reflects a value which the land has for purposes or uses other than as 13 agricultural land or horticultural land and <u>therefore</u> therefor does not 14 reflect <u>agricultural</u> current market value of other agricultural land or 15 horticultural land;

(13) Whether sales or transfers of property are in a similar market 16 17 area and have similar characteristics to the property being assessed; and (14) For agricultural land and horticultural land as defined in 18 19 section 77-1359 which is within a class or subclass of irrigated cropland pursuant to section 77-1363, whether the difference in well capacity or 20 in water availability due to federal, state, or local regulatory actions 21 22 or limited source affected the sale price of the property. If data on current well capacity or current water availability is not available from 23 24 a federal, state, or local government entity, this subdivision shall not 25 be used to determine what constitutes a comparable sale.

The Property Tax Administrator may issue guidelines for assessing officials for use in determining what constitutes a comparable sale. Guidelines shall take into account the factors listed in this section and other relevant factors as prescribed by the Property Tax Administrator.

30 Sec. 6. Section 77-1507.01, Reissue Revised Statutes of Nebraska, is 31 amended to read:

-8-

1 77-1507.01 Any person otherwise having a right to appeal may 2 petition the Tax Equalization and Review Commission in accordance with 3 section 77-5013, on or before December 31 of each year, to determine the 4 actual value or <u>agricultural special</u> value of real property for that year 5 if a failure to give notice prevented timely filing of a protest or 6 appeal provided for in sections 77-1501 to 77-1510.

7 Sec. 7. Section 77-5022, Revised Statutes Cumulative Supplement,8 2014, is amended to read:

9 77-5022 The commission shall annually equalize the assessed value or 10 special value of all real property as submitted by the county assessors 11 on the abstracts of assessments and equalize the values of real property 12 that is valued by the state. The commission shall have the power to 13 recess from time to time until the equalization process is complete. 14 Meetings held pursuant to this section may be held by means of 15 videoconference or telephone conference.

16 Sec. 8. Section 77-5023, Reissue Revised Statutes of Nebraska, is 17 amended to read:

18 77-5023 (1) Pursuant to section 77-5022, the commission shall have 19 the power to increase or decrease the value of a class or subclass of 20 real property in any county or taxing authority or of real property 21 valued by the state so that all classes or subclasses of real property in 22 all counties fall within an acceptable range.

23 (2) An acceptable range is the percentage of variation from a 24 standard for valuation as measured by an established indicator of central 25 tendency of assessment. Acceptable ranges are: (a) For agricultural land and horticultural land as defined in section 77-1359, sixty-nine to 26 seventy-five percent of <u>agricultural</u> actual value as defined in section 27 28 77-1359; and (b) for lands receiving special valuation, sixty-nine to seventy-five percent of special valuation as defined in section 77-1343; 29 and (c) for all other real property, ninety-two to one hundred percent of 30 actual value. 31

-9-

1 (3) Any increase or decrease shall cause the level of value 2 determined by the commission to be at the midpoint of the applicable 3 acceptable range.

4 (4) Any decrease or increase to a subclass of property shall also 5 cause the level of value determined by the commission for the class from 6 which the subclass is drawn to be within the applicable acceptable range.

7 (5) Whether or not the level of value determined by the commission 8 falls within an acceptable range or at the midpoint of an acceptable 9 range may be determined to a reasonable degree of certainty relying upon 10 generally accepted mass appraisal techniques.

11 Sec. 9. Section 79-1016, Reissue Revised Statutes of Nebraska, is 12 amended to read:

13 79-1016 (1) On or before August 25, the county assessor shall 14 certify to the Property Tax Administrator the total taxable value by school district in the county for the current assessment year on forms 15 16 prescribed by the Tax Commissioner. The county assessor may amend the filing for changes made to the taxable valuation of the school district 17 in the county if corrections or errors on the original certification are 18 19 discovered. Amendments shall be certified to the Property Тах Administrator on or before September 30. 20

(2) On or before October 10, the Property Tax Administrator shall 21 compute and certify to the State Department of Education the adjusted 22 23 valuation for the current assessment year for each class of property in 24 each school district and each local system. The adjusted valuation of property for each school district and each local system, for purposes of 25 determining state aid pursuant to the Tax Equity and Educational 26 Opportunities Support Act, shall reflect as nearly as possible state aid 27 value as defined in subsection (3) of this section. The Property Tax 28 Administrator shall notify each school district and each local system of 29 its adjusted valuation for the current assessment year by class of 30 property on or before October 10. Establishment of the adjusted valuation 31

-10-

shall be based on the taxable value certified by the county assessor for 1 2 each school district in the county adjusted by the determination of the level of value for each school district from an analysis of the 3 4 comprehensive assessment ratio study or other studies developed by the Property Tax Administrator, in compliance with professionally accepted 5 mass appraisal techniques, as required by section 77-1327. The Tax 6 7 Commissioner shall adopt and promulgate rules and regulations setting forth standards for the determination of level of value for state aid 8 9 purposes.

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(3) For purposes of this section, state aid value means:

(a) For real property other than agricultural and horticultural
land, ninety-six percent of actual value;

(b) For agricultural and horticultural land, seventy-two percent of
<u>agricultural actual</u> value as provided in sections 77-1359 <u>and to 77-1363</u>.
For agricultural and horticultural land that receives special valuation
pursuant to section 77-1344, seventy-two percent of special valuation as
defined in section 77-1343; and

18 (c) For personal property, the net book value as defined in section19 77-120.

(4) On or before November 10, any local system may file with the Tax 20 Commissioner written objections to the adjusted valuations prepared by 21 the Property Tax Administrator, stating the reasons why such adjusted 22 23 valuations are not the valuations required by subsection (3) of this 24 section. The Tax Commissioner shall fix a time for a hearing. Either 25 party shall be permitted to introduce any evidence in reference thereto. On or before January 1, the Tax Commissioner shall enter a written order 26 modifying or declining to modify, in whole or in part, the adjusted 27 28 valuations and shall certify the order to the State Department of Education. Modification by the Tax Commissioner shall be based upon the 29 evidence introduced at hearing and shall not be limited to the 30 modification requested in the written objections or at hearing. A copy of 31

-11-

the written order shall be mailed to the local system within seven days after the date of the order. The written order of the Tax Commissioner may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

5 (5) On or before November 10, any local system or county official may file with the Tax Commissioner a written request for a nonappealable 6 7 correction of the adjusted valuation due to clerical error as defined in section 77-128 or, for agricultural and horticultural land, assessed 8 9 value changes by reason of land qualified or disqualified for special use 10 valuation pursuant to sections 77-1343 to 77-1347.01. On or before the following January 1, the Tax Commissioner shall approve or deny the 11 request and, if approved, certify the corrected adjusted valuations 12 resulting from such action to the State Department of Education. 13

14 (6) On or before May 31 of the year following the certification of adjusted valuation pursuant to subsection (2) of this section, any local 15 system or county official may file with the Tax Commissioner a written 16 17 request for a nonappealable correction of the adjusted valuation due to changes to the tax list that change the assessed value of taxable 18 property. Upon the filing of the written request, the Tax Commissioner 19 shall require the county assessor to recertify the taxable valuation by 20 in the county on forms prescribed 21 school district by the Тах Commissioner. The recertified valuation shall be the valuation that was 22 certified on the tax list, pursuant to section 77-1613, increased or 23 24 decreased by changes to the tax list that change the assessed value of 25 taxable property in the school district in the county in the prior assessment year. On or before the following July 31, the Tax Commissioner 26 shall approve or deny the request and, if approved, certify the corrected 27 28 adjusted valuations resulting from such action to the State Department of 29 Education.

30 (7) No injunction shall be granted restraining the distribution of31 state aid based upon the adjusted valuations pursuant to this section.

-12-

1 (8) A school district whose state aid is to be calculated pursuant 2 to subsection (5) of this section and whose state aid payment is postponed as a result of failure to calculate state aid pursuant to such 3 4 subsection may apply to the state board for lump-sum payment of such 5 postponed state aid. Such application may be for any amount up to one hundred percent of the postponed state aid. The state board may grant the 6 entire amount applied for or any portion of such amount. The state board 7 shall notify the Director of Administrative Services of the amount of 8 9 funds to be paid in a lump sum and the reduced amount of the monthly payments. The Director of Administrative Services shall, at the time of 10 the next state aid payment made pursuant to section 79-1022, draw a 11 warrant for the lump-sum amount from appropriated funds and forward such 12 warrant to the district. 13

14 Sec. 10. Section 79-1036, Reissue Revised Statutes of Nebraska, is 15 amended to read:

16 79-1036 (1) In making the apportionment under section 79-1035, the 17 Commissioner of Education shall distribute from the school fund for school purposes, to any and all learning communities and school districts 18 which are not members of a learning community, in which there are 19 situated school lands which have not been sold and transferred by deed or 20 saline lands owned by the state, which lands are being used for a public 21 purpose, an amount in lieu of tax money that would be raised by school 22 23 district levies and learning community common levies for which the 24 proceeds are distributed to member school districts pursuant to sections 25 79-1073 and 79-1073.01 if such lands were taxable, to be ascertained in accordance with subsection (2) of this section, except that: 26

(a) For Class I districts or portions thereof which are affiliated and in which there are situated school or saline lands, 38.6207 percent of the in lieu of land tax money calculated pursuant to subsection (2) of this section, based on the affiliated school system tax levy computed pursuant to section 79-1077, shall be distributed to the affiliated high

-13-

school district and the remainder shall be distributed to the Class I
 district;

3 (b) For Class I districts or portions thereof which are part of a 4 Class VI district which offers instruction in grades nine through twelve 5 and in which there are situated school or saline lands, 38.6207 percent 6 of the in lieu of land tax money calculated pursuant to subsection (2) of 7 this section, based on the Class VI school system levy computed pursuant 8 to section 79-1078, shall be distributed to the Class VI district and the 9 remainder shall be distributed to the Class I district;

10 (c) For Class I districts or portions thereof which are part of a 11 Class VI district which offers instruction in grades seven through twelve 12 and in which there are situated school or saline lands, 55.1724 percent 13 of the in lieu of land tax money calculated pursuant to subsection (2) of 14 this section, based on the Class VI school system levy computed pursuant 15 to section 79-1078, shall be distributed to the Class VI district and the 16 remainder shall be distributed to the Class I district; and

(d) For Class I districts or portions thereof which are part of a Class VI district which offers instruction in grades six through twelve and in which there are situated school or saline lands, 62.0690 percent of the in lieu of land tax money calculated pursuant to subsection (2) of this section, based on the Class VI school system levy computed pursuant to section 79-1078, shall be distributed to the Class VI district and the remainder shall be distributed to the Class I district.

24 (2) The county assessor shall certify to the Commissioner of 25 Education the tax levies of each school district and learning community in which school land or saline land is located and the last appraised 26 value of such school land, which value shall be the same percentage of 27 the appraised value as the percentage of the assessed value is of 28 agricultural market value in subsection (2) of section 77-201 for the 29 purpose of applying the applicable tax levies for each district and 30 learning community in determining the distribution to the districts of 31

-14-

1 such amounts. The school board of any school district and the learning 2 community coordinating council of any learning community in which there 3 is located any leased or undeeded school land or saline land subject to this section may appeal to the Board of Educational Lands and Funds for a 4 reappraisement of such school land if such school board or learning 5 community coordinating council deems the land not appraised in proportion 6 to the value of adjoining land of the same or similar value. The Board of 7 Educational Lands and Funds shall proceed to investigate the facts 8 9 involved in such appeal and, if the contention of the school board or learning community coordinating council is correct, make the proper 10 reappraisement. The value calculation in this subsection shall be used by 11 the Commissioner of Education for making distributions in each school 12 13 fiscal year.

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Sec. 11. This act becomes operative on January 1, 2017.

Sec. 12. Original sections 46-294.03, 77-201, 77-1507.01, 77-5023,
79-1016, and 79-1036, Reissue Revised Statutes of Nebraska, and sections
77-1327, 77-1359, 77-1371, and 77-5022, Revised Statutes Cumulative
Supplement, 2014, are repealed.

Sec. 13. The following sections are outright repealed: Sections
77-1343, 77-1344, 77-1345, 77-1345.01, 77-1346, and 77-1347.01, Reissue
Revised Statutes of Nebraska, and section 77-1347, Revised Statutes
Cumulative Supplement, 2014.

-15-