

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1042

Introduced by Wickersham, 49; Kristensen, 37

Read first time January 6, 2000

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Tax Equalization and Review Commission;
2 to amend sections 77-202.04, 77-5003, 77-5005, and
3 77-5009, Revised Statute Supplement, 1998, and section
4 77-1519, Revised Statutes Supplement, 1999; to increase
5 the number of commissioners; to provide for panels; to
6 change duties of special masters; to change procedures
7 for appeals to the Court of Appeals; to harmonize
8 provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-202.04, Revised Statutes
2 Supplement, 1998, is amended to read:

3 77-202.04. Persons, corporations, or organizations
4 denied exemption from taxation for real or tangible personal
5 property by a county board of equalization may appeal to the Tax
6 Equalization and Review Commission. The county assessor may appeal
7 the grant of an exemption from taxation for real or tangible
8 personal property by a county board of equalization to the Tax
9 Equalization and Review Commission. The Property Tax Administrator
10 may in his or her discretion intervene in any such appeal pursuant
11 to this section.

12 Sec. 2. Section 77-5003, Revised Statutes Supplement,
13 1998, is amended to read:

14 77-5003. The Tax Equalization and Review Commission is
15 created. The Tax Commissioner has no supervision, authority, or
16 control over the actions or decisions of the commission relating to
17 its duties prescribed by law. The commission shall have ~~three~~ six
18 commissioners, ~~one~~ two from each congressional district, who are
19 appointed by the Governor with the approval of a majority of the
20 members of the Legislature. One of the commissioners shall be
21 designated by the Governor as chairperson.

22 The term of the original commissioner from district 1
23 expires two years after the first appointment under this section,
24 the term of the original commissioner from district 2 expires four
25 years after the first appointment under this section, and the term
26 of the original commissioner from district 3 expires six years
27 after the first appointment under this section. The terms of the
28 three commissioners appointed to the commission due to the passage

1 of this legislative bill shall expire at the same time as the terms
2 of the original commissioner from each district. After the initial
3 terms are completed, each term shall be for six years. Upon the
4 expiration of his or her term of office, a commissioner shall
5 continue to serve until his or her successor has been appointed.

6 A commissioner may be removed by the Governor for
7 misfeasance, malfeasance, or willful neglect of duty or other cause
8 after notice and a public hearing unless notice and hearing are
9 expressly waived in writing by the commissioner.

10 Sec. 3. Section 77-5005, Revised Statutes Supplement,
11 1998, is amended to read:

12 77-5005. (1) Within ten days after appointment, the
13 commissioners shall meet at their office in Lincoln, Nebraska, and
14 enter upon the duties of their office.

15 (2) A majority of the commission or, in cases when a
16 panel of three commissioners heard a case, a majority of the panel
17 shall at all times constitute a quorum to transact business, and
18 one vacancy shall not impair the right of the remaining
19 commissioners to exercise all the powers of the commission.

20 (3) Any investigation, inquiry, or hearing held or
21 undertaken by the commission may be held or undertaken by or before
22 any one commissioner or a panel of three commissioners, with the
23 approval of the commission.

24 (4) When holding hearings pursuant to sections 77-5016,
25 77-5024, and 77-5026, the commission may, after hearing the
26 evidence and argument on the record, recess to closed deliberations
27 for the limited purpose of deciding the matter before it
28 notwithstanding sections 84-1408 to 84-1414. After deliberating,

1 the commission shall issue its final decision, accompanied by
2 findings of fact and conclusions of law, in writing or on the
3 record.

4 (5) All investigations, inquiries, hearings, and
5 decisions of a commissioner or a panel of commissioners and every
6 order made by a commissioner or a panel of commissioners ~~when~~
7 ~~approved and confirmed by a quorum of the commission, if so shown~~
8 ~~on its record of proceedings,~~ shall be deemed to be the order of
9 the commission. The full commission may grant a rehearing and
10 determine de novo any decisions of or orders made by a single
11 commissioner or panel of commissioners.

12 Sec. 4. Section 77-5009, Revised Statutes Supplement,
13 1998, is amended to read:

14 77-5009. (1) The commission may employ legal, clerical,
15 and other assistants as may be necessary to carry out the powers
16 and duties of the commission.

17 (2)(a) For purposes of finding facts ~~or in the~~
18 ~~performance of other duties~~ with regard to any matters relating to
19 taxation, the commission may appoint by an order in writing a
20 special master or special masters whose duties are prescribed in
21 the order, except that the duties of a special master shall not
22 include the determination of conclusions of law or the final
23 disposition of any case or controversy.

24 (b) Special masters may be paid a salary or fee in the
25 discretion of the commission. If a salary is paid, the amount paid
26 shall be fixed by the commission, and if a fee is paid, the amount
27 paid shall be in accordance with the value of the service rendered
28 and shall be agreed upon and approved by the commission before the

1 special master renders service under his or her appointment.

2 (c) The claim for services rendered shall be certified by
3 the commission and paid as provided by law for other claims against
4 the state.

5 (3) In the discharge of his or her duties a special
6 master shall have all the investigative and factfinding powers of
7 the commission in deciding any tax dispute.

8 (4)(a) The commission may conduct a number of
9 factfindings contemporaneously through different special masters
10 and may delegate to a special master the taking of all testimony
11 bearing upon any investigation or hearing.

12 (b) The decision of the commission shall be based upon
13 its examination of all testimony and records.

14 (c) The recommendations made by any special master shall
15 be advisory only and shall not preclude the taking of further
16 testimony if the commission orders further investigation.

17 Sec. 5. Section 77-5019, Revised Statutes Supplement,
18 1999, is amended to read:

19 77-5019. (1) Any party aggrieved by a final decision in
20 a case appealed to the commission and any county or other political
21 subdivision aggrieved by an order of the commission issued pursuant
22 to section 77-5028 shall be entitled to judicial review in the
23 Court of Appeals. Nothing in this section shall be deemed to
24 prevent resort to other means of review, redress, or relief
25 provided by law.

26 (2)(a) Proceedings for review shall be instituted by
27 filing a petition and the appropriate docket fees in the Court of
28 Appeals and delivery of a copy of the petition to the commission

1 within thirty days after the date on which a final appealable order
2 is entered by the commission. All parties of record shall be made
3 parties to the proceedings for review. If the commission's only
4 role in a case is to act as a neutral factfinding body, the
5 commission shall not be a party of record. In all other cases, the
6 commission shall be a party of record. Summons shall be served on
7 all parties within thirty days after the filing of the petition in
8 the manner provided for service of a summons in section 25-510.02.
9 If the commission is not a party of record, the petitioner shall
10 serve a copy of the petition and a request for preparation of the
11 official record upon the commission within thirty days after the
12 filing of the petition. The court, in its discretion, may permit
13 other interested persons to intervene. No bond or undertaking is
14 required for an appeal to the Court of Appeals.

15 (b) A petition for review shall set forth: (i) The name
16 and mailing address of the petitioner; (ii) the name and mailing
17 address of the county whose action is at issue or the commission;
18 (iii) identification of the final decision at issue together with a
19 duplicate copy of the final decision; (iv) the identification of
20 the parties in the case that led to the final decision; (v) the
21 facts to demonstrate proper venue; (vi) the petitioner's reasons
22 for believing that relief should be granted; and (vii) a request
23 for relief, specifying the type and extent of the relief requested.

24 (3) The filing of the petition or the service of summons
25 upon the commission shall not stay enforcement of a decision. The
26 commission may order a stay. The court may order a stay after
27 notice of the application for the stay to the commission and to all
28 parties of record. If the commission has found that its action on

1 an application for stay or other temporary remedies is justified to
2 protect against a substantial threat to the public health, safety,
3 or welfare, the court may not grant relief unless the court finds
4 that: (a) The applicant is likely to prevail when the court finally
5 disposes of the matter; (b) without relief, the applicant will
6 suffer irreparable injuries; (c) the grant of relief to the
7 applicant will not substantially harm other parties to the
8 proceedings; and (d) the threat to the public health, safety, or
9 welfare relied on by the commission is not sufficiently serious to
10 justify the commission's action in the circumstances. The court
11 may require the party requesting the stay to give bond in such
12 amount and conditioned as the court directs.

13 (4) Within thirty days after service of the petition or
14 within such further time as the court for good cause shown allows,
15 the commission shall prepare and transmit to the court a certified
16 copy of the official record of the proceedings had before the
17 commission. The official record shall include: (a) Notice of all
18 proceedings; (b) any pleadings, motions, requests, preliminary or
19 intermediate rulings and orders, and similar correspondence to or
20 from the commission pertaining to the case; (c) the transcribed
21 record of the hearing before the commission, including all exhibits
22 and evidence introduced during the hearing, a statement of matters
23 officially noticed by the commission during the proceeding, and all
24 proffers of proof and objections and rulings thereon; and (d) the
25 final order appealed from. The commission shall charge the
26 petitioner with the reasonable direct cost or require the
27 petitioner to pay the cost for preparing the official record for
28 transmittal to the court in all cases except when the petitioner is

1 not required to pay a filing fee. The commission may require
2 payment or bond prior to the transmittal of the record.

3 (5) The review shall be conducted by the court for error
4 on the record of the commission. If the court determines that the
5 interest of justice would be served by the resolution of any other
6 issue not raised before the commission, the court may remand the
7 case to the commission for further proceedings. The court may
8 affirm, reverse, or modify the decision of the commission or remand
9 the case for further proceedings.

10 (6) Appeals under this section shall be given precedence
11 over all civil cases.

12 Sec. 6. Original sections 77-202.04, 77-5003, 77-5005,
13 and 77-5009, Revised Statute Supplement, 1998, and section 77-1519,
14 Revised Statutes Supplement, 1999, are repealed.