

AMENDMENTS TO LB 465

1 1. Strike the original sections and insert the following
2 new sections:

3 "Section 1. Section 77-5003, Revised Statutes
4 Supplement, 2000, is amended to read:

5 77-5003. (1) The Tax Equalization and Review Commission
6 is created. The Tax Commissioner has no supervision, authority, or
7 control over the actions or decisions of the commission relating to
8 its duties prescribed by law. ~~The~~

9 (2) Prior to January 1, 2002, the commission shall have
10 three commissioners, one from each congressional district, who are
11 appointed by the Governor with the approval of a majority of the
12 members of the Legislature. One of the commissioners shall be
13 designated by the Governor as chairperson. The term of the
14 commissioner from district 1 expires two years after the first
15 appointment under this section, the term of the commissioner from
16 district 2 expires four years after the first appointment under
17 this section, and the term of the commissioner from district 3
18 expires six years after the first appointment under this section.
19 ~~After the initial terms are completed, each term shall be for six~~
20 ~~years. Upon the expiration of his or her term of office, a~~
21 ~~commissioner shall continue to serve until his or her successor has~~
22 ~~been appointed.~~

23 (3)(a) Beginning on January 1, 2002, the commission shall
24 have five members, one from each public service commissioner

1 district as described in section 32-509, who are appointed by the
2 Governor with the approval of a majority of the members of the
3 Legislature.

4 (b) The initial terms of office for commissioners under
5 this subsection are as follows:

6 (i) The commissioner representing district 1 on the
7 effective date of this act shall continue in office and represent
8 district 1 on the commission until January 1, 2004;

9 (ii) The commissioner representing district 2 on the
10 effective date of this act shall continue in office and represent
11 district 2 on the commission until January 1, 2006;

12 (iii) The commissioner appointed to represent district 3
13 shall take office on January 1, 2002, and represent such district
14 until January 1, 2006; and

15 (iv) The commissioners appointed to represent districts 4
16 and 5 shall take office on January 1, 2002, and represent such
17 districts until January 1, 2008.

18 (c) After the initial terms of office under this
19 subsection are completed:

20 (i) The terms of office for each commissioner shall be
21 six years; and

22 (ii) Commissioners representing districts 1 and 2 shall
23 meet the qualifications set forth in section 77-5004.

24 (d) Upon expiration of a commissioner's term of office,
25 such commissioner shall continue to serve until a successor has
26 been appointed.

27 (4) The Governor shall designate one commissioner, who is

1 a licensed attorney, to serve as the chairperson of the commission
2 from January 1, 2002, through December 31, 2003. Beginning on
3 January 1, 2004, the commission shall designate pursuant to rule
4 and regulation its chairperson on a two-year, rotating basis among
5 the commissioners who are licensed attorneys.

6 (5) 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. 2. Section 77-5004, Revised Statutes Supplement,
11 2000, is amended to read:

12 77-5004. (1) Each commissioner shall be a qualified
13 voter, ~~taxpayer~~, and resident of the state and the district he or
14 she represents.

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

20 (a) Appropriate knowledge of terms commonly used in or
21 related to real property appraisal and of the writing of appraisal
22 reports;

23 (b) Adequate knowledge of depreciation theories, cost
24 estimating, methods of capitalization, and real property appraisal
25 mathematics;

26 (c) An understanding of the principles of land economics,
27 appraisal processes, and problems encountered in the gathering,

1 interpreting, and evaluating of data involved in the valuation of
2 real property, including complex industrial properties and
3 mass-appraisal techniques;

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

6 (e) Any certification or training required of Nebraska
7 assessment officers; and

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

11 (3) ~~The~~ Prior to January 1, 2002, the chairperson shall
12 have been engaged in the practice of law in the State of Nebraska
13 for at least five years, which may include prior service as a
14 judge, and shall be currently admitted to practice before the
15 Nebraska Supreme Court. Beginning on January 1, 2002, at least
16 three commissioners shall have been engaged in the practice of law
17 in the State of Nebraska for at least five years, which may include
18 prior service as a judge, and shall be currently admitted to
19 practice before the Nebraska Supreme Court.

20 (4) No commissioner or employee of the commission shall
21 hold any position of profit or engage in any occupation or business
22 interfering with or inconsistent with his or her duties as a
23 commissioner or employee. A person is not eligible for appointment
24 and may not hold the office of commissioner or be appointed by the
25 commission to or hold any office or position under the commission
26 if he or she holds any official office or position.

27 (5) During ~~each year~~ the first two years of his or her

1 term, each commissioner shall attend a ~~seminar or class~~ of at least
2 ~~two days duration,~~ sponsored by a recognized assessment or
3 appraisal organization, in each of these areas: Utility and
4 railroad appraisal; appraisal of complex industrial properties; and
5 mass appraisal, residential or agricultural appraisal, or
6 assessment administration at least thirty hours of instruction that
7 constitutes training for judges or administrative law judges.

8 (6) The commissioners shall be considered employees of
9 the state for purposes of sections 81-1301 to 81-1391 and 84-1601
10 to 84-1615.

11 (7) The commissioners shall be reimbursed as prescribed
12 in sections 81-1174 to 81-1177 for their actual and necessary
13 expenses in the performance of their official duties pursuant to
14 the Tax Equalization and Review Commission Act. Mileage expenses
15 incurred while traveling in the line of duty to and from a
16 commissioner's primary residence to the commission office as well
17 as living expenses for any commissioner whose residence is located
18 more than eighty miles from the commission office shall be
19 reimbursed by the state if:

20 (a) The commission has adopted and promulgated rules and
21 regulations establishing guidelines for allowable reimbursement of
22 mileage and living expenses, except that the reimbursement rate for
23 mileage shall not exceed the rate established by the Department of
24 Administrative Services pursuant to section 81-1176;

25 (b) The commissioner complies with the request procedures
26 for reimbursement set forth in such guidelines; and

27 (c) The total amounts authorized for reimbursement of

1 such mileage and living expenses in any fiscal year shall not cause
2 the total expenses to exceed the total funds appropriated to the
3 program established for commissioners' expenses.

4 Sec. 3. Section 77-5005, Revised Statutes Supplement,
5 2000, is amended to read:

6 77-5005. (1) Within ten days after appointment, the
7 commissioners shall meet at their office in Lincoln, Nebraska, and
8 enter upon the duties of their office.

9 (2) A majority of the commission or, in cases when a
10 panel of three commissioners heard a case, a majority of the panel
11 shall at all times constitute a quorum to transact business, and
12 one vacancy shall not impair the right of the remaining
13 commissioners to exercise all the powers of the commission.

14 (3) Any investigation, inquiry, or hearing held or
15 undertaken by the commission may be held or undertaken by or before
16 ~~any one commissioner~~ a panel of three commissioners with the
17 approval of the commission.

18 (4) When holding hearings pursuant to sections 77-5016,
19 77-5024, and 77-5026, the commission may, after hearing the
20 evidence and argument on the record, recess to closed deliberations
21 for the limited purpose of deciding the matter before it
22 notwithstanding sections 84-1408 to 84-1414. After deliberating,
23 the commission shall issue its final decision, accompanied by
24 findings of fact and conclusions of law, in writing or on the
25 record.

26 (5) All investigations, inquiries, hearings, and
27 decisions of a ~~commissioner~~ a panel of commissioners and every

1 order made by a ~~commissioner~~ panel of commissioners ~~when approved~~
2 ~~and confirmed by a quorum of the commission,~~ ~~if so shown on its~~
3 ~~record of proceedings,~~ shall be deemed to be the order of the
4 commission. The full commission may grant a rehearing and
5 determine de novo any decisions of or orders made by a panel of
6 commissioners. The thirty-day filing period for appeals under
7 subsection (2) of section 77-5019 shall be tolled while a motion
8 for rehearing is pending.

9 Sec. 4. Section 77-5009, Revised Statutes Supplement,
10 2000, is amended to read:

11 77-5009. (1) The commission may employ legal, clerical,
12 and other assistants as may be necessary to carry out the powers
13 and duties of the commission.

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

20 (b) Special masters may be paid a salary or fee in the
21 discretion of the commission. If a salary is paid, the amount paid
22 shall be fixed by the commission, and if a fee is paid, the amount
23 paid shall be in accordance with the value of the service rendered
24 and shall be agreed upon and approved by the commission before the
25 special master renders service under his or her appointment.

26 (c) The claim for services rendered shall be certified by
27 the commission and paid as provided by law for other claims against

1 the state.

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

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

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

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

14 (5)(a) For purposes of mediating valuation disputes
15 between the county and the owner of the property, the commission by
16 order may also appoint a referee or referees. The purpose of the
17 referee is to meet with the parties and facilitate agreement on
18 facts and issues prior to the hearing on the appeal. If the
19 parties fail to resolve their differences, a hearing before the
20 commission shall be either held as previously scheduled, or the
21 case shall be placed on the schedule for hearing. If the parties
22 resolve their differences, the commission shall enter an order that
23 reflects the agreement of the parties.

24 (b) Referees 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

1 and shall be agreed upon and approved by the commission before the
2 referee renders service under his or her appointment.

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

6 Sec. 5. Section 77-5016, Revised Statutes Supplement,
7 2000, is amended to read:

8 77-5016. All cases appealed to the commission shall be
9 granted an informal hearing unless a formal hearing is granted as
10 determined by the commission according to its rules and
11 regulations. In cases appealed to the commission:

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. It
15 shall give effect to the rules of privilege recognized by law. It
16 may exclude incompetent, irrelevant, immaterial, and unduly
17 repetitious evidence. Any party to an appeal filed under section
18 77-5007 may request a formal hearing by delivering a written
19 request to the commission not more than thirty days after the
20 appeal is filed. The request shall include the requesting party's
21 agreement to be liable for the payment of costs incurred and upon
22 any appeal or review, including the cost of court reporting
23 services which the requesting party shall procure for the hearing.
24 The commission shall be bound by the rules of evidence applicable
25 in district court in any formal hearing held by the commission.
26 All costs of a formal hearing shall be paid by the party or parties
27 against whom a final decision is rendered;

1 (2) The commission may administer oaths, issue subpoenas,
2 compel the attendance of witnesses and the production of any
3 papers, books, accounts, documents, statistical analysis, and
4 testimony, and cause the depositions of witnesses residing either
5 within or without the state to be taken in the manner prescribed by
6 law for taking depositions in civil actions in the district court;

7 (3) All evidence including records and documents in the
8 possession of the commission of which it desires to avail itself
9 shall be offered and made a part of the record in the case. No
10 other factual information or evidence shall be considered in the
11 determination of the case. Documentary evidence may be received in
12 the form of copies or excerpts or by incorporation by reference;

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

16 (5) The commission may take notice of judicially
17 cognizable facts and in addition may take notice of general,
18 technical, or scientific facts within its specialized knowledge or
19 statistical information regarding general levels of assessment
20 within a county or a class or subclass of property within a county
21 and measures of central tendency within such county or classes or
22 subclasses within such county which have been made known to the
23 commission. Parties shall be notified either before or during the
24 hearing or by reference in preliminary reports or otherwise of the
25 material so noticed. They shall be afforded an opportunity to
26 contest the facts so noticed. The commission may utilize its
27 experience, technical competence, and specialized knowledge in the

1 evaluation of the evidence presented to it;

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

6 (7) The commission shall hear appeals and cross appeals
7 taken under section 77-5007 as in equity and without a jury and
8 determine de novo all questions raised before the county board of
9 equalization or the Property Tax Administrator which relate to the
10 liability of the property to assessment or the amount thereof. ~~The~~
11 ~~commission shall affirm the action taken by the board or Property~~
12 ~~Tax Administrator~~ If the taxpayer presents no evidence to show that
13 the action taken by the board or the Property Tax Administrator is
14 incorrect, the commission shall affirm such action. If the
15 taxpayer presents any evidence to show that the action taken by the
16 board or the Property Tax Administrator is incorrect, such action
17 shall still be affirmed unless evidence is adduced establishing
18 that the action of the board or the Property Tax Administrator was
19 unreasonable or arbitrary. Any decision rendered by the commission
20 shall be certified to the parties and, if applicable, to the county
21 treasurer and the official charged with the duty of preparing the
22 tax list. When such decision becomes final, any officials shall
23 correct their records accordingly.

24 Sec. 6. Section 77-5018, Revised Statutes Supplement,
25 2000, is amended to read:

26 77-5018. The commission may issue decisions and orders
27 which are supported by the evidence and appropriate for resolving

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1 the matters in dispute. Every final decision and order adverse to
2 a party to the proceeding, rendered by the commission in a case
3 appealed to the commission, shall be in writing or stated in the
4 record and shall be accompanied by findings of fact and conclusions
5 of law. The findings of fact shall consist of a concise statement
6 of the conclusions upon each contested issue of fact. Parties to
7 the proceeding shall be notified of the decision and order in
8 person or by mail. A copy of the decision and order shall be
9 delivered or mailed upon request to each party or his or her
10 attorney of record. Any decision rendered by the commission shall
11 be certified to the county treasurer and to the officer charged
12 with the duty of preparing the tax list, and if and when such
13 decision becomes final, such officers shall correct their records
14 accordingly.

15 Sec. 7. Original sections 77-5003, 77-5004, 77-5005,
16 77-5009, 77-5016, and 77-5018, Revised Statutes Supplement, 2000,
17 are repealed.

18 Sec. 8. The following section is outright repealed:
19 Section 77-1511, Reissue Revised Statutes of Nebraska.

20 Sec. 9. Since an emergency exists, this act takes effect
21 when passed and approved according to law."