

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1077

Introduced by Karpisek, 32.

Read first time January 21, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 46-294.03, 77-112, 77-201, 77-1359, 77-1371, and 77-5023,
3 Reissue Revised Statutes of Nebraska, and section
4 79-1016, Revised Statutes Supplement, 2009; to change
5 provisions relating to valuation of agricultural land and
6 horticultural land; to harmonize provisions; to provide
7 operative dates; to repeal the original sections; and to
8 declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

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

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

15 Sec. 2. Section 77-112, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 77-112 Actual value of real property other than
18 agricultural land and horticultural land for purposes of taxation
19 means the market value of real property in the ordinary course of
20 trade. Actual value may be determined using professionally accepted
21 mass appraisal methods, including, but not limited to, the (1)
22 sales comparison approach using the guidelines in section 77-1371,
23 (2) income approach, and (3) cost approach. Actual value is the
24 most probable price expressed in terms of money that a property
25 will bring if exposed for sale in the open market, or in an arm's

1 length transaction, between a willing buyer and willing seller,
2 both of whom are knowledgeable concerning all the uses to which the
3 real property is adapted and for which the real property is capable
4 of being used. In analyzing the uses and restrictions applicable
5 to real property, the analysis shall include a consideration of
6 the full description of the physical characteristics of the real
7 property and an identification of the property rights being valued.

8 Actual value of agricultural land and horticultural land
9 for purposes of taxation means the agricultural income value of
10 the land. Agricultural income value is the capitalized annual
11 earning capacity on a per-acre basis which has been adjusted by
12 an amount that reflects the landowner's share of the gross return.
13 Agricultural income value shall be determined on the basis of
14 productivity and the annual agricultural earnings capacity of the
15 land. Productivity and annual earning capacity shall be based on
16 data collected and analyzed pursuant to section 5 of this act.

17 Sec. 3. Section 77-201, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 77-201 (1) Except as provided in subsections (2) through
20 (4) of this section, all real property in this state, not expressly
21 exempt therefrom, shall be subject to taxation and shall be valued
22 at its actual value.

23 (2) Agricultural land and horticultural land as defined
24 in section 77-1359 shall constitute a separate and distinct
25 class of property for purposes of property taxation, shall be

1 subject to taxation, unless expressly exempt from taxation, and
2 shall be valued at ~~seventy-five percent of its actual value.~~ its
3 agricultural income value.

4 (3) Agricultural land and horticultural land actively
5 devoted to agricultural or horticultural purposes which has value
6 for purposes other than agricultural or horticultural uses and
7 which meets the qualifications for special valuation under section
8 77-1344 shall constitute a separate and distinct class of property
9 for purposes of property taxation, shall be subject to taxation,
10 and shall be valued for taxation at ~~seventy-five percent of its~~
11 special value as defined in section 77-1343.

12 (4) Historically significant real property which meets
13 the qualifications for historic rehabilitation valuation under
14 sections 77-1385 to 77-1394 shall be valued for taxation as
15 provided in such sections.

16 (5) Tangible personal property, not including motor
17 vehicles registered for operation on the highways of this state,
18 shall constitute a separate and distinct class of property for
19 purposes of property taxation, shall be subject to taxation, unless
20 expressly exempt from taxation, and shall be valued at its net
21 book value. Tangible personal property transferred as a gift or
22 devise or as part of a transaction which is not a purchase shall be
23 subject to taxation based upon the date the property was acquired
24 by the previous owner and at the previous owner's Nebraska adjusted
25 basis. Tangible personal property acquired as replacement property

1 for converted property shall be subject to taxation based upon
2 the date the converted property was acquired and at the Nebraska
3 adjusted basis of the converted property unless insurance proceeds
4 are payable by reason of the conversion. For purposes of this
5 subsection, (a) converted property means tangible personal property
6 which is compulsorily or involuntarily converted as a result of
7 its destruction in whole or in part, theft, seizure, requisition,
8 or condemnation, or the threat or imminence thereof, and no gain
9 or loss is recognized for federal or state income tax purposes
10 by the holder of the property as a result of the conversion and
11 (b) replacement property means tangible personal property acquired
12 within two years after the close of the calendar year in which
13 tangible personal property was converted and which is, except for
14 date of construction or manufacture, substantially the same as the
15 converted property.

16 Sec. 4. Section 77-1359, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 77-1359 The Legislature finds and declares that
19 agricultural land and horticultural land shall be a separate and
20 distinct class of real property for purposes of assessment. The
21 assessed value of agricultural land and horticultural land shall
22 not be uniform and proportionate with all other real property, but
23 the assessed value shall be uniform and proportionate within the
24 class of agricultural land and horticultural land.

25 For purposes of sections 77-1359 to 77-1363 and section 5

1 of this act:

2 (1) Agricultural land and horticultural land means
3 unimproved land used to produce agricultural and horticultural
4 products, including, but not limited to, grains, feed crops,
5 fruits, vegetables, land used for the grazing or feeding of
6 livestock, or land enrolled in federally funded cropland retirement
7 or conservation use programs; a parcel of land, excluding any
8 building or enclosed structure and the land associated with
9 such building or enclosed structure located on the parcel, which
10 is primarily used for agricultural or horticultural purposes,
11 including wasteland lying in or adjacent to and in common ownership
12 or management with other agricultural land and horticultural land;

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

18 (a) Land retained or protected for future agricultural or
19 horticultural purposes under a conservation easement as provided
20 in the Conservation and Preservation Easements Act except when the
21 parcel or a portion thereof is being used for purposes other than
22 agricultural or horticultural purposes; and

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

1 ~~(3)~~ (2) Farm home site means not more than one acre
2 of land contiguous to a farm site which includes an inhabitable
3 residence and improvements used for residential purposes, and such
4 improvements include utility connections, water and sewer systems,
5 and improved access to a public road. Farm home sites shall be
6 valued as residential real property; and

7 ~~(4)~~ (3) Farm site means the portion of land contiguous
8 to land actively devoted to agriculture which includes improvements
9 that are agricultural or horticultural in nature, including any
10 uninhabitable or unimproved farm home site. Farm sites, except any
11 portion of a farm site which is used for nonagricultural uses,
12 shall be valued as agricultural land and horticultural land.

13 Sec. 5. (1) For purposes of determining the agricultural
14 income value beginning January 1, 2012, the Tax Commissioner shall
15 make annual earning capacity income and expense calculations using
16 data obtained on rents, crop prices, and expenses. The capacity
17 of cropland to produce agricultural or horticultural products
18 shall be based on the income from crops and plants produced on
19 the land. The capacity of grassland or non-cropland to produce
20 agricultural or horticultural products shall be based on cash
21 rents or the animal-unit carrying capacity of the land, or a
22 combination of both. Net agricultural income shall be capitalized
23 at a rate of which results in a total taxable agricultural land and
24 horticultural land valuation which is equal to that certified as of
25 August 20, 2011.

1 (2) The Tax Commissioner shall enter into contracts with
2 the University of Nebraska Institute of Agriculture and Natural
3 Resources and the Department of Agriculture to determine the
4 agricultural income from agricultural land and horticultural land
5 by county. The county cropland data used shall include, but not be
6 limited to: Acres planted to cropland by type of crop; yield per
7 acre; crop prices; cash rents; rangeland acres; pastureland acres;
8 rangeland animal-unit months per acre; pastureland animal-unit
9 months per acre; grazing season data; and statewide cow and
10 calf prices. The Tax Commissioner may contract for additional
11 surveys for collection of cash rent information for all uses of
12 agricultural land and horticultural land when deemed necessary.
13 Such information shall be developed for calendar years beginning in
14 2005 and each year thereafter. Five-year averages shall be used in
15 calculating agricultural income value.

16 Sec. 6. Section 77-1371, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 77-1371 Comparable sales are recent sales of properties
19 that are similar to the property being assessed in significant
20 physical, functional, and location characteristics and in their
21 contribution to value. When using comparable sales in determining
22 actual value of an individual property under the sales comparison
23 approach provided in section 77-112, the following guidelines shall
24 be considered in determining what constitutes a comparable sale:

25 (1) Whether the sale was financed by the seller and

1 included any special financing considerations or the value of
2 improvements;

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

5 ~~(3) For sales of agricultural land or horticultural land~~
6 ~~as defined in section 77-1359, whether a premium was paid to~~
7 ~~acquire nearby property. Land within one mile of currently owned~~
8 ~~property shall be considered nearby property;~~

9 ~~(4) (3) Whether sales or transfers made in connection~~
10 ~~with foreclosure, bankruptcy, or condemnations, in lieu of~~
11 ~~foreclosure, or in consideration of other legal actions should be~~
12 ~~excluded from comparable sales analysis as not reflecting current~~
13 ~~market value;~~

14 ~~(5) (4) Whether sales between family members within the~~
15 ~~third degree of consanguinity include considerations that fail to~~
16 ~~reflect current market value;~~

17 ~~(6) (5) Whether sales to or from federal or state~~
18 ~~agencies or local political subdivisions reflect current market~~
19 ~~value;~~

20 ~~(7) (6) Whether sales of undivided interests in real~~
21 ~~property or parcels less than forty acres or sales conveying only a~~
22 ~~portion of the unit assessed reflect current market value;~~

23 ~~(8) (7) Whether sales or transfers of property in~~
24 ~~exchange for other real estate, stocks, bonds, or other personal~~
25 ~~property reflect current market value;~~

1 ~~(9)~~ (8) Whether deeds recorded for transfers of
2 convenience, transfers of title to cemetery lots, mineral rights,
3 and rights of easement reflect current market value;

4 ~~(10)~~ (9) Whether sales or transfers of property involving
5 railroads or other public utility corporations reflect current
6 market value;

7 ~~(11)~~ (10) Whether sales of property substantially
8 improved subsequent to assessment and prior to sale should be
9 adjusted to reflect current market value or eliminated from such
10 analysis; and

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

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

23 Sec. 7. Section 77-5023, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 77-5023 (1) Pursuant to section 77-5022, the commission

1 shall have the power to increase or decrease the value of a class
2 or subclass of real property in any county or taxing authority
3 or of real property valued by the state so that all classes
4 or subclasses of real property in all counties fall within an
5 acceptable range.

6 (2) An acceptable range is the percentage of variation
7 from a standard for valuation as measured by an established
8 indicator of central tendency of assessment. Acceptable ranges
9 are: ~~(a) For agricultural land and horticultural land as defined~~
10 ~~in section 77-1359, sixty-nine to seventy-five percent of actual~~
11 ~~value; (b) for lands receiving special valuation, sixty-nine to~~
12 ~~seventy-five percent of special valuation as defined in section~~
13 ~~77-1343; and (c) for all other real property, ninety-two to one~~
14 hundred percent of actual value.

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

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

22 (5) Whether or not the level of value determined by
23 the commission falls within an acceptable range or at the
24 midpoint of an acceptable range may be determined to a reasonable
25 degree of certainty relying upon generally accepted mass appraisal

1 techniques.

2 Sec. 8. Section 79-1016, Revised Statutes Supplement,
3 2009, is amended to read:

4 79-1016 (1) On or before August 25, the county assessor
5 shall certify to the Property Tax Administrator the total taxable
6 value by school district in the county for the current assessment
7 year on forms prescribed by the Tax Commissioner. The county
8 assessor may amend the filing for changes made to the taxable
9 valuation of the school district in the county if corrections or
10 errors on the original certification are discovered. Amendments
11 shall be certified to the Property Tax Administrator on or before
12 September 30.

13 (2) On or before October 10, the Property Tax
14 Administrator shall compute and certify to the State Department of
15 Education the adjusted valuation for the current assessment year
16 for each class of property in each school district and each local
17 system. The adjusted valuation of property for each school district
18 and each local system, for purposes of determining state aid
19 pursuant to the Tax Equity and Educational Opportunities Support
20 Act, shall reflect as nearly as possible state aid value as defined
21 in subsection (3) of this section. The Property Tax Administrator
22 shall notify each school district and each local system of its
23 adjusted valuation for the current assessment year by class of
24 property on or before October 10. Establishment of the adjusted
25 valuation shall be based on the taxable value certified by the

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

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

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

12 ~~(b) For agricultural and horticultural land, seventy-two~~
13 ~~percent of actual value as provided in sections 77-1359 to 77-1363.~~
14 ~~For agricultural and horticultural land that receives special~~
15 ~~valuation pursuant to section 77-1344, seventy-two percent of~~
16 ~~special valuation as defined in section 77-1343; and~~

17 ~~(c) (b) For personal property, the net book value as~~
18 ~~defined in section 77-120.~~

19 (4) On or before November 10, any local system may
20 file with the Tax Commissioner written objections to the adjusted
21 valuations prepared by the Property Tax Administrator, stating
22 the reasons why such adjusted valuations are not the valuations
23 required by subsection (3) of this section. The Tax Commissioner
24 shall fix a time for a hearing. Either party shall be permitted to
25 introduce any evidence in reference thereto. On or before January

1 1, the Tax Commissioner shall enter a written order modifying or
2 declining to modify, in whole or in part, the adjusted valuations
3 and shall certify the order to the State Department of Education.
4 Modification by the Tax Commissioner shall be based upon the
5 evidence introduced at hearing and shall not be limited to the
6 modification requested in the written objections or at hearing.
7 A copy of the written order shall be mailed to the local system
8 within seven days after the date of the order. The written order of
9 the Tax Commissioner may be appealed within thirty days after the
10 date of the order to the Tax Equalization and Review Commission in
11 accordance with section 77-5013.

12 (5) On or before November 10, any local system or county
13 official may file with the Tax Commissioner a written request
14 for a nonappealable correction of the adjusted valuation due to
15 clerical error as defined in section 77-128 or, for agricultural
16 and horticultural land, assessed value changes by reason of land
17 qualified or disqualified for special use valuation pursuant to
18 sections 77-1343 to 77-1347.01. On or before the following January
19 1, the Tax Commissioner shall approve or deny the request and, if
20 approved, certify the corrected adjusted valuations resulting from
21 such action to the State Department of Education.

22 (6) On or before May 31 of the year following the
23 certification of adjusted valuation pursuant to subsection (2) of
24 this section, any local system or county official may file with the
25 Tax Commissioner a written request for a nonappealable correction

1 of the adjusted valuation due to changes to the tax list that
2 change the assessed value of taxable property. Upon the filing of
3 the written request, the Tax Commissioner shall require the county
4 assessor to recertify the taxable valuation by school district
5 in the county on forms prescribed by the Tax Commissioner. The
6 recertified valuation shall be the valuation that was certified on
7 the tax list, pursuant to section 77-1613, increased or decreased
8 by changes to the tax list that change the assessed value of
9 taxable property in the school district in the county in the
10 prior assessment year. On or before the following July 31, the Tax
11 Commissioner shall approve or deny the request and, if approved,
12 certify the corrected adjusted valuations resulting from such
13 action to the State Department of Education.

14 (7) No injunction shall be granted restraining the
15 distribution of state aid based upon the adjusted valuations
16 pursuant to this section.

17 (8) A school district whose state aid is to be calculated
18 pursuant to subsection (5) of this section and whose state aid
19 payment is postponed as a result of failure to calculate state
20 aid pursuant to such subsection may apply to the state board for
21 lump-sum payment of such postponed state aid. Such application may
22 be for any amount up to one hundred percent of the postponed state
23 aid. The state board may grant the entire amount applied for or any
24 portion of such amount. The state board shall notify the Director
25 of Administrative Services of the amount of funds to be paid in

1 a lump sum and the reduced amount of the monthly payments. The
2 Director of Administrative Services shall, at the time of the next
3 state aid payment made pursuant to section 79-1022, draw a warrant
4 for the lump-sum amount from appropriated funds and forward such
5 warrant to the district.

6 Sec. 9. Sections 1, 5, 9, 11, and 12 of this act become
7 operative on June 10, 2010. Sections 2, 3, 4, 6, 7, 8, and 10 of
8 this act become operative on January 1, 2012.

9 Sec. 10. Original sections 77-112, 77-201, 77-1359,
10 77-1371, and 77-5023, Reissue Revised Statutes of Nebraska, and
11 section 79-1016, Revised Statutes Supplement, 2009, are repealed.

12 Sec. 11. Original section 46-294.03, Reissue Revised
13 Statutes of Nebraska, is repealed.

14 Sec. 12. Since an emergency exists, this act takes effect
15 when passed and approved according to law.