

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.