

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 405

Introduced by Cornett, 45; Utter, 33.

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, 77-5005, and 77-5017, Reissue Revised Statutes
3 of Nebraska, and sections 77-5016 and 77-5018, Revised
4 Statutes Cumulative Supplement, 2010; to authorize
5 hearings by a single commissioner of the Tax Equalization
6 and Review Commission; to harmonize provisions; to repeal
7 the original sections; and to declare an emergency.
8 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 3 of this
4 act shall be known and may be cited as the Tax Equalization and
5 Review Commission Act.

6 Sec. 2. Section 77-5005, Reissue Revised Statutes of
7 Nebraska, is amended to read:

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

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

16 (3) Any investigation, inquiry, or hearing held or
17 undertaken by the commission may be held or undertaken by or before a
18 panel of three commissioners or by a single commissioner in those
19 appeals designated for hearing pursuant to section 3 of this act.

20 (4) All investigations, inquiries, hearings, and
21 decisions of a panel of commissioners and every order made by a panel
22 of commissioners or by a single commissioner pursuant to section 3 of
23 this act shall be deemed to be the order of the commission, except as
24 provided in subsection (6) of section 3 of this act. The full
25 commission, on an application made within thirty days after the date

1 of an order, may grant a rehearing and determine de novo any
2 decisions of or orders made by the commission or a panel of
3 commissioners. The commission, on an application made within thirty
4 days after the date of an order issued after a hearing by a single
5 commissioner, except for an order dismissing an appeal or petition
6 for failure of the appellant or petitioner to appear at a hearing on
7 the merits, shall grant a rehearing on the merits before a panel of
8 commissioners. The thirty-day filing period for appeals under
9 subsection (2) of section 77-5019 shall be tolled while a motion for
10 rehearing is pending.

11 (5) All hearings or proceedings of the commission shall
12 be open to the public.

13 (6) The Open Meetings Act applies only to hearings or
14 proceedings of the commission held pursuant to the rulemaking
15 authority of the commission.

16 Sec. 3. (1) A single commissioner may hear an appeal and
17 cross appeal and appeals and cross appeals consolidated with any such
18 appeal and cross appeal when:

19 (a) The taxable value of each parcel is one million
20 dollars or less as determined by the county board of equalization;
21 and

22 (b) The appeal and cross appeal has been designated for
23 hearing pursuant to this section by the chairperson of the commission
24 or in such manner as the commission may provide in its rules and
25 regulations.

1 (2) A proceeding held before a single commissioner shall
2 be informal. Any party to the proceeding may appear through an
3 authorized representative. The usual common-law or statutory rules of
4 evidence, including rules of hearsay, shall not apply, and the
5 commissioner may consider and utilize all matters presented at the
6 proceeding in making his or her determination.

7 (3) Any party to an appeal designated for hearing before
8 a single commissioner pursuant to this section may, prior to a
9 hearing, elect in writing to have the appeal heard by a panel of
10 commissioners. The commissioner conducting a proceeding pursuant to
11 this section may at any time designate the appeal for hearing by a
12 panel of commissioners.

13 (4) Documents necessary to establish jurisdiction of the
14 commission shall constitute the record of a proceeding before a
15 single commissioner. No recording shall be made of a proceeding
16 before a single commissioner.

17 (5) A party to a proceeding before a single commissioner
18 may request a rehearing pursuant to section 77-5005.

19 (6) An order entered by a single commissioner pursuant to
20 this section may not be appealed pursuant to section 77-5019 or any
21 other provision of law.

22 (7) Subdivisions (3), (6), (8), (9), (10), (11), and (12)
23 of section 77-5016 apply to proceedings before a single commissioner.

24 Sec. 4. Section 77-5016, Revised Statutes Cumulative
25 Supplement, 2010, is amended to read:

1 77-5016 Any hearing or proceeding of the commission shall
2 be conducted as an informal hearing unless a formal hearing is
3 granted as determined by the commission according to its rules and
4 regulations. In any hearing or proceeding heard by the commission or
5 a panel of commissioners:

6 (1) The commission may admit and give probative effect to
7 evidence which possesses probative value commonly accepted by
8 reasonably prudent persons in the conduct of their affairs excluding
9 incompetent, irrelevant, immaterial, and unduly repetitious evidence
10 and shall give effect to the privilege rules of evidence in sections
11 27-501 to 27-513 but shall not otherwise be bound by the usual
12 common-law or statutory rules of evidence except during a formal
13 hearing. Any party to an appeal filed under section 77-5007 may
14 request a formal hearing by delivering a written request to the
15 commission not more than thirty days after the appeal is filed. The
16 requesting party shall be liable for the payment of fees and costs of
17 a court reporter pending a final decision. The commission shall be
18 bound by the rules of evidence applicable in district court in any
19 formal hearing held by the commission. Fees and costs of a court
20 reporter shall be paid by the party or parties against whom a final
21 decision is rendered, and all other costs shall be allocated as the
22 commission may determine;

23 (2) The commission may administer oaths, issue subpoenas,
24 and compel the attendance of witnesses and the production of any
25 papers, books, accounts, documents, statistical analysis, and

1 testimony. The commission may adopt and promulgate necessary rules
2 for discovery which are consistent with the rules adopted by the
3 Supreme Court pursuant to section 25-1273.01;

4 (3) The commission may consider and utilize the
5 provisions of the Constitution of the United States, the Constitution
6 of Nebraska, the laws of the United States, the laws of Nebraska, the
7 Code of Federal Regulations, the Nebraska Administrative Code, any
8 decision of the several courts of the United States or the State of
9 Nebraska, and the legislative history of any law, rule, or
10 regulation, without making the document a part of the record. The
11 commission may without inclusion in the record consider and utilize
12 published treatises, periodicals, and reference works pertaining to
13 the valuation or assessment of real or personal property or the
14 meaning of words and phrases if the document is identified in the
15 commission's rules and regulations; -

16 (4) All other evidence, other than that described in
17 subdivision (3) of this section, including records and documents in
18 the possession of the commission of which it desires to avail itself,
19 shall be offered and made a part of the record in the case. No other
20 factual information or evidence other than that set forth in this
21 section shall be considered in the determination of the case.
22 Documentary evidence may be received in the form of copies or
23 excerpts or by incorporation by reference;

24 ~~(4)~~ (5) Every party shall have the right of cross-
25 examination of witnesses who testify and shall have the right to

1 submit rebuttal evidence;

2 ~~(5)~~-(6) The commission may take notice of judicially
3 cognizable facts and in addition may take notice of general,
4 technical, or scientific facts within its specialized knowledge or
5 statistical information regarding general levels of assessment within
6 a county or a class or subclass of real property within a county and
7 measures of central tendency within such county or classes or
8 subclasses within such county which have been made known to the
9 commission. Parties shall be notified either before or during the
10 hearing or by reference in preliminary reports or otherwise of the
11 material so noticed. They shall be afforded an opportunity to contest
12 the facts so noticed. The commission may utilize its experience,
13 technical competence, and specialized knowledge in the evaluation of
14 the evidence presented to it;

15 ~~(6)~~-(7) Any person testifying under oath at a hearing who
16 knowingly and intentionally makes a false statement to the commission
17 or its designee is guilty of perjury. For the purpose of this
18 section, perjury is a Class I misdemeanor;

19 ~~(7)~~-(8) The commission may determine any question raised
20 in the proceeding upon which an order, decision, determination, or
21 action appealed from is based. The commission may consider all
22 questions necessary to determine taxable value of property as it
23 hears an appeal or cross appeal;

24 ~~(8)~~-(9) In all appeals, excepting those arising under
25 section 77-1606, if the appellant presents no evidence to show that

1 the order, decision, determination, or action appealed from is
2 incorrect, the commission shall deny the appeal. If the appellant
3 presents any evidence to show that the order, decision,
4 determination, or action appealed from is incorrect, such order,
5 decision, determination, or action shall be affirmed unless evidence
6 is adduced establishing that the order, decision, determination, or
7 action was unreasonable or arbitrary;

8 ~~(9)~~(10) If the appeal concerns a decision by the county
9 board of equalization that property is, in whole or in part, exempt
10 from taxation, the decision to be rendered by the commission shall
11 only determine the exemption status of the property. The decision
12 shall not determine the taxable value of the property unless
13 stipulated by the parties according to subsection (2) of section
14 77-5017;

15 ~~(10)~~(11) If the appeal concerns a decision by the county
16 board of equalization that property owned by the state or a political
17 subdivision is or is not exempt and there has been no final
18 determination of the value of the property, the decision to be
19 rendered by the commission shall only determine the exemption status
20 of the property. The decision shall not determine the taxable value
21 of the property unless stipulated by the parties according to
22 subsection (2) of section 77-5017;

23 ~~(11)~~(12) The costs of any appeal, including the costs of
24 witnesses, may be taxed by the commission as it deems just, except
25 costs payable by the appellant pursuant to section 77-1510.01, unless

1 (a) the appellant is the county assessor or county clerk in which
2 case the costs shall be paid by the county or (b) the appellant is
3 the Tax Commissioner or Property Tax Administrator in which case the
4 costs shall be paid by the state; ~~and~~

5 ~~(12)~~(13) The commission shall deny relief to the
6 appellant or petitioner in any hearing or proceeding unless a
7 majority of the commissioners present determine that the relief
8 should be granted; and -

9 (14) Subdivisions (3), (6), (8), (9), (10), (11), and
10 (12) of this section apply to hearings or proceedings before a single
11 commissioner pursuant to section 3 of this act.

12 Sec. 5. Section 77-5017, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-5017 (1) In resolving an appeal or petition, the
15 commission may make such orders as are appropriate for resolving the
16 dispute but in no case shall the relief be excessive compared to the
17 problems addressed. The commission may make prospective orders
18 requiring changes in assessment practices which will improve
19 assessment practices or affect the general level of assessment or the
20 measures of central tendency in a positive way. If no other relief is
21 adequate to resolve disputes, the commission may order a reappraisal
22 of property within a county, an area within a county, or classes or
23 subclasses of property within a county.

24 (2) In an appeal specified in subdivision ~~(9)~~(10) or
25 ~~(10)~~(11) of section 77-5016 for which the commission determines

1 exempt property to be taxable, the commission shall order the county
2 board of equalization to determine the taxable value of the property,
3 unless the parties stipulate to such taxable value during the hearing
4 before the commission. The order shall require the county board of
5 equalization to (a) assess such property using procedures for
6 assessing omitted property, (b) determine such taxable value within
7 ninety days after the issuance of the commission's order, and (c)
8 apply interest, but not penalty, to the taxable value as of the date
9 the commission's order was issued or the date the taxes were
10 delinquent, whichever is later.

11 (3) A determination of the taxable value of the property
12 made by the county board of equalization pursuant to subsection (2)
13 of this section may be appealed to the commission within thirty days
14 after the board's decision.

15 Sec. 6. Section 77-5018, Revised Statutes Cumulative
16 Supplement, 2010, is amended to read:

17 77-5018 (1) The commission may issue decisions and orders
18 which are supported by the evidence and appropriate for resolving the
19 matters in dispute. Every final decision and order adverse to a party
20 to the proceeding, rendered by the commission in a case appealed to
21 the commission, shall be in writing or stated in the record and shall
22 be accompanied by findings of fact and conclusions of law. The
23 findings of fact shall consist of a concise statement of the
24 conclusions upon each contested issue of fact. Parties to the
25 proceeding shall be notified of the decision and order in person or

1 by mail. A copy of the decision and order shall be delivered or
2 mailed to each party or his or her attorney of record. Within seven
3 days of issuing a decision and order, the commission shall
4 electronically publish such decision and order on a web site
5 maintained by the commission that is accessible to the general
6 public. The full text of final decisions and orders ~~entered after a~~
7 ~~hearing by the commission or a panel of commissioners~~ shall be
8 published on the web site, except that final. ~~Final~~ decisions and
9 orders that are entered (a) on a dismissal by the appellant or
10 petitioner, (b) on a default order when the appellant or petitioner
11 failed to appear, ~~or~~ (c) by agreement of the parties, or (d) by a
12 single commissioner pursuant to section 3 of this act may be
13 published on the web site in a summary manner identifying the
14 parties, the case number, and the basis for the final decision and
15 order. Any decision rendered by the commission shall be certified to
16 the county treasurer and to the officer charged with the duty of
17 preparing the tax list, and if and when such decision becomes final,
18 such officers shall correct their records accordingly and the tax
19 list pursuant to section 77-1613.02.

20 (2) The commission may, on its own motion, modify or
21 change its findings or orders, at any time before an appeal and
22 within ten days after the date of such findings or orders, for the
23 purpose of correcting any ambiguity, clerical error, or patent or
24 obvious error. The time for appeal shall not be lengthened because of
25 the correction unless the correction substantially changes the

1 findings or order.

2 (3) The Tax Commissioner or the Property Tax
3 Administrator shall have thirty days after a final decision of the
4 commission to appeal the commission's decision pursuant to section
5 77-5019.

6 Sec. 7. Original sections 77-5001, 77-5005, and 77-5017,
7 Reissue Revised Statutes of Nebraska, and sections 77-5016 and
8 77-5018, Revised Statutes Cumulative Supplement, 2010, are repealed.

9 Sec. 8. Since an emergency exists, this act takes effect
10 when passed and approved according to law.