

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 356

Introduced by Harr, 8.

Read first time January 15, 2015

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
2 77-1333, Reissue Revised Statutes of Nebraska, and section 77-5007,
3 Revised Statutes Cumulative Supplement, 2014; to change provisions
4 relating to the assessment of certain rent-restricted housing
5 projects; to create a committee; to provide powers and duties; to
6 change provisions relating to the Tax Equalization and Review
7 Commission; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-1333, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-1333 (1) For purposes of this section, rent-restricted housing
4 project means a project consisting of five or more houses or residential
5 units that is financed, in whole or in part, with an allocation of
6 federal low-income housing tax credits under section 42 of the Internal
7 Revenue Code.

8 (2) The Legislature finds that:

9 (a) The provision of safe, decent, and affordable housing to all
10 residents of the State of Nebraska is a matter of public concern and
11 represents a legitimate and compelling state need, affecting the general
12 welfare of all residents;

13 (b) Rent-restricted housing projects effectively provide safe,
14 decent, and affordable housing for residents of Nebraska;

15 (c) Such projects are restricted by federal law as to the rents paid
16 by the tenants thereof;

17 (d) Of all the professionally accepted mass appraisal methodologies,
18 which include the sales comparison approach, the income approach, and the
19 cost approach, the utilization of the income-approach methodology results
20 in the most accurate determination of the actual value of such projects;
21 and

22 (e) This section is intended to (i) further the provision of safe,
23 decent, and affordable housing to all residents of Nebraska and (ii)
24 comply with Article VIII, section 1, of the Constitution of Nebraska,
25 which empowers the Legislature to prescribe standards and methods for the
26 determination of value of real property at uniform and proportionate
27 values.

28 (3) Except as otherwise provided in this section, the ~~The~~ county
29 assessor shall utilize ~~perform~~ an income-approach calculation for all
30 rent-restricted housing projects constructed to allow an allocation of
31 low-income housing tax credits under section 42 of the Internal Revenue

1 ~~Code and approved by the Nebraska Investment Finance Authority when~~
2 ~~determining~~ ~~considering~~ the assessed valuation to place on the property
3 for each assessment year. The income-approach calculation shall be
4 consistent with this section and any rules and regulations adopted and
5 promulgated by the Tax Commissioner and shall comply with professionally
6 accepted mass appraisal techniques.

7 (4) The Rent-Restricted Housing Projects Valuation Committee is
8 created. For administrative purposes only, the committee shall be within
9 the Department of Revenue. The committee's purpose shall be to develop a
10 market-derived capitalization rate to be used by county assessors in
11 determining the assessed valuation for rent-restricted housing projects.
12 The committee shall consist of the following four persons:

13 (a) A representative of local government assessing officials
14 appointed by the Tax Commissioner. Such representative shall be skilled
15 in the valuation of property and shall hold a certificate issued under
16 section 77-422;

17 (b) A representative of the low-income housing industry appointed by
18 the Tax Commissioner. The appointment shall be based on a recommendation
19 made by the Nebraska Commission on Housing and Homelessness;

20 (c) The Property Tax Administrator or a designee of the Property Tax
21 Administrator who holds a certificate issued under section 77-422. Such
22 person shall serve as the chairperson of the committee; and

23 (d) An appraiser from the private sector appointed by the Tax
24 Commissioner. Such appraiser must hold either a valid credential as a
25 certified general real property appraiser under the Real Property
26 Appraiser Act or an MAI designation from the Appraisal Institute.

27 (5) The owner of a rent-restricted housing project shall file a
28 statement with the Rent-Restricted Housing Projects Valuation Committee
29 and the county assessor on or before October 1 of each year that details
30 income and expense data for the prior year, a description of any land-use
31 restrictions, and such other information as the committee or the county

1 assessor may require for purposes of this section.

2 (6) The Rent-Restricted Housing Projects Valuation Committee shall
3 meet annually in November to examine the information on rent-restricted
4 housing projects that was provided pursuant to subsection (5) of this
5 section. The Department of Revenue shall electronically publish notice of
6 such meeting no less than thirty days in advance. The committee shall
7 also solicit information on the sale of any such rent-restricted housing
8 projects. The committee shall, after reviewing all such information,
9 calculate a market-derived capitalization rate on an annual basis using
10 the band-of-investment technique. The capitalization rate shall be a
11 composite rate weighted by the proportions of total property investment
12 represented by equity and debt, with equity weighted at eighty percent
13 and debt weighted at twenty percent unless a substantially different
14 market capital structure can be verified to the county assessor. The
15 yield for equity shall be calculated using the capital asset pricing
16 model as provided in subsection (7) of this section. The yield for debt
17 shall be equivalent to the average yield on thirty-year non-inflation-
18 indexed United States Treasury bonds, also referred to as the thirty-year
19 Treasury constant maturity rate.

20 (7)(a) The capital asset pricing model used to calculate the yield
21 for equity shall be represented by the following formula: $Re = B(Rm - Rf) +$
22 Rf , where:

- 23 (i) Re equals return on equity;
24 (ii) B equals beta;
25 (iii) Rm equals return on the market;
26 (iv) Rf equals risk-free rate of return; and
27 (v) $Rm - Rf$ equals market-risk premium.

28 (b) The beta is assumed to be one which indicates the risk level to
29 be consistent with the market as a whole. The risk-free rate of return is
30 calculated by averaging the yield of the three-month and six-month non-
31 inflation-indexed United States Treasury bonds. The return on the market

1 is calculated based on the average annual return on the Standard and
2 Poor's 500 Index or by reference to other published secondary sources
3 that reflect the rate of return on the market as a whole.

4 (8) After the Rent-Restricted Housing Projects Valuation Committee
5 has calculated the capitalization rate pursuant to subsections (6) and
6 (7) of this section, the committee shall provide such rate and the
7 information reviewed by the committee in calculating such rate in an
8 annual report. Such report shall be forwarded by the Property Tax
9 Administrator to each county assessor in Nebraska no later than December
10 1 of each year for his or her use in determining the valuation of rent-
11 restricted housing projects. The Department of Revenue shall publish the
12 annual report electronically but may charge a fee for copies. The Tax
13 Commissioner shall set the fee based on the reasonable cost of producing
14 the report.

15 (9) Except as provided in subsections (10) and (11) of this section,
16 each county assessor shall use the capitalization rate contained in the
17 report received under subsection (8) of this section and the income and
18 expense data filed by owners of rent-restricted housing projects under
19 subsection (5) of this section in the county assessor's income-approach
20 calculation. Any low-income housing tax credits authorized under section
21 42 of the Internal Revenue Code that were granted to owners of the
22 project shall not be considered income for purposes of the calculation.
23 If the income and expense data required to be filed under subsection (5)
24 of this section is not filed in a timely manner, the county assessor may
25 use any method for determining value that is consistent with
26 professionally accepted mass appraisal methods described in section
27 77-112, except that the sales comparison approach may only be used if
28 there are five comparable sales within the same county as the rent-
29 restricted housing project being valued but may be considered in
30 determining the capitalization rate to be used when capitalizing the
31 income stream. The county assessor, in determining the actual value of

1 ~~any specific property, may consider other methods of determining value~~
2 ~~that are consistent with professionally accepted mass appraisal methods~~
3 ~~described in section 77-112.~~

4 (10) If a county assessor, based on the facts and circumstances,
5 believes that the income-approach calculation does not result in a
6 valuation of a rent-restricted housing project at actual value, then the
7 county assessor shall present such facts and circumstances to the county
8 board of equalization. If the county board of equalization, based on such
9 facts and circumstances, concurs with the county assessor, then the
10 county board of equalization shall petition the Tax Equalization and
11 Review Commission to consider the county assessor's utilization of
12 another professionally accepted mass appraisal technique that, based on
13 the facts and circumstances presented by a county board of equalization,
14 would result in a substantially different determination of actual value
15 of the rent-restricted housing project. Petitions must be filed within
16 thirty days after the property is assessed. Hearings held pursuant to
17 this section may be held by means of videoconference or telephone
18 conference. The burden of proof is on the petitioning county board of
19 equalization to show that failure to make an adjustment to the
20 professionally accepted mass appraisal technique utilized would result in
21 a value that is not equitable and in accordance with the law. At the
22 hearing, the commission may receive testimony from any interested person.
23 After a hearing, the commission shall, within the powers granted in
24 section 77-5023, enter its order based on evidence presented to it at
25 such hearing. Payment of taxes shall be suspended, without penalty or
26 interest, until the commission enters its order.

27 (11) If the Tax Commissioner, based on the facts and circumstances,
28 believes that the capitalization rate set by the Rent-Restricted Housing
29 Projects Valuation Committee to value any rent-restricted housing project
30 does not result in a valuation at actual value, then the Tax Commissioner
31 shall petition the Tax Equalization and Review Commission to consider an

1 adjustment to the capitalization rate of such rent-restricted housing
2 project. Petitions must be filed within thirty days after the property is
3 assessed. Hearings held pursuant to this section may be held by means of
4 videoconference or telephone conference. The burden of proof is on the
5 Tax Commissioner to show that failure to make an adjustment to the
6 capitalization rate employed would result in a value that is not
7 equitable and in accordance with the law. At the hearing, the commission
8 may receive testimony from any interested person. After a hearing, the
9 commission shall, within the powers granted in section 77-5023, enter its
10 order based on evidence presented to it at such hearing. Payment of taxes
11 shall be suspended, without penalty or interest, until the commission
12 enters its order.

13 ~~(2) The owner of a rent-restricted housing project shall file a~~
14 ~~statement with the county assessor on or before October 1 of each year~~
15 ~~that details income and expense data for the prior year, a description of~~
16 ~~any land-use restrictions, and such other information as the county~~
17 ~~assessor may require.~~

18 Sec. 2. Section 77-5007, Revised Statutes Cumulative Supplement,
19 2014, is amended to read:

20 77-5007 The commission has the power and duty to hear and determine
21 appeals of:

22 (1) Decisions of any county board of equalization equalizing the
23 value of individual tracts, lots, or parcels of real property so that all
24 real property is assessed uniformly and proportionately;

25 (2) Decisions of any county board of equalization granting or
26 denying tax-exempt status for real or personal property or an exemption
27 from motor vehicle taxes and fees;

28 (3) Decisions of the Tax Commissioner determining the taxable
29 property of a railroad company, car company, public service entity, or
30 air carrier within the state;

31 (4) Decisions of the Tax Commissioner determining adjusted valuation

1 pursuant to section 79-1016;

2 (5) Decisions of any county board of equalization on the valuation
3 of personal property or any penalties imposed under sections 77-1233.04
4 and 77-1233.06;

5 (6) Decisions of any county board of equalization on claims that a
6 levy is or is not for an unlawful or unnecessary purpose or in excess of
7 the requirements of the county;

8 (7) Decisions of any county board of equalization granting or
9 rejecting an application for a homestead exemption;

10 (8) Decisions of the Department of Motor Vehicles determining the
11 taxable value of motor vehicles pursuant to section 60-3,188;

12 (9) Decisions of the Tax Commissioner made under section 77-1330;

13 (10) Any other decision of any county board of equalization;

14 (11) Any other decision of the Tax Commissioner regarding property
15 valuation, exemption, or taxation;

16 (12) Decisions of the Tax Commissioner pursuant to section 77-3520;

17 (13) Final decisions of a county board of equalization appealed by
18 the Tax Commissioner or Property Tax Administrator pursuant to section
19 77-701;

20 (14) Determinations of the Rent-Restricted Housing Projects
21 Valuation Committee regarding the capitalization rate to be used to value
22 rent-restricted housing projects pursuant to section 77-1333 or the
23 requirement under such section that an income-approach calculation be
24 used by county assessors to value rent-restricted housing projects;

25 (15 14) The requirement under section 77-1314 that the income
26 approach, including the use of a discounted cash-flow analysis, be used
27 by county assessors; and

28 (16 15) Any other decision, determination, action, or order from
29 which an appeal to the commission is authorized.

30 The commission has the power and duty to hear and grant or deny
31 relief on petitions.

1 Sec. 3. Original section 77-1333, Reissue Revised Statutes of
2 Nebraska, and section 77-5007, Revised Statutes Cumulative Supplement,
3 2014, are repealed.