Introduced by Harr, 8.

Read first time January 10, 2017

Committee: Revenue

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-1333, Revised Statutes Cumulative Supplement, 2016; to change provisions relating to rent-restricted housing projects; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 77-1333, Revised Statutes Cumulative Supplement, 2016, is amended to read:

77-1333 (1) For purposes of this section, rent-restricted housing project means a project consisting of five or more houses or residential units that has received an allocation of federal low-income housing tax credits under section 42 of the Internal Revenue Code from the Nebraska Investment Finance Authority or its successor agency and, for the year of assessment, is a project as defined in section 58-219 involving rental housing as defined in section 58-220.

(2) The Legislature finds that:

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

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

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

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

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

(3) Except as otherwise provided in this section, the county assessor shall utilize an income-approach calculation to determine the
actual value of a rent-restricted housing project when determining the assessed valuation to place on the property for each assessment year. The income-approach calculation shall be consistent with this section and any rules and regulations adopted and promulgated by the Tax Commissioner and shall comply with professionally accepted mass appraisal techniques.

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

(a) A representative of county assessors appointed by the Tax Commissioner. Such representative shall be skilled in the valuation of property and shall hold a certificate issued under section 77-422;

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

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

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

(5) The owner of a rent-restricted housing project shall file a statement electronically on a form prescribed by the Tax Commissioner with the Rent-Restricted Housing Projects Valuation Committee and the county assessor on or before July 1 of each year that details actual income and actual expense data for the prior year, a description of any land-use restrictions, a description of the terms of any mortgage loans, including loan amount, interest rate, and amortization period, and
such other information as the committee or the county assessor may require for purposes of this section. The Department of Revenue, on behalf of the committee, shall forward such statements on or before August 15 of each year to the county assessor of each county in which a rent-restricted housing project is located.

(6) The Rent-Restricted Housing Projects Valuation Committee shall meet annually in November to examine the information on rent-restricted housing projects that was provided pursuant to subsection (5) of this section. The Department of Revenue shall electronically publish notice of such meeting no less than thirty days in advance. The committee shall also solicit information on the sale of any such rent-restricted housing projects and information on the yields generated to investors in rent-restricted housing projects. The committee shall, after reviewing all such information, calculate a market-derived capitalization rate on an annual basis using the band-of-investment technique or other generally accepted technique used to derive capitalization rates depending upon the data available. The capitalization rate shall be a composite rate weighted by the proportions of total property investment represented by equity and debt, with equity weighted at eighty percent and debt weighted at twenty percent unless a substantially different market capital structure can be verified to the county assessor. The yield for equity shall be calculated using the data on investor returns gathered by the committee. The yield for debt shall be calculated using the data provided to the committee pursuant to subsection (5) of this section. If the committee determines that a particular county or group of counties requires a different capitalization rate than that calculated for the rest of the state pursuant to this subsection, then the committee may calculate an additional capitalization rate that will apply only to such county or group of counties. If the committee determines that a particular housing type requires a different capitalization rate than that calculated for the rest of the state pursuant to this subsection,
then the committee may calculate an additional capitalization rate that
will apply only to such housing type or types.

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

(8) Except as provided in subsections (9) through (11) of this
section, each county assessor shall use the capitalization rate or rates
contained in the report received under subsection (7) of this section and
the actual income and actual expense data filed by owners of rent-
restricted housing projects under subsection (5) of this section in the
county assessor's income-approach calculation. Any low-income housing tax
credits authorized under section 42 of the Internal Revenue Code that
were granted to owners of the project shall not be considered income for
purposes of the calculation.

(9) If the actual income and actual expense data required to be
filed for a rent-restricted housing project under subsection (5) of this
section is not filed in a timely manner, the county assessor may use any
method for determining actual value for such rent-restricted housing
project that is consistent with professionally accepted mass appraisal
methods described in section 77-112.

(10) If a county assessor, based on the facts and circumstances,
believes that the income-approach calculation does not result in a
valuation of a rent-restricted housing project at actual value, then the
county assessor shall present such facts and circumstances to the county 
board of equalization. If the county board of equalization, based on such 
facts and circumstances, concurs with the county assessor, then the 
county board of equalization shall petition the Tax Equalization and 
Review Commission to consider the county assessor's utilization of 
another professionally accepted mass appraisal technique that, based on 
the facts and circumstances presented by a county board of equalization, 
would result in a substantially different determination of actual value 
of the rent-restricted housing project. Petitions must be filed no later 
than January 31. The burden of proof is on the petitioning county board 
of equalization to show that failure to make a determination that a 
different methodology should be used would result in a value that is not 
equitable and in accordance with the law. At the hearing, the commission 
may receive testimony from any interested person. After a hearing, the 
commission shall, within the powers granted in section 77-5007, enter its 
order based on evidence presented to it at such hearing.

(11) If the Tax Commissioner, based on the facts and circumstances, 
believes that the applicable capitalization rate set by the Rent-
Restricted Housing Projects Valuation Committee to value a rent-
restricted housing project does not result in a valuation at actual value 
for such rent-restricted housing project, then the Tax Commissioner shall 
petition the Tax Equalization and Review Commission to consider an 
adjustment to the capitalization rate of such rent-restricted housing 
project. Petitions must be filed no later than January 31. The burden of 
proof is on the Tax Commissioner to show that failure to make an 
adjustment to the capitalization rate employed would result in a value 
that is not equal to the rent-restricted housing project's actual value. 
At the hearing, the commission may receive testimony from any interested 
person. After a hearing, the commission shall, within the powers granted 
in section 77-5007, enter its order based on evidence presented to it at 
such hearing.
Sec. 2. Original section 77-1333, Revised Statutes Cumulative Supplement, 2016, is repealed.

Sec. 3. Since an emergency exists, this act takes effect when passed and approved according to law.