LEGISLATIVE BILL 322

Introduced by Craighead, 6.
Read first time January 12, 2017
Committee: Revenue

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-5016.01, 77-5023, 77-5026, and 77-5028, Reissue Revised Statutes of Nebraska, and sections 77-5004, 77-5013, 77-5015, 77-5015.02, and 77-5018, Revised Statutes Cumulative Supplement, 2016; to change the Tax Equalization and Review Commission Act as prescribed; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 77-5004, Revised Statutes Cumulative Supplement, 2016, is amended to read:

77-5004 (1) Each commissioner shall be a qualified voter and resident of the state and a domiciliary of the district he or she represents.

(2) Each commissioner shall devote his or her full time and efforts to the discharge of his or her duties and shall not hold any other office under the laws of this state, any city or county in this state, or the United States Government while serving on the commission. Each commissioner shall possess:

(a) Appropriate knowledge of terms commonly used in or related to real property appraisal and of the writing of appraisal reports;

(b) Adequate knowledge of depreciation theories, cost estimating, methods of capitalization, and real property appraisal mathematics;

(c) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and evaluating of data involved in the valuation of real property, including complex industrial properties and mass appraisal techniques;

(d) Knowledge of the law relating to taxation, civil and administrative procedure, due process, and evidence in Nebraska;

(e) At least thirty hours of successfully completed class hours in courses of study, approved by the Real Property Appraiser Board, which relate to appraisal and which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. If a commissioner has not received such training prior to his or her appointment, such training shall be completed within one year after appointment; and

(f) Such other qualifications and skills as reasonably may be requisite for the effective and reliable performance of the commission's duties.

(3) At least one commissioner shall possess the certification, qualifications, and training required to become a certified general
licensed residential real property appraiser as set forth in section 76-2232 76-2230.

(4) At least one commissioner shall have been engaged in the practice of law in the State of Nebraska for at least five years, which may include prior service as a judge, and shall be currently admitted to practice before the Nebraska Supreme Court.

(5) At least one commissioner shall have been employed as a broker as defined in section 81-885.01 for at least ten years and shall be currently licensed as a broker under the Nebraska Real Estate License Act.

(6) No commissioner or employee of the commission shall hold any position of profit or engage in any occupation or business interfering with or inconsistent with his or her duties as a commissioner or employee. A person is not eligible for appointment and may not hold the office of commissioner or be appointed by the commission to or hold any office or position under the commission if he or she holds any official office or position.

(7) Each commissioner shall annually attend a seminar or class of at least two days' duration that is:

(a) Sponsored by a recognized assessment or appraisal organization, in each of these areas: Utility and railroad appraisal; appraisal of complex industrial properties; appraisal of other hard to assess properties; and mass appraisal, residential or agricultural appraisal, or assessment administration; or

(b) Pertaining to management, law, civil or administrative procedure, or other knowledge or skill necessary for performing the duties of the office.

(8) Each commissioner shall within two years after his or her appointment attend at least thirty hours of instruction that constitutes training for judges or administrative law judges.

(9) The commissioners shall be considered employees of the state
for purposes of sections 81-1320 to 81-1328 and 84-1601 to 84-1615.

(10) The commissioners shall be reimbursed as prescribed in sections 81-1174 to 81-1177 for their actual and necessary expenses in the performance of their official duties pursuant to the Tax Equalization and Review Commission Act.

Sec. 2. Section 77-5013, Revised Statutes Cumulative Supplement, 2016, is amended to read:

77-5013 (1) The commission obtains exclusive jurisdiction over an appeal or petition when:

(a) The commission has the power or authority to hear the appeal or petition;

(b) An appeal or petition is timely filed;

(c) The filing fee, if applicable, is timely received and thereafter paid; and

(d) In the case of an appeal, a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.

Only the requirements of this subsection shall be deemed jurisdictional.

(2) A petition, an appeal, or the information required by subdivision (1)(d) of this section is timely filed and the filing fee, if applicable, is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received by the commission, on or before the date specified by law for filing the appeal or petition. If no date is otherwise provided by law, then an appeal shall be filed within thirty days after the decision, order, determination, or action appealed from is made.

(3) The filing fee for each appeal or petition filed with the commission shall be as follows:

(a) For an appeal under subdivision (2), (4), (6), (7), (8), or (12)...
of section 77-5007, the fee shall be fifty dollars;

(b) For an appeal under subdivision (1), (3), (5), (10), (11), (14), or (16) of section 77-5007, the fee shall be fifty dollars or one-thirtieth of one percent of the assessed value of the subject property, whichever is greater; and

(c) For an appeal under subdivision (9), (13), or (15) of section 77-5007 or any other is twenty-five dollars, except that no filing fee shall be required for an appeal by a county assessor, the Tax Commissioner, or the Property Tax Administrator acting in his or her official capacity or a county board of equalization acting in its official capacity, there shall be no filing fee.

(4) The form and requirements for execution of an appeal or petition may be specified by the commission in its rules and regulations.

Sec. 3. Section 77-5015, Revised Statutes Cumulative Supplement, 2016, is amended to read:

77-5015 In any case appealed to the commission, all parties shall be afforded an opportunity for hearing after no less than sixty days' reasonable notice. A party is required to notify the commission upon any change to the party's contact information. The notice shall state the time and place of the hearing. Included with the notice shall be a written acknowledgement form that the appellant shall complete, sign, and return to the commission. The completed acknowledgement form shall include the appellant's acknowledgement of the date and time of the hearing and an affirmation by the appellant that the appellant wishes to proceed to a hearing on the case. Failure of the appellant to file the completed acknowledgement form with the commission within thirty days after receipt of the notice shall constitute a withdrawal of the case, and the commission shall enter an order dismissing the appeal or petition. A case that is dismissed pursuant to this section may be reinstated only upon a showing of good cause by the appellant. Opportunity shall be afforded all parties to present evidence and
argument. The commission shall prepare an official record, which includes
testimony and exhibits, in each case, but it shall not be necessary to
transcribe the record of the proceedings unless requested for purposes of
rehearing, in which event the transcript and record shall be furnished by
the commission upon request and tender of the cost of preparation.
Informal disposition may also be made of any case by stipulation, agreed
settlement, consent order, or default. All appeals and petitions must be
heard by the commission within eighteen months after filing unless
otherwise prescribed by law.

Sec. 4. Section 77-5015.02, Revised Statutes Cumulative Supplement, 2016, is amended to read:

    77-5015.02 (1) A single commissioner may hear an appeal and cross
appeal and appeals and cross appeals consolidated with any such appeal
and cross appeal when:

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

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

    (2) A proceeding held before a single commissioner shall be
informal. The usual common-law or statutory rules of evidence, including
rules of hearsay, shall not apply, and the commissioner may consider and
utilize all matters presented at the proceeding in making his or her
determination.

    (3) Any party to an appeal designated for hearing before a single
commissioner pursuant to this section may, prior to a hearing, elect in
writing to have the appeal heard by the commission. The commissioner
conducting a proceeding pursuant to this section may at any time
designate the appeal for hearing by the commission.

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

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

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

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

(8) Proceedings before a single commissioner shall occur in the district court judicial district in which the subject property is located.

Sec. 5. Section 77-5016.01, Reissue Revised Statutes of Nebraska, is amended to read:

77-5016.01 Each appeal or petition filed with the commission shall be deemed to include an oath, affirmation, or statement given by an owner of the subject property or, if the appeal or petition is filed by the state or a political subdivision, by an officer of the state or political subdivision to the effect that the its representations contained in the appeal or petition are true as far as the person executing or filing it knows or should know. Any person who willfully falsifies any such representation shall be guilty of perjury and shall, upon conviction thereof, be punished as provided by section 28-915.

Sec. 6. Section 77-5018, Revised Statutes Cumulative Supplement, 2016, is amended to read:

77-5018 (1) The commission may issue decisions and orders which are supported by the evidence and appropriate for resolving the matters in dispute. Every final decision and order adverse to a party to the proceeding, rendered by the commission in a case appealed to the commission, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each
contested issue of fact. Parties to the proceeding shall be notified of
the decision and order in person or by mail. A copy of the decision and
order shall be delivered or mailed to each party or his or her attorney
of record within thirty days after the hearing unless otherwise
prescribed by law. Within seven days of issuing a decision and order, the
commission shall electronically publish such decision and order on a web
site maintained by the commission that is accessible to the general
public. The full text of final decisions and orders shall be published on
the web site, except that final decisions and orders that are entered (a)
on a dismissal by the appellant or petitioner, (b) on a default order
when the appellant or petitioner failed to appear, (c) by agreement of
the parties, or (d) by a single commissioner pursuant to section
77-5015.02 may be published on the web site in a summary manner
identifying the parties, the case number, and the basis for the final
decision and order. Any decision rendered by the commission shall be
certified to the county treasurer and to the officer charged with the
duty of preparing the tax list, and if and when such decision becomes
final, such officers shall correct their records accordingly and the tax
list pursuant to section 77-1613.02.

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

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

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

77-5023 (1) Pursuant to section 77-5022, the commission shall have
the power to increase or decrease the value of a class or subclass of real property in any county or taxing authority or of real property valued by the state so that (a) all classes or subclasses of real property in all counties fall within an acceptable range and (b) the standards of uniformity are met for that class or subclass in that county.

(2) For purposes of this section:

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

(b) Standards of uniformity means the standards relating to coefficient of dispersion as set forth in the Standard on Ratio Studies published by the International Association of Assessing Officers, as such publication existed on January 1, 2017. A coefficient of dispersion of less than fifteen percent for residential real property, less than twenty percent for agricultural land and horticultural land as defined in section 77-1359, less than twenty percent for commercial property, and less than twenty percent for vacant land and other property classes shall be deemed uniform for purposes of this section.

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

(4) Any decrease or increase to a subclass of property shall also cause the level of value determined by the commission for the class from which the subclass is drawn to be (a) within the applicable acceptable
range and (b) in compliance with the standards of uniformity.

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

(6) In those cases in which the variation falls outside the acceptable ranges or the standards of uniformity, the commission shall consider ordering (a) a moratorium on increases or decreases to values and (b) a reappraisal of the subject class or subclass of real property.

Sec. 8. Section 77-5026, Reissue Revised Statutes of Nebraska, is amended to read:

77-5026 Pursuant to section 77-5023, if the commission finds, based upon a recommendation in the Property Tax Administrator's annual reports and opinions, that the level of value of a class or subclass of real property fails to satisfy the requirements of section 77-5023, the commission shall issue a notice to the counties which it deems either undervalued or overvalued and shall set a date for hearing at least fifteen days following the mailing of the notice unless notice is waived. The notice unless waived shall be mailed to the county clerk, county assessor, county attorney, and chairperson of the county board. At the hearing the county assessor or other legal representatives of the county may appear and show cause why the value of a class or subclass of real property of the county should not be adjusted. An authorized county assessor or other legal representative of the county board of equalization may waive notice of the hearing or consent to entry of an order adjusting the value of a class or subclass of real property without further notice. At the hearing, the commission may receive testimony from any interested person.

Sec. 9. Section 77-5028, Reissue Revised Statutes of Nebraska, is amended to read:

77-5028 After a hearing conducted pursuant to section 77-5026, the
commission shall enter its order based on information presented to it at the hearing. The order of the commission shall be sent by facsimile transmittal and certified mail to the county assessor, and by regular mail to the county clerk, and the chairperson of the county board on or before May 15 of each year or the date determined by the Property Tax Administrator if an extension is ordered pursuant to section 77-1514, unless the offices of the commission are closed, then the order of the commission shall be sent by the end of the next day the commission's offices are open. The order shall specify the percentage increase or decrease and the class or subclass of real property affected or the corrections or adjustments to be made to each parcel of real property in the class or subclass affected. The specified changes shall be made by the county assessor to each parcel of real property in the county so affected. Upon an order increasing or decreasing a class or subclass of real property, a county shall be granted a rehearing if additional evidence regarding the matter is discovered.

Sec. 10. Original sections 77-5016.01, 77-5023, 77-5026, and 77-5028, Reissue Revised Statutes of Nebraska, and sections 77-5004, 77-5013, 77-5015, 77-5015.02, and 77-5018, Revised Statutes Cumulative Supplement, 2016, are repealed.