

LEGISLATIVE BILL 465

Approved by the Governor May 31, 2001

Introduced by Wickersham, 49; Hartnett, 45

AN ACT relating to revenue and taxation; to amend sections 77-702, 77-5003, 77-5005, 77-5009, 77-5016, 77-5018, and 77-5019, Revised Statutes Supplement, 2000, and sections 77-1510 and 77-5004, Revised Statutes Supplement, 2000, as amended by sections 18 and 19, respectively, Legislative Bill 170, Ninety-seventh Legislature, First Session, 2001; to change and eliminate appeal provisions and related powers and duties concerning property tax valuation and equalization; to change membership on, qualifications for, and powers and duties of the Tax Equalization and Review Commission; to authorize property tax referees; to harmonize provisions; to provide severability; to repeal the original sections; to outright repeal section 77-1511, Reissue Revised Statutes of Nebraska; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 77-702, Revised Statutes Supplement, 2000, is amended to read:

77-702. (1) Commencing with the expiration of the term of the Property Tax Administrator holding office on July 1, 1999, the Governor shall appoint a Property Tax Administrator with the approval of a majority of the members of the Legislature. The Property Tax Administrator shall have experience and training in the fields of taxation and property appraisal and shall meet all the qualifications required for members of the Tax Equalization and Review Commission under subsections (1) and (2) and subdivision (6)(a) of section 77-5004. The administrator shall serve a six-year term. The Property Tax Administrator may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty or other cause after notice and a public hearing unless notice and hearing are expressly waived in writing by the Property Tax Administrator. The Property Tax Administrator shall adopt and promulgate rules and regulations to carry out his or her duties. Rules and regulations of the Property Tax Administrator in effect on July 1, 1999, shall be valid rules and regulations of the Department of Property Assessment and Taxation beginning on July 1, 1999.

(2) In addition to any duties, powers, or responsibilities otherwise conferred upon the Property Tax Administrator, he or she shall administer and enforce all laws related to the state supervision of local property tax administration and the central assessment of property subject to property taxation. The Property Tax Administrator shall also advise county assessors regarding the administration and assessment of taxable property within the state and measure assessment performance in order to determine the accuracy and uniformity of assessments.

Sec. 2. Section 77-1510, Revised Statutes Supplement, 2000, as amended by section 18, Legislative Bill 170, Ninety-seventh Legislature, First Session, 2001, is amended to read:

77-1510. Appeals may be taken from any action of the county board of equalization to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act. The appeal shall be filed or postmarked within thirty days after adjournment of the board which, for actions taken pursuant to section 77-1502, shall be deemed to be July 25 of the year in which the action is taken. After an appeal has been initiated, the county board of equalization shall have no power or authority to compromise, settle, or otherwise change the action it has taken with respect to such assessment, and exclusive jurisdiction thereof shall be vested in the Tax Equalization and Review Commission, except that the county board of equalization may offer to confess judgment pursuant to section 77-1510.01. The changes made to this section by Laws 2001, LB 170, shall apply to all appeals pending on April 5, 2001, and to all appeals arising on or after such date.

Sec. 3. Section 77-5003, Revised Statutes Supplement, 2000, is amended to read:

77-5003. (1) The Tax Equalization and Review Commission is created. The Tax Commissioner has no supervision, authority, or control over the actions or decisions of the commission relating to its duties prescribed by law. The commission shall have three commissioners, one from each congressional district, who are and beginning on and after January 1, 2002, the commission shall have four commissioners and one at-large commissioner

shall be appointed in addition to the commissioners representing the congressional districts. All commissioners shall be appointed by the Governor with the approval of a majority of the members of the Legislature. One of the commissioners shall be designated by the Governor as chairperson.

(2) The term of the commissioner from district 1 expires two years after the first appointment under this section, the term of the commissioner from district 2 expires four years after the first appointment under this section, and the term of the commissioner from district 3 expires six years after the first appointment under this section. The initial term of the at-large commissioner expires on January 1, 2008. After the initial terms of the commissioners are completed, each term shall be for six years. Upon the expiration of his or her term of office, a commissioner shall continue to serve until his or her successor has been appointed.

(3) The Governor shall designate one commissioner, who is an attorney admitted to practice before the Nebraska Supreme Court, to serve as the chairperson of the commission from January 1, 2002, through December 31, 2003. Beginning on January 1, 2004, the commission shall designate pursuant to rule and regulation its chairperson on a two-year, rotating basis among the commissioners who are attorneys admitted to practice before the Nebraska Supreme Court.

(4) A commissioner may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty or other cause after notice and a public hearing unless notice and hearing are expressly waived in writing by the commissioner.

Sec. 4. Section 77-5004, Revised Statutes Supplement, 2000, as amended by section 19, Legislative Bill 170, Ninety-seventh Legislature, First Session, 2001, is amended to read:

77-5004. (1) Each commissioner shall be a qualified voter, taxpayer, and resident of the state and, for each commissioner representing a congressional district, a resident 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) Any certification or training required to become a registered real estate appraiser as set forth in section 76-2229.01. If a commissioner has not received such certification or training prior to his or her appointment, such certification or training shall be completed within one year after the appointment. At least thirty hours of successfully completed class hours in courses of study, approved by the Real Estate Appraiser Board, which relate to appraisal and which include a fifteen-hour course in the Uniform Standards of Professional Appraisal Practice. 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) One commissioner shall possess any certification or training required to become a licensed real estate appraiser as set forth in section 76-2230.

(4) Prior to January 1, 2002, the The chairperson, and on and after January 1, 2002, at least two commissioners, 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.

~~(4)~~ (5) 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.

~~(5)~~ During each year of his or her term, each commissioner (6)(a) Each commissioner who meets the requirements of subsection (4) of this section on or after January 1, 2002, shall annually attend a seminar or class of at least two days' duration, sponsored by a recognized assessment or appraisal organization, in each of these areas: Utility and railroad appraisal; appraisal of complex industrial properties; and mass appraisal, residential or agricultural appraisal, or assessment administration.

(b) Each commissioner who does not meet the requirements of subsection (4) of this section on or after January 1, 2002, 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.

~~(6)~~ (7) The commissioners shall be considered employees of the state for purposes of sections 81-1301 to 81-1391 and 84-1601 to 84-1615.

~~(7)~~ (8) 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. Mileage expenses incurred while traveling in the line of duty to and from a commissioner's primary residence to the commission office as well as living expenses for any commissioner whose residence is located more than eighty miles from the commission office shall be reimbursed by the state if:

(a) The commission has adopted and promulgated rules and regulations establishing guidelines for allowable reimbursement of mileage and living expenses, except that the reimbursement rate for mileage shall not exceed the rate established by the Department of Administrative Services pursuant to section 81-1176;

(b) The commissioner complies with the request procedures for reimbursement set forth in such guidelines; and

(c) The total amounts authorized for reimbursement of such mileage and living expenses in any fiscal year shall not cause the total expenses to exceed the total funds appropriated to the program established for commissioners' expenses.

Sec. 5. Section 77-5005, Revised Statutes Supplement, 2000, is amended to read:

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

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

(3) Any investigation, inquiry, or hearing held or undertaken by the commission may be held or undertaken by or before ~~any one commissioner~~ a panel of three commissioners with the approval of the commission.

(4) When holding hearings pursuant to sections 77-5016, 77-5024, and 77-5026, the commission may, after hearing the evidence and argument on the record, recess to closed deliberations for the limited purpose of deciding the matter before it notwithstanding sections 84-1408 to 84-1414. After deliberating, the commission shall issue its final decision, accompanied by findings of fact and conclusions of law, in writing or on the record.

(5) All investigations, inquiries, hearings, and decisions of a ~~commissioner~~ a panel of commissioners and every order made by a ~~commissioner~~ panel of commissioners when approved and confirmed by a quorum of the commission, if so shown on its record of proceedings, shall be deemed to be the order of the commission. The full commission may grant a rehearing and determine de novo any decisions of or orders made by a panel of commissioners. The thirty-day filing period for appeals under subsection (2) of section 77-5019 shall be tolled while a motion for rehearing is pending.

Sec. 6. Section 77-5009, Revised Statutes Supplement, 2000, is amended to read:

77-5009. (1) The commission may employ legal, clerical, and other assistants as may be necessary to carry out the powers and duties of the commission.

(2)(a) For purposes of finding facts with regard to any matters relating to taxation, the commission may appoint by an order in writing a special master or special masters whose duties are prescribed in the order, except that the duties of a special master shall not include the determination of conclusions of law or the final disposition of any case or controversy.

(b) Special masters may be paid a salary or fee in the discretion of the commission. If a salary is paid, the amount paid shall be fixed by the commission, and if a fee is paid, the amount paid shall be in accordance with

the value of the service rendered and shall be agreed upon and approved by the commission before the special master renders service under his or her appointment.

(c) The claim for services rendered shall be certified by the commission and paid as provided by law for other claims against the state.

(3) In the discharge of his or her duties, a special master shall have all the investigative and factfinding powers of the commission in deciding any tax dispute.

(4)(a) The commission may conduct a number of factfindings contemporaneously through different special masters and may delegate to a special master the taking of all testimony bearing upon any investigation or hearing.

(b) The decision of the commission shall be based upon its examination of all testimony and records.

(c) The recommendations made by any special master shall be advisory only and shall not preclude the taking of further testimony if the commission orders further investigation.

(5)(a) For purposes of mediating valuation disputes between the county and the owner of the property, the commission by order may also appoint a referee or referees. The purpose of the referee is to meet with the parties and facilitate agreement on facts and issues prior to the hearing on the appeal. If the parties fail to resolve their differences, either a hearing before the commission shall be held as previously scheduled or the case shall be placed on the schedule for hearing. If the parties resolve their differences, the commission shall enter an order that reflects the agreement of the parties.

(b) Referees may be paid a salary or fee in the discretion of the commission. If a salary is paid, the amount paid shall be fixed by the commission, and if a fee is paid, the amount paid shall be in accordance with the value of the service rendered and shall be agreed upon and approved by the commission before the referee renders service under his or her appointment.

(c) The claim for services rendered shall be certified by the commission and paid as provided by law for other claims against the state.

Sec. 7. Section 77-5016, Revised Statutes Supplement, 2000, is amended to read:

77-5016. All cases appealed to the commission shall be granted an informal hearing unless a formal hearing is granted as determined by the commission according to its rules and regulations. In cases appealed to the commission:

(1) The commission may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. It shall give effect to the rules of privilege recognized by law. It may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Any party to an appeal filed under section 77-5007 may request a formal hearing by delivering a written request to the commission not more than thirty days after the appeal is filed. The request shall include the requesting party's agreement to be liable for the payment of costs incurred and upon any appeal or review, including the cost of court reporting services which the requesting party shall procure for the hearing. The commission shall be bound by the rules of evidence applicable in district court in any formal hearing held by the commission. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered;

(2) The commission may administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, statistical analysis, and testimony, and cause the depositions of witnesses residing either within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the district court;

(3) All evidence including records and documents in the possession of the commission of which it desires to avail itself shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference;

(4) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence;

(5) The commission may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge or statistical information regarding general levels of assessment within a county or a class or subclass of property within a county and measures of central tendency within such county or classes or

subclasses within such county which have been made known to the commission. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material so noticed. They shall be afforded an opportunity to contest the facts so noticed. The commission may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it;

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

(7) The commission shall hear appeals and cross appeals taken under section 77-5007 as in equity and without a jury and determine de novo all questions raised before the county board of equalization or the Property Tax Administrator which relate to the liability of the property to assessment or the amount thereof. ~~The commission shall affirm the action taken by the board or Property Tax Administrator~~ If the appellant presents no evidence to show that the action taken by the board or the Property Tax Administrator is incorrect, the commission shall affirm such action. If the appellant presents any evidence to show that the action taken by the board or the Property Tax Administrator is incorrect, such action shall still be affirmed unless evidence is adduced establishing that the action of the board or the Property Tax Administrator was unreasonable or arbitrary. Any decision rendered by the commission shall be certified to the parties and, if applicable, to the county treasurer and the official charged with the duty of preparing the tax list. When such decision becomes final, any officials shall correct their records accordingly.

Sec. 8. Section 77-5018, Revised Statutes Supplement, 2000, is amended to read:

77-5018. 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 upon request to each party or his or her attorney of record. 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.

Sec. 9. Section 77-5019, Revised Statutes Supplement, 2000, is amended to read:

77-5019. (1) Any party aggrieved by a final decision in a case appealed to the commission and any county or other political subdivision aggrieved by an order of the commission issued pursuant to section 77-1504.01 or 77-5028 shall be entitled to judicial review in the Court of Appeals. Upon request of the county, the Attorney General may appear and represent the county or political subdivision in cases in which the commission is not a party. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a) Proceedings for review shall be instituted by filing a petition and the appropriate docket fees in the Court of Appeals and delivery of a copy of the petition to the commission within thirty days after the date on which a final appealable order is entered by the commission. All parties of record shall be made parties to the proceedings for review. The commission shall only be made a party of record if the action complained of is an order issued by the commission pursuant to section 77-1504.01 or 77-5023. Summons shall be served on all parties within thirty days after the filing of the petition in the manner provided for service of a summons in section 25-510.02. If the commission is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the commission within thirty days after the filing of the petition. The court, in its discretion, may permit other interested persons to intervene. No bond or undertaking is required for an appeal to the Court of Appeals.

(b) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the county whose action is at issue or the commission; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) the identification of the parties in the case that led to the final decision; (v) the facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief,

specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon the commission shall not stay enforcement of a decision. The commission may order a stay. The court may order a stay after notice of the application for the stay to the commission and to all parties of record. If the commission has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety, or welfare, the court may not grant relief unless the court finds that: (a) The applicant is likely to prevail when the court finally disposes of the matter; (b) without relief, the applicant will suffer irreparable injuries; (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and (d) the threat to the public health, safety, or welfare relied on by the commission is not sufficiently serious to justify the commission's action in the circumstances. The court may require the party requesting the stay to give bond in such amount and conditioned as the court directs.

(4) Within thirty days after service of the petition or within such further time as the court for good cause shown allows, the commission shall prepare and transmit to the court a certified copy of the official record of the proceedings had before the commission. The official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the commission pertaining to the case; (c) the transcribed record of the hearing before the commission, including all exhibits and evidence introduced during the hearing, a statement of matters officially noticed by the commission during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The commission shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The commission may require payment or bond prior to the transmittal of the record.

(5) The review shall be conducted by the court for error on the record of the commission. If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the commission, the court may remand the case to the commission for further proceedings. The court may affirm, reverse, or modify the decision of the commission or remand the case for further proceedings.

(6) Appeals under this section shall be given precedence over all civil cases.

Sec. 10. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 11. Original sections 77-702, 77-5003, 77-5005, 77-5009, 77-5016, 77-5018, and 77-5019, Revised Statutes Supplement, 2000, and sections 77-1510 and 77-5004, Revised Statutes Supplement, 2000, as amended by sections 18 and 19, respectively, Legislative Bill 170, Ninety-seventh Legislature, First Session, 2001, are repealed.

Sec. 12. The following section is outright repealed: Section 77-1511, Reissue Revised Statutes of Nebraska.

Sec. 13. Since an emergency exists, this act takes effect when passed and approved according to law.