

## LEGISLATIVE BILL 291

Approved by the Governor April 2, 2003

Introduced by Revenue Committee: Landis, 46, Chairperson; Baker, 44;  
Connealy, 16; Hartnett, 45; Janssen, 15; Raikes, 25;  
Redfield, 12

AN ACT relating to revenue and taxation; to amend section 77-5021, Reissue Revised Statutes of Nebraska, and sections 77-103.01, 77-1504.01, 77-1510, 77-5001, 77-5003, 77-5005, 77-5011, 77-5015, 77-5016, 77-5022, and 77-5023, Revised Statutes Supplement, 2002; to redefine a term; to change provisions relating to appeals, the Tax Equalization and Review Commission, hearings, notices, meetings, and powers and duties; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 77-103.01, Revised Statutes Supplement, 2002, is amended to read:

77-103.01. Class or subclass of real property means a group of properties that share one or more characteristics typically common to all the properties in the class or subclass, but are not typically found in the properties outside the class or subclass. Class or subclass includes, but is not limited to, the classifications of agricultural land or horticultural land listed in section 77-1363, parcel use, parcel type, location, geographic characteristics, zoning, city size, parcel size, and market characteristics. ~~Appropriate~~ appropriate for the valuation of such land. ~~A~~ A class or subclass based on market characteristics shall be based on characteristics that affect the actual value in a different manner than it affects the actual value of properties not within the market characteristic class or subclass.

Sec. 2. Section 77-1504.01, Revised Statutes Supplement, 2002, is amended to read:

77-1504.01. (1) After completion of its actions and based upon the hearings conducted pursuant to sections 77-1502 and 77-1504, a county board of equalization may petition the Tax Equalization and Review Commission to consider an adjustment to a class or subclass of real property within the county. Petitions must be filed with the commission on or before July 26.

(2) The commission shall hear and take action on a petition filed by a county board of equalization on or before August 10. Hearings held pursuant to this section may be held by means of videoconference. ~~and shall comply with section 84-1411, except that a member of the commission need not be present at each videoconference site. A duly appointed representative of the commission shall be present at each videoconference site to take custody of any exhibits and keep a record of persons who appear at the hearing.~~ Hearings conducted pursuant to this section shall be in the manner prescribed in section 77-5026. The burden of proof is on the petitioning county to show that failure to make an adjustment would result in values that are not equitable and in accordance with the law.

(3) After a hearing the commission shall enter its order based on evidence presented to it at such hearing and the hearings held pursuant to section 77-5022 for that year. The order shall specify the percentage increase or decrease and the class or subclass of real property affected or any corrections or adjustments to be made to the class or subclass of real property affected. When issuing an order to adjust a class or subclass of real property, the commission may exclude individual properties from that order whose value has already been adjusted by a county board of equalization in the same manner as the commission directs in its order. On or before August 10 of each year, the commission shall send its order by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board.

(4) The county assessor shall make the specified changes to each item of property in the county as directed by the order of the commission. In implementing such order, the county assessor shall adjust the values of the class or subclass that is the subject of the order. For properties that have already received an adjustment from the county board of equalization, no additional adjustment shall be made applying the commission's order, but such an exclusion from the commission's order shall not preclude adjustments to those properties for corrections or omissions. The county assessor of the county adjusted by an order of the commission shall recertify the abstract of assessment to the Property Tax Administrator on or before August 20.

Sec. 3. Section 77-1510, Revised Statutes Supplement, 2002, 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. 4. Section 77-5001, Revised Statutes Supplement, 2002, is amended to read:

77-5001. Sections 77-5001 to 77-5031 and section 11 of this act shall be known and may be cited as the Tax Equalization and Review Commission Act.

Sec. 5. Section 77-5003, Revised Statutes Supplement, 2002, 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, and beginning on and after January 1, 2002, the commission shall have four commissioners. One 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 and vice-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. 6. Section 77-5005, Revised Statutes Supplement, 2002, 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 hears 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 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~~ 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 panel of commissioners and every order made by a panel of commissioners 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.

(6) All hearings or proceedings of the commission shall be open to the public.

(7) Sections 84-1408 to 84-1414 shall only apply to hearings or proceedings of the commission held pursuant to the rulemaking authority of the commission.

Sec. 7. Section 77-5011, Revised Statutes Supplement, 2002, is amended to read:

77-5011. The chairperson may call special meetings of the commission at such times as its business requires. The chairperson may also administer oaths and affirmations and sign all orders, certificates, and process in the name of the commission. ~~upon a roll call vote.~~ The chairperson shall attest all orders, certificates, and process with the official seal of the commission. In the absence of the chairperson the vice-chairperson may perform the duties of the chairperson. Orders, certificates, and process under the official seal of the commission may be enforced by the district court.

Sec. 8. Section 77-5015, Revised Statutes Supplement, 2002, is amended to read:

77-5015. Cases may be appealed to the commission within thirty days after the final action of the county board of equalization or Property Tax Administrator. Appeals regarding the valuation or exemption of multiple parcels involving the same owner and the same issues may be consolidated at the discretion of the commission. Any multiple filing fees for consolidated appeals shall be refunded by the commission if such fees were paid prior to the consolidation of appeals by the commission. In any case appealed to the commission all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, ~~and place,~~ ~~and issues involved,~~ ~~but if, by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable of the hearing.~~ 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 ~~shorthand notes~~ 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. ~~The commission shall adopt and promulgate rules and regulations for notice and hearing in cases appealed.~~

Sec. 9. Section 77-5016, Revised Statutes Supplement, 2002, is amended to read:

77-5016. ~~All cases appealed to~~ Any hearing or proceeding of the commission shall be granted conducted as 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: In any hearing or proceeding heard by the commission or a panel of commissioners:

(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, and compel the attendance of witnesses and the production of any papers, books, accounts, documents, statistical analysis, and testimony. The commission may adopt and promulgate necessary rules for discovery which are consistent with the rules adopted by the Supreme Court pursuant to section 25-1273.01; ~~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) The commission may consider and utilize the provisions of the Constitution of the United States, the Constitution of Nebraska, the laws of the United States, the laws of Nebraska, the Code of Federal Regulations, the Nebraska Administrative Code, any decision of the several courts of the United States or the State of Nebraska, and the legislative history of any law, rule, or regulation, without making the document a part of the record. The commission may without inclusion in the record consider and utilize published treatises, periodicals, and reference works pertaining to the valuation or assessment of real or personal property or the meaning of words and phrases if the document is identified in the commission's rules and regulations. All other 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 other than that set forth in this section 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 real 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;

(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. 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;

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

(9) The costs of any appeal, including the costs of witnesses, may be taxed by the commission as it deems just unless the appellant is the county assessor or county clerk in which case the costs shall be paid by the county; ~~and -~~

(10) The commission shall deny the relief requested in any hearing or proceeding unless a majority of the commissioners present determine that the relief should be granted.

Sec. 10. Section 77-5021, Reissue Revised Statutes of Nebraska, is amended to read:

77-5021. The commission may adopt and promulgate rules and regulations to carry out the Tax Equalization and Review Commission Act its constitutional or statutory purposes, powers, or authority. The commission may adopt and promulgate rules and regulations necessary to regulate persons and proceedings within the commission's jurisdiction and authority.

Sec. 11. The commission shall give notice of the time and place of the first meeting held pursuant to sections 77-1504.01, 77-5024, and 77-5026

by publication in a newspaper of general circulation in the State of Nebraska. Such notice shall contain a statement that the agenda shall be readily available for public inspection at the principal office of the commission during normal business hours. The agenda shall be continually revised to remain current. The commission may thereafter modify the agenda and need only provide notice of the meeting to the affected counties in the manner provided in section 77-1504.01, 77-5024, or 77-5026. The commission shall publish in its notice a list of those counties certified under section 77-5027 as having assessments which may fail to satisfy the requirements of law.

Sec. 12. Section 77-5022, Revised Statutes Supplement, 2002, is amended to read:

77-5022. The commission shall annually equalize the ~~values~~ assessed value, special value, or recapture value of all real property as submitted by the county assessors on the abstracts of assessments and equalize the values of real property which is valued by the state. For this purpose the commission shall meet as soon as the abstracts of assessments have been submitted by the county assessors. The commission shall have the power to adjourn from time to time until the equalization process is complete. Meetings held pursuant to this section may be held by means of videoconference. ~~and shall comply with section 84-1411, except that a member of the commission need not be present at each videoconference site. A duly appointed representative of the commission shall be present at each videoconference site to take custody of any exhibits and keep a record of persons who appear at the meeting.~~

Sec. 13. Section 77-5023, Revised Statutes Supplement, 2002, is amended to read:

77-5023. (1) Pursuant to section 77-5022, the commission shall have the power to increase or decrease the assessed value, special value, or recapture value of a class or subclass of real property of any county or tax district or real property valued by the state so that all classes or subclasses of real property in all counties fall within the acceptable range.

(2) Such increase or decrease shall be made by a percentage and shall result in the established indicator of central tendency of assessment for the class or subclass of real property adjusted at (a) seventy-seven percent of actual value for agricultural and horticultural land, (b) beginning January 1, 2001, ninety-six percent of special or recapture value for agricultural and horticultural land that receives special valuation pursuant to section 77-1344, and (c) ninety-six percent of actual value for nonagricultural and nonhorticultural real property. If such increase or decrease is made to a subclass of real property, the increase or decrease shall also cause the established indicator of central tendency of assessment for the class from which the subclass is drawn to fall within the acceptable range. This subsection shall become operative for all actions filed with the commission on or after April 7, 2000.

(3) For agricultural and horticultural land, the acceptable range shall be from seventy-four percent to eighty percent of actual value of agricultural and horticultural land; beginning January 1, 2001, for agricultural and horticultural land eligible for special valuation under section 77-1344, the acceptable range shall be from ninety-two percent to one hundred percent of the special valuation, and the recapture valuation shall be between ninety-two to one hundred percent of the recapture value; and for nonagricultural and nonhorticultural real property, the acceptable range shall be from ninety-two percent to one hundred percent of actual value of nonagricultural and nonhorticultural real property.

Sec. 14. Original section 77-5021, Reissue Revised Statutes of Nebraska, and sections 77-103.01, 77-1504.01, 77-1510, 77-5001, 77-5003, 77-5005, 77-5011, 77-5015, 77-5016, 77-5022, and 77-5023, Revised Statutes Supplement, 2002, are repealed.

Sec. 15. Since an emergency exists, this act takes effect when passed and approved according to law.