

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 322

Introduced by Craighead, 6.

Read first time January 12, 2017

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-5016.01, 77-5023, 77-5026, and 77-5028, Reissue Revised Statutes
3 of Nebraska, and sections 77-5004, 77-5013, 77-5015, 77-5015.02, and
4 77-5018, Revised Statutes Cumulative Supplement, 2016; to change the
5 Tax Equalization and Review Commission Act as prescribed; and to
6 repeal the original sections.

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

1 Section 1. Section 77-5004, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 77-5004 (1) Each commissioner shall be a qualified voter and
4 resident of the state and a domiciliary of the district he or she
5 represents.

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

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

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

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

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

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

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

30 (3) At least one commissioner shall possess the certification,
31 qualifications, and ~~or~~ training required to become a certified general

1 ~~licensed residential~~ real property appraiser as set forth in section
2 76-2232 ~~76-2230~~.

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

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

11 (6) ~~(5)~~ No commissioner or employee of the commission shall hold any
12 position of profit or engage in any occupation or business interfering
13 with or inconsistent with his or her duties as a commissioner or
14 employee. A person is not eligible for appointment and may not hold the
15 office of commissioner or be appointed by the commission to or hold any
16 office or position under the commission if he or she holds any official
17 office or position.

18 (7) ~~(6)~~ Each commissioner shall annually attend a seminar or class
19 of at least two days' duration that is:

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

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

28 (8) ~~(7)~~ Each commissioner shall within two years after his or her
29 appointment attend at least thirty hours of instruction that constitutes
30 training for judges or administrative law judges.

31 (9) ~~(8)~~ The commissioners shall be considered employees of the state

1 for purposes of sections 81-1320 to 81-1328 and 84-1601 to 84-1615.

2 ~~(10)~~ (9) The commissioners shall be reimbursed as prescribed in
3 sections 81-1174 to 81-1177 for their actual and necessary expenses in
4 the performance of their official duties pursuant to the Tax Equalization
5 and Review Commission Act.

6 Sec. 2. Section 77-5013, Revised Statutes Cumulative Supplement,
7 2016, is amended to read:

8 77-5013 (1) The commission obtains exclusive jurisdiction over an
9 appeal or petition when:

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

12 (b) An appeal or petition is timely filed;

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

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

19 Only the requirements of this subsection shall be deemed
20 jurisdictional.

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

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

31 (a) For an appeal under subdivision (2), (4), (6), (7), (8), or (12)

1 of section 77-5007, the fee shall be fifty dollars;

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

6 (c) For an appeal under subdivision (9), (13), or (15) of section
7 77-5007 or any other is twenty-five dollars, except that no filing fee
8 shall be required for an appeal by a county assessor, the Tax
9 Commissioner, or the Property Tax Administrator acting in his or her
10 official capacity or a county board of equalization acting in its
11 official capacity, there shall be no filing fee.

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

14 Sec. 3. Section 77-5015, Revised Statutes Cumulative Supplement,
15 2016, is amended to read:

16 77-5015 In any case appealed to the commission, all parties shall be
17 afforded an opportunity for hearing after no less than sixty days'
18 reasonable notice. A party is required to notify the commission upon any
19 change to the party's contact information. The notice shall state the
20 time and place of the hearing. Included with the notice shall be a
21 written acknowledgement form that the appellant shall complete, sign, and
22 return to the commission. The completed acknowledgement form shall
23 include the appellant's acknowledgement of the date and time of the
24 hearing and an affirmation by the appellant that the appellant wishes to
25 proceed to a hearing on the case. Failure of the appellant to file the
26 completed acknowledgement form with the commission within thirty days
27 after receipt of the notice shall constitute a withdrawal of the case,
28 and the commission shall enter an order dismissing the appeal or
29 petition. A case that is dismissed pursuant to this section may be
30 reinstated only upon a showing of good cause by the appellant.
31 Opportunity shall be afforded all parties to present evidence and

1 argument. The commission shall prepare an official record, which includes
2 testimony and exhibits, in each case, but it shall not be necessary to
3 transcribe the record of the proceedings unless requested for purposes of
4 rehearing, in which event the transcript and record shall be furnished by
5 the commission upon request and tender of the cost of preparation.
6 Informal disposition may also be made of any case by stipulation, agreed
7 settlement, consent order, or default. All appeals and petitions must be
8 heard by the commission within eighteen months after filing unless
9 otherwise prescribed by law.

10 Sec. 4. Section 77-5015.02, Revised Statutes Cumulative Supplement,
11 2016, is amended to read:

12 77-5015.02 (1) A single commissioner may hear an appeal and cross
13 appeal and appeals and cross appeals consolidated with any such appeal
14 and cross appeal when:

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

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

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

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

30 (4) Documents necessary to establish jurisdiction of the commission
31 shall constitute the record of a proceeding before a single commissioner.

1 No recording shall be made of a proceeding before a single commissioner.

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

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

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

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

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

14 77-5016.01 Each appeal or petition filed with the commission shall
15 ~~be deemed to~~ include an oath, affirmation, or statement given by an owner
16 of the subject property or, if the appeal or petition is filed by the
17 state or a political subdivision, by an officer of the state or political
18 subdivision to the effect that the its representations contained in the
19 appeal or petition are true as far as the person executing or filing it
20 knows or should know. Any person who willfully falsifies any such
21 representation shall be guilty of perjury and shall, upon conviction
22 thereof, be punished as provided by section 28-915.

23 Sec. 6. Section 77-5018, Revised Statutes Cumulative Supplement,
24 2016, is amended to read:

25 77-5018 (1) The commission may issue decisions and orders which are
26 supported by the evidence and appropriate for resolving the matters in
27 dispute. Every final decision and order adverse to a party to the
28 proceeding, rendered by the commission in a case appealed to the
29 commission, shall be in writing or stated in the record and shall be
30 accompanied by findings of fact and conclusions of law. The findings of
31 fact shall consist of a concise statement of the conclusions upon each

1 contested issue of fact. Parties to the proceeding shall be notified of
2 the decision and order in person or by mail. A copy of the decision and
3 order shall be delivered or mailed to each party or his or her attorney
4 of record within thirty days after the hearing unless otherwise
5 prescribed by law. Within seven days of issuing a decision and order, the
6 commission shall electronically publish such decision and order on a web
7 site maintained by the commission that is accessible to the general
8 public. The full text of final decisions and orders shall be published on
9 the web site, except that final decisions and orders that are entered (a)
10 on a dismissal by the appellant or petitioner, (b) on a default order
11 when the appellant or petitioner failed to appear, (c) by agreement of
12 the parties, or (d) by a single commissioner pursuant to section
13 77-5015.02 may be published on the web site in a summary manner
14 identifying the parties, the case number, and the basis for the final
15 decision and order. Any decision rendered by the commission shall be
16 certified to the county treasurer and to the officer charged with the
17 duty of preparing the tax list, and if and when such decision becomes
18 final, such officers shall correct their records accordingly and the tax
19 list pursuant to section 77-1613.02.

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

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

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

31 77-5023 (1) Pursuant to section 77-5022, the commission shall have

1 the power to increase or decrease the value of a class or subclass of
2 real property in any county or taxing authority or of real property
3 valued by the state so that (a) all classes or subclasses of real
4 property in all counties fall within an acceptable range and (b) the
5 standards of uniformity are met for that class or subclass in that
6 county.

7 (2) For purposes of this section:

8 (a) Acceptable An ~~acceptable~~ range means is the percentage of
9 variation from a standard for valuation as measured by an established
10 indicator of central tendency of assessment. Acceptable ranges are: (i)
11 ~~(a)~~ For agricultural land and horticultural land as defined in section
12 77-1359, sixty-nine to seventy-five percent of actual value; (ii) ~~(b)~~ for
13 lands receiving special valuation, sixty-nine to seventy-five percent of
14 special valuation as defined in section 77-1343; and (iii) ~~(c)~~ for all
15 other real property, ninety-two to one hundred percent of actual value;
16 and -

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

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

29 (4) Any decrease or increase to a subclass of property shall also
30 cause the level of value determined by the commission for the class from
31 which the subclass is drawn to be (a) within the applicable acceptable

1 range and (b) in compliance with the standards of uniformity.

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

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

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

12 77-5026 Pursuant to section 77-5023, if the commission finds, based
13 upon a recommendation in the Property Tax Administrator's annual reports
14 and opinions, that the level of value of a class or subclass of real
15 property fails to satisfy the requirements of section 77-5023, the
16 commission shall issue a notice to the counties which it deems either
17 undervalued or overvalued and shall set a date for hearing at least
18 fifteen ~~five~~ days following the mailing of the notice unless notice is
19 waived. The notice unless waived shall be mailed to the county clerk,
20 county assessor, county attorney, and chairperson of the county board. At
21 the hearing the county assessor or other ~~legal~~ representatives of the
22 county may appear and show cause why the value of a class or subclass of
23 real property of the county should not be adjusted. An authorized A
24 county assessor or other legal representative of the county board of
25 equalization may waive notice of the hearing or consent to entry of an
26 order adjusting the value of a class or subclass of real property without
27 further notice. At the hearing, the commission may receive testimony from
28 any interested person.

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

31 77-5028 After a hearing conducted pursuant to section 77-5026, the

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

17 Sec. 10. Original sections 77-5016.01, 77-5023, 77-5026, and
18 77-5028, Reissue Revised Statutes of Nebraska, and sections 77-5004,
19 77-5013, 77-5015, 77-5015.02, and 77-5018, Revised Statutes Cumulative
20 Supplement, 2016, are repealed.