

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1135

Introduced by Murman, 38.

Read first time January 19, 2022

Committee: Judiciary

1 A BILL FOR AN ACT relating to conservation or preservation easements; to
2 amend sections 23-1506, 76-2,112, 76-2,113, 76-2,115, 76-2,117, and
3 77-5007, Reissue Revised Statutes of Nebraska, and section 77-202,
4 Revised Statutes Cumulative Supplement, 2020; to change provisions
5 relating to creating, approving or denying, recording, or enforcing
6 such easements; to change property tax exemptions relating to
7 easements; to harmonize provisions; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 23-1506, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 23-1506 The register of deeds shall have the custody of and safely
4 keep and preserve all books, records, maps, and papers kept or deposited
5 in his or her office. He or she shall also record or cause to be recorded
6 all deeds, mortgages, instruments, and writings presented to him or her
7 for recording and left with him or her for that purpose. Plats and
8 subdivisions are not authorized to be recorded if such plat or
9 subdivision has not been approved by the city council, the village board
10 of trustees, the agent of a city of the first or second class or of a
11 village designated pursuant to section 19-916, or the governing body of
12 the county, whichever is appropriate. Conservation or preservation
13 easements are not authorized to be recorded if such conservation or
14 preservation easement has not been approved by the appropriate governing
15 body pursuant to section 76-2,112. When such deeds, mortgages,
16 instruments, and writings are so recorded, it shall be the duty of the
17 register of deeds to proofread or cause to be proofread such records. If
18 an error should occur in recording any of the writings mentioned in this
19 section thereby necessitating the rerecording of same, the expense thus
20 incurred shall be paid out of the general fund of the county in the same
21 way as any other claim, and the amount so paid shall be collected from
22 the official responsible for the error or from his or her official bond.
23 The register of deeds shall prepare and file the required annual
24 inventory statement of county personal property in his or her custody or
25 possession as provided in sections 23-346 to 23-350.

26 Sec. 2. Section 76-2,112, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 76-2,112 (1) A conservation or preservation easement shall be an
29 interest in real property, created by an instrument in which the purpose
30 for the easement is clearly stated. The instrument shall be filed, duly
31 recorded, and indexed in the office of the register of deeds of the

1 county in which the real property subject to the conservation or
2 preservation easement is located.

3 (2) No conveyance of a conservation or preservation easement shall
4 be effective until accepted by the holder.

5 (3) In order to minimize conflicts with land-use planning, each
6 conservation or preservation easement shall be approved by the
7 appropriate governing body. Such approving body shall first refer the
8 proposed acquisition to and receive comments from the local planning
9 commission with jurisdiction over such property, which shall within
10 ninety ~~sixty~~ days of the referral provide such comments regarding the
11 conformity of the proposed acquisition to comprehensive planning for the
12 area. If such comments are not received within ninety ~~sixty~~ days, the
13 proposed acquisition shall be deemed denied ~~approved~~ by the local
14 planning commission. If the property is located partially or entirely
15 within the boundaries or zoning jurisdiction of a city or village,
16 approval of the governing body of such city or village shall be required.
17 If such property is located entirely outside the boundaries and zoning
18 jurisdiction of any city or village, approval of the county board shall
19 be required. If the property is located in the Niobrara scenic river
20 corridor as defined in section 72-2006 and is not incorporated within the
21 boundaries of a city or village, the Niobrara Council approval rather
22 than city, village, or county approval shall be required. Approval of a
23 proposed acquisition may also be denied upon a finding by the appropriate
24 governing body that the acquisition is not in the public interest when
25 the easement is inconsistent with (a) a comprehensive plan for the area
26 which had been officially adopted and was in force at the time of the
27 conveyance, (b) any national, state, regional, or local program
28 furthering conservation or preservation, or (c) any known proposal by a
29 governmental body for use of the land.

30 (4) Notwithstanding the provisions of subsection (3) of this
31 section, the state, or any state agency or political subdivision other

1 than a city, village, or county, may accept an easement after first
2 referring the proposed acquisition to and receiving comments from the
3 local planning commission with jurisdiction over the property, which
4 shall within ninety sixty days of the referral provide such comments
5 regarding the conformity of the proposed acquisition to comprehensive
6 planning for the area. If such comments are not received within ninety
7 sixty days, the proposed acquisition shall be deemed denied ~~approved~~ by
8 the local planning commission.

9 (5) Notice of the approval or denial by the appropriate governing
10 body as provided in subsections (3) and (4) of this section shall be sent
11 by the governing body to the owner of the land and the holder of the
12 conservation or preservation easement within seven days of the governing
13 body's decision.

14 (6) Protests of the denial of a conservation or preservation
15 easement by the appropriate governing body may be made to the county
16 board of equalization within thirty days after the notice is sent. All
17 provisions of section 77-1502, except dates for filing a protest, the
18 period for hearing protests, and the date for mailing notice of the
19 county board of equalization's decision, are applicable to any protest
20 filed pursuant to this section. The county board of equalization shall
21 issue its decision on the protest within thirty days after the filing of
22 the protest. Within seven days after the county board of equalization's
23 final decision, the county clerk shall mail to the protester written
24 notice of the decision. The notice shall contain a statement advising the
25 protester that a report of the decision is available at the office of the
26 county clerk.

27 (7) The action of the county board of equalization upon a protest
28 filed pursuant to subsection (6) of this section may be appealed to the
29 Tax Equalization and Review Commission within thirty days after the
30 county board of equalization's final decision.

31 Sec. 3. Section 76-2,113, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 76-2,113 (1) A conservation or preservation easement may be released
3 by the holder of the easement to the owner of the servient estate,~~except~~
4 ~~that such release shall be approved by the governing body which approved~~
5 ~~the easement, or if the holder is the state, a state agency, or political~~
6 ~~subdivision other than a city, village, or county, the release shall be~~
7 ~~approved by the state or such state agency or political subdivision. The~~
8 ~~release of an easement may be approved upon a finding by such body that~~
9 ~~the easement no longer substantially achieves the conservation or~~
10 ~~preservation purpose for which it was created.~~

11 (2) A conservation or preservation easement may be assigned or
12 transferred to any governmental body or charitable corporation or trust
13 authorized to secure such easement pursuant to sections 76-2,111 to
14 76-2,118.

15 Sec. 4. Section 76-2,115, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 76-2,115 No duly recorded conservation or preservation easement
18 shall be unenforceable for lack of privity of estate or of contract, for
19 lack of benefit to a dominant estate, or on account of the easement being
20 assignable. The duration of the conservation or preservation easement
21 shall be stated in the instrument creating the easement and the stated
22 duration may not exceed ninety-nine years. At the transfer of ownership,
23 or within six months of the stated end of the conservation or
24 preservation easement, the landowner or holder of the easement may extend
25 the duration of the easement by an instrument in which the purpose for
26 the easement and extended duration is clearly stated. The instrument
27 extending the easement must first be approved by the appropriate
28 governing body as provided in section 76-2,112 A conservation or
29 preservation easement shall run with the land and shall be perpetual
30 unless otherwise stated in the instrument creating it. A conservation or
31 preservation easement may be enforced by proceedings at law or in equity.

1 Sec. 5. Section 76-2,117, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 76-2,117 (1) The provisions of sections 76-2,111 to 76-2,118 do not
4 render invalid or unenforceable any otherwise valid restriction,
5 easement, covenant, or condition whether created before or after the
6 enactment of sections 76-2,111 to 76-2,118.

7 (2) Nothing in sections 76-2,111 to 76-2,118 shall diminish the
8 powers granted in any other law to acquire by purchase, gift, grant,
9 eminent domain, or otherwise and to use interests in real property for
10 public purposes.

11 (3) If property subject to a conservation or preservation easement
12 is condemned for public use, ~~that part of the easement which conflicts~~
13 ~~with the condemnation~~ shall terminate as of the time of the condemnation.
14 If the easement was obtained by gift or devise the owner shall be
15 entitled to such compensation for the taking as if the property had not
16 been subject to the easement and if the easement was obtained by purchase
17 or exchange, the holder shall be entitled to just compensation for the
18 taking of the easement.

19 (4) An entity having the power of eminent domain may, through
20 agreement with the owner of the servient estate and the holder of the
21 conservation or preservation easement, acquire an easement over the land
22 for the purpose of providing utility services.

23 Sec. 6. Section 77-202, Revised Statutes Cumulative Supplement,
24 2020, is amended to read:

25 77-202 (1) The following property shall be exempt from property
26 taxes:

27 (a) Property of the state and its governmental subdivisions to the
28 extent used or being developed for use by the state or governmental
29 subdivision for a public purpose. For purposes of this subdivision:

30 (i) Property of the state and its governmental subdivisions means
31 (A) property held in fee title by the state or a governmental subdivision

1 or (B) property beneficially owned by the state or a governmental
2 subdivision in that it is used for a public purpose and is being acquired
3 under a lease-purchase agreement, financing lease, or other instrument
4 which provides for transfer of legal title to the property to the state
5 or a governmental subdivision upon payment of all amounts due thereunder.
6 If the property to be beneficially owned by a governmental subdivision
7 has a total acquisition cost that exceeds the threshold amount or will be
8 used as the site of a public building with a total estimated construction
9 cost that exceeds the threshold amount, then such property shall qualify
10 for an exemption under this section only if the question of acquiring
11 such property or constructing such public building has been submitted at
12 a primary, general, or special election held within the governmental
13 subdivision and has been approved by the voters of the governmental
14 subdivision. For purposes of this subdivision, threshold amount means the
15 greater of fifty thousand dollars or six-tenths of one percent of the
16 total actual value of real and personal property of the governmental
17 subdivision that will beneficially own the property as of the end of the
18 governmental subdivision's prior fiscal year; and

19 (ii) Public purpose means use of the property (A) to provide public
20 services with or without cost to the recipient, including the general
21 operation of government, public education, public safety, transportation,
22 public works, civil and criminal justice, public health and welfare,
23 developments by a public housing authority, parks, culture, recreation,
24 community development, and cemetery purposes, or (B) to carry out the
25 duties and responsibilities conferred by law with or without
26 consideration. Public purpose does not include leasing of property to a
27 private party unless the lease of the property is at fair market value
28 for a public purpose. Leases of property by a public housing authority to
29 low-income individuals as a place of residence are for the authority's
30 public purpose;

31 (b) Unleased property of the state or its governmental subdivisions

1 which is not being used or developed for use for a public purpose but
2 upon which a payment in lieu of taxes is paid for public safety, rescue,
3 and emergency services and road or street construction or maintenance
4 services to all governmental units providing such services to the
5 property. Except as provided in Article VIII, section 11, of the
6 Constitution of Nebraska, the payment in lieu of taxes shall be based on
7 the proportionate share of the cost of providing public safety, rescue,
8 or emergency services and road or street construction or maintenance
9 services unless a general policy is adopted by the governing body of the
10 governmental subdivision providing such services which provides for a
11 different method of determining the amount of the payment in lieu of
12 taxes. The governing body may adopt a general policy by ordinance or
13 resolution for determining the amount of payment in lieu of taxes by
14 majority vote after a hearing on the ordinance or resolution. Such
15 ordinance or resolution shall nevertheless result in an equitable
16 contribution for the cost of providing such services to the exempt
17 property;

18 (c) Property owned by and used exclusively for agricultural and
19 horticultural societies;

20 (d) Property, excluding conservation or preservation easements as
21 defined in section 76-2,111, owned by educational, religious, charitable,
22 or cemetery organizations, or any organization for the exclusive benefit
23 of any such educational, religious, charitable, or cemetery organization,
24 and used exclusively for educational, religious, charitable, or cemetery
25 purposes, when such property is not (i) owned or used for financial gain
26 or profit to either the owner or user, (ii) used for the sale of
27 alcoholic liquors for more than twenty hours per week, or (iii) owned or
28 used by an organization which discriminates in membership or employment
29 based on race, color, or national origin. For purposes of this
30 subdivision, educational organization means (A) an institution operated
31 exclusively for the purpose of offering regular courses with systematic

1 instruction in academic, vocational, or technical subjects or assisting
2 students through services relating to the origination, processing, or
3 guarantying of federally reinsured student loans for higher education or
4 (B) a museum or historical society operated exclusively for the benefit
5 and education of the public. For purposes of this subdivision, charitable
6 organization includes an organization operated exclusively for the
7 purpose of the mental, social, or physical benefit of the public or an
8 indefinite number of persons and a fraternal benefit society organized
9 and licensed under sections 44-1072 to 44-10,109; and

10 (e) Household goods and personal effects not owned or used for
11 financial gain or profit to either the owner or user.

12 (2) The increased value of land by reason of shade and ornamental
13 trees planted along the highway shall not be taken into account in the
14 valuation of land.

15 (3) Tangible personal property which is not depreciable tangible
16 personal property as defined in section 77-119 shall be exempt from
17 property tax.

18 (4) Motor vehicles, trailers, and semitrailers required to be
19 registered for operation on the highways of this state shall be exempt
20 from payment of property taxes.

21 (5) Business and agricultural inventory shall be exempt from the
22 personal property tax. For purposes of this subsection, business
23 inventory includes personal property owned for purposes of leasing or
24 renting such property to others for financial gain only if the personal
25 property is of a type which in the ordinary course of business is leased
26 or rented thirty days or less and may be returned at the option of the
27 lessee or renter at any time and the personal property is of a type which
28 would be considered household goods or personal effects if owned by an
29 individual. All other personal property owned for purposes of leasing or
30 renting such property to others for financial gain shall not be
31 considered business inventory.

1 (6) Any personal property exempt pursuant to subsection (2) of
2 section 77-4105 or section 77-5209.02 shall be exempt from the personal
3 property tax.

4 (7) Livestock shall be exempt from the personal property tax.

5 (8) Any personal property exempt pursuant to the Nebraska Advantage
6 Act or the Imagine Nebraska Act shall be exempt from the personal
7 property tax.

8 (9) Any depreciable tangible personal property used directly in the
9 generation of electricity using wind as the fuel source shall be exempt
10 from the property tax levied on depreciable tangible personal property.
11 Any depreciable tangible personal property used directly in the
12 generation of electricity using solar, biomass, or landfill gas as the
13 fuel source shall be exempt from the property tax levied on depreciable
14 tangible personal property if such depreciable tangible personal property
15 was installed on or after January 1, 2016, and has a nameplate capacity
16 of one hundred kilowatts or more. Depreciable tangible personal property
17 used directly in the generation of electricity using wind, solar,
18 biomass, or landfill gas as the fuel source includes, but is not limited
19 to, wind turbines, rotors and blades, towers, solar panels, trackers,
20 generating equipment, transmission components, substations, supporting
21 structures or racks, inverters, and other system components such as
22 wiring, control systems, switchgears, and generator step-up transformers.

23 (10) Any tangible personal property that is acquired by a person
24 operating a data center located in this state, that is assembled,
25 engineered, processed, fabricated, manufactured into, attached to, or
26 incorporated into other tangible personal property, both in component
27 form or that of an assembled product, for the purpose of subsequent use
28 at a physical location outside this state by the person operating a data
29 center shall be exempt from the personal property tax. Such exemption
30 extends to keeping, retaining, or exercising any right or power over
31 tangible personal property in this state for the purpose of subsequently

1 transporting it outside this state for use thereafter outside this state.
2 For purposes of this subsection, data center means computers, supporting
3 equipment, and other organized assembly of hardware or software that are
4 designed to centralize the storage, management, or dissemination of data
5 and information, environmentally controlled structures or facilities or
6 interrelated structures or facilities that provide the infrastructure for
7 housing the equipment, such as raised flooring, electricity supply,
8 communication and data lines, Internet access, cooling, security, and
9 fire suppression, and any building housing the foregoing.

10 (11) For tax years prior to tax year 2020, each person who owns
11 property required to be reported to the county assessor under section
12 77-1201 shall be allowed an exemption amount as provided in the Personal
13 Property Tax Relief Act. For tax years prior to tax year 2020, each
14 person who owns property required to be valued by the state as provided
15 in section 77-601, 77-682, 77-801, or 77-1248 shall be allowed a
16 compensating exemption factor as provided in the Personal Property Tax
17 Relief Act.

18 Sec. 7. Section 77-5007, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 77-5007 The commission has the power and duty to hear and determine
21 appeals of:

22 (1) Decisions of any county board of equalization equalizing the
23 value of individual tracts, lots, or parcels of real property so that all
24 real property is assessed uniformly and proportionately;

25 (2) Decisions of any county board of equalization granting or
26 denying tax-exempt status for real or personal property or an exemption
27 from motor vehicle taxes and fees;

28 (3) Decisions of the Tax Commissioner determining the taxable
29 property of a railroad company, car company, public service entity, or
30 air carrier within the state;

31 (4) Decisions of the Tax Commissioner determining adjusted valuation

1 pursuant to section 79-1016;

2 (5) Decisions of any county board of equalization on the valuation
3 of personal property or any penalties imposed under sections 77-1233.04
4 and 77-1233.06;

5 (6) Decisions of any county board of equalization on claims that a
6 levy is or is not for an unlawful or unnecessary purpose or in excess of
7 the requirements of the county;

8 (7) Decisions of any county board of equalization granting or
9 rejecting an application for a homestead exemption;

10 (8) Decisions of the Department of Motor Vehicles determining the
11 taxable value of motor vehicles pursuant to section 60-3,188;

12 (9) Decisions of the Tax Commissioner made under section 77-1330;

13 (10) Any other decision of any county board of equalization;

14 (11) Any other decision of the Tax Commissioner regarding property
15 valuation, exemption, or taxation;

16 (12) Decisions of the Tax Commissioner pursuant to section 77-3520;

17 (13) Final decisions of a county board of equalization appealed by
18 the Tax Commissioner or Property Tax Administrator pursuant to section
19 77-701;

20 (14) Determinations of the Rent-Restricted Housing Projects
21 Valuation Committee regarding the capitalization rate to be used to value
22 rent-restricted housing projects pursuant to section 77-1333 or the
23 requirement under such section that an income-approach calculation be
24 used by county assessors to value rent-restricted housing projects;

25 (15) Final decisions of any county board of equalization denying a
26 conservation or preservation easement under section 76-2,112;

27 (16) ~~(15)~~ The requirement under section 77-1314 that the income
28 approach, including the use of a discounted cash-flow analysis, be used
29 by county assessors; and

30 (17) ~~(16)~~ Any other decision, determination, action, or order from
31 which an appeal to the commission is authorized.

1 The commission has the power and duty to hear and grant or deny
2 relief on petitions.

3 Sec. 8. Original sections 23-1506, 76-2,112, 76-2,113, 76-2,115,
4 76-2,117, and 77-5007, Reissue Revised Statutes of Nebraska, and section
5 77-202, Revised Statutes Cumulative Supplement, 2020, are repealed.