

LEGISLATIVE BILL 263

Approved by the Governor March 9, 2005

Introduced by Landis, 46

AN ACT relating to revenue and taxation; to amend sections 77-101, 77-202.02, 77-202.12, 77-1311, 77-1331, 77-1347, 77-1504, and 77-1507, Reissue Revised Statutes of Nebraska, and sections 23-125, 77-1303, 77-1345.01, 77-5027, and 79-1016, Revised Statutes Supplement, 2004; to define a term; to change provisions relating to property taxes and property valuation for state aid to schools; 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 23-125, Revised Statutes Supplement, 2004, is amended to read:

23-125. Whenever the county board deems it necessary to assess taxes the aggregate of which exceeds the rate of fifty cents on every one hundred dollars of the taxable value of all the taxable property in such county, the county board may, by an order entered of record, set forth substantially the amount of such excess required and the purpose for which the same will be required, and if for the payment of interest, principal, or both upon bonds, such order shall in a general way designate the bonds and specify the number of years such excess must be levied and provide for the submission of the question of assessing the additional rate required to a vote of the people of the county at the next election for county officers after the adoption of the resolution or at a special election ordered by the county board for that purpose. If the proposition for such additional tax is carried, the same shall be paid in money and in no other manner. The additional tax shall not have a duration greater than five years, except that such five-year limitation shall not apply to any additional tax approved by the voters of the county for payment of principal and interest on bonded indebtedness. The additional tax is excluded from the limitation in section 77-3442 as provided by section 77-3444.

Sec. 2. Section 77-101, Reissue Revised Statutes of Nebraska, is amended to read:

77-101. For purposes of Chapter 77 and any statutes dealing with taxation, unless the context otherwise requires, the definitions found in sections 77-102 to 77-131 and section 3 of this act shall be used.

Sec. 3. Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section. Parcel also means an improvement on leased land. If all or several lots in the same block are owned by the same person and are contained in the same tax district, they may be included in one parcel.

Sec. 4. Section 77-202.02, Reissue Revised Statutes of Nebraska, is amended to read:

77-202.02. The county board of equalization, between February 1 and June 1 after a hearing on ten days' notice to the applicant and the publication of notice as provided in section 77-202.01, and after considering the recommendation of the county assessor and any other information it may obtain from public testimony, shall grant or withhold tax exemption for the real property or tangible personal property on the basis of law and of regulations promulgated by the Property Tax Administrator. ~~The board shall certify its decision to the applicant and the county assessor within ten days thereafter.~~

For applications accepted after approval of a waiver pursuant to section 77-202.01, the county board of equalization shall hear and certify its decision on or before August 15.

Sec. 5. Section 77-202.12, Reissue Revised Statutes of Nebraska, is amended to read:

77-202.12. (1) On or before March 1, the county assessor shall send notice to the state or to any governmental subdivision if it has property not being used for a public purpose upon which a payment in lieu of taxes is not made. Such notice shall inform the state or governmental subdivision that the property will be subject to taxation for property tax purposes. The written notice shall contain the legal description of the property and be given by first-class mail addressed to the state's or governmental subdivision's last-known address. If the property is leased by the state or the governmental subdivision to another entity and the lessor does not intend to

pay the taxes for the lessee as allowed under subsection (4) of section 77-202.11, the lessor shall immediately forward the notice to the lessee.

(2) The state, governmental subdivision, or lessee may protest the determination of the county assessor that the property is not used for a public purpose to the county board of equalization on or before April 1. The county board of equalization shall issue its decision on the protest on or before May 1.

(3) The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission on or before June 1. The Property Tax Administrator in his or her discretion may intervene in an appeal pursuant to this section.

Sec. 6. (1) The county assessor shall perform an income-approach calculation for all rent-restricted housing projects constructed to allow an allocation of low-income housing tax credits under section 42 of the Internal Revenue Code and approved by the Nebraska Investment Finance Authority when considering the assessed valuation to place on the property for each assessment year. The income-approach calculation shall be consistent with any rules and regulations adopted and promulgated by the Property Tax Administrator and shall comply with professionally accepted mass appraisal techniques. Any low-income housing tax credits authorized under section 42 of the Internal Revenue Code that were granted to owners of the project shall not be considered income for purposes of the calculation but may be considered in determining the capitalization rate to be used when capitalizing the income stream. The county assessor, in determining the actual value of any specific property, may consider other methods of determining value that are consistent with professionally accepted mass appraisal methods described in section 77-112.

(2) The owner of a rent-restricted housing project shall file a statement with the county assessor on or before October 1 of each year that details income and expense data for the prior year, a description of any land-use restrictions, and such other information as the county assessor may require.

Sec. 7. Section 77-1303, Revised Statutes Supplement, 2004, is amended to read:

77-1303. (1) On or before March 19 of each year, the county assessor or county clerk shall make up an assessment roll of the taxable real property in the county.

~~(2) If a whole section, half section, quarter section, or half quarter section belongs to the same owner, it shall be included in one description. If all the lots in the same block belong to the same owner, they shall be included in one description. If several adjoining lots in the same block belong to the same owner, they shall be included in one description. If any item of real property is situated in more than one tax district, the portion thereof in each district shall be listed separately.~~

~~(3) The county assessor or county clerk shall enter in the proper column, opposite each respective item parcel, the name of the owner thereof so far as he or she is able to ascertain the same. The assessment roll shall contain columns in which may be shown the number of acres or lots and the value thereof, the improvements and the value thereof, the total value of the acres or lots and improvements, and the improvements on leased lands and the value and owner thereof and such other columns as may be required.~~

Sec. 8. Section 77-1311, Reissue Revised Statutes of Nebraska, is amended to read:

77-1311. The county assessor shall have general supervision over and direction of the assessment of all property in his or her county. In addition to the other duties provided by law, the county assessor shall:

(1) ~~Annually revise the real property assessment for the correction of errors; and, when properties have been assessed as entities and afterward part or parts transferred to other parties, set off and apportion to each its just and equitable portion of the valuation;~~

(2) When a parcel has been assessed and thereafter part or parts are transferred to a different ownership, set off and apportion to each its just and equitable portion of the assessment;

(3) Obey all rules and regulations made under Chapter 77 and the instructions and orders sent out by the Property Tax Administrator and the Tax Equalization and Review Commission;

~~(4) Examine the records in the office of the register of deeds and county clerk for the purpose of ascertaining whether mortgages on real property and security interests on personal property, producing mineral leases, title notes, contracts, and bills of sale, intended to operate as a lien in the county, have been fully and correctly listed and add to the assessment roll any which have been omitted, belonging to residents of his or~~

her county, and not otherwise assessed, upon notice to the owner thereof or his or her agents;

(4) Examine the records in the office of the county judge and ascertain whether the property belonging to minors, persons with mental retardation or a mental disorder, and estates of deceased persons has been fully and correctly listed and add to or change any such assessments so that the same shall be fully assessed;

(5) Examine the records in the office of the clerk of the district court to ascertain whether any judgments or liens thereon filed, belonging to residents of his or her county and not otherwise assessed, have been omitted from the assessment rolls and, in case of any such omission, add the same to the assessment roll after notice to the owner, the property described in producing mineral leases, contracts, and bills of sale, have been fully and correctly listed and add to the assessment roll any property which has been omitted; and

(6) (5) Prepare the assessment roll as defined in section 77-129 and described in section 77-1303. +

(7) Provide access to the public to property record cards and allow facsimiles to be reproduced at cost to the requesting individual; and

(8) Submit a plan of assessment to the county board of equalization and the Department of Property Assessment and Taxation on or before September 1, 2001, and every five years thereafter. The county assessor shall update the plan each year between the adoption of each five-year plan. The plan and any update shall examine the level, quality, and uniformity of assessment in the county and may utilize a progress report developed by the department and presented to the county assessor on or before July 31. The progress report is to be based on reports and statistics developed by class and subclass of real property for each county. The plan of assessment shall address issues of level, quality, and uniformity of assessment, including those outlined in the progress report, and shall propose actions to be taken for the following years to assure uniform and proportionate assessments that are within the statutory and administrative guidelines for the level and quality of assessment.

Sec. 9. The county assessor shall, on or before June 15 each year, prepare a plan of assessment which shall describe the assessment actions the county assessor plans to make for the next assessment year and two years thereafter. The plan shall indicate the classes or subclasses of real property that the county assessor plans to examine during the years contained in the plan of assessment. The plan shall describe all the assessment actions necessary to achieve the levels of value and quality of assessment practices required by law and the resources necessary to complete those actions. The plan shall be presented to the county board of equalization on or before July 31 each year. The county assessor may amend the plan, if necessary, after the budget is approved by the county board. A copy of the plan and any amendments thereto shall be mailed to the Department of Property Assessment and Taxation on or before October 31 each year.

Sec. 10. Section 77-1331, Reissue Revised Statutes of Nebraska, is amended to read:

77-1331. The Pursuant to rules and regulations, the Property Tax Administrator shall, on or before July 1, 2007, develop, maintain, and enforce a uniform system of statewide applicability for the preparation of statewide structure for record identification codes, property record cards, property record files, assessment rolls, and tax rolls through data processing facilities as needed by the county or multicounty assessment district pursuant to rules and regulations and other administrative reports required for the administration of the property assessment process. The Property Tax Administrator shall not require the use of specific computer software or hardware if the an existing system produces data and reports in compliance with the rules and regulations of the Property Tax Administrator.

Sec. 11. Section 77-1345.01, Revised Statutes Supplement, 2004, is amended to read:

77-1345.01. (1) On or before July 15 in the year of application, the county assessor shall approve or deny the application for special valuation filed pursuant to section 77-1345. On or before July 22, the county assessor shall send notification of his or her action to the applicant by regular mail to the address on the application issue notice of approval or denial.

(2) If the application is approved, the county assessor shall value the land as provided in section 77-1344.

(2) If the application is denied, the applicant may protest the denial to the county board of equalization on or before August 15. The protest shall be in writing and filed with the county clerk. The county board of equalization shall decide the protest on or before September 15. The

county clerk shall mail notice of the board's decision to the applicant within seven days after the date of the decision. If the protest is denied, the notice shall state the reason for denial.

(3) The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the date of the decision by the county assessor, the land shall be valued as provided in section 77-1344 and, on or before July 22, the county board of equalization shall send a property valuation notice for special value and recapture value to the owner and, if not the same, the applicant. Within thirty days after the mailing of the notice, a written protest of the special value or recapture value may be filed.

(3) (a) If the application is denied by the assessor, a written protest of the denial of the application may be filed within thirty days after the mailing of the denial.

(b) If the denial of an application for special valuation is reversed on appeal and the application is approved, the land shall be valued as provided in section 77-1344 and the county board of equalization shall send the property valuation notice for special value and recapture value to the owner and, if not the same, the applicant or his or her successor in interest, within fourteen days after the date of the final order. Within thirty days after the mailing of the notice, a written protest of the special value or recapture value may be filed.

(4) If the county board of equalization takes action pursuant to section 77-1504 or 77-1507 and the taxpayer filed an application for special valuation pursuant to subsection (3) of section 77-1345, the county assessor shall approve or deny the application within fifteen days after the filing of the application and issue notice of the approval or denial as prescribed in subsection (1) of this section. If the application is denied, the applicant may protest the denial to the county board of equalization within thirty days after the mailing of the notice of the action of the county assessor. The protest shall be in writing and filed with the county clerk. The county board of equalization shall decide the protest within thirty days after the filing of the protest by the applicant. The applicant may appeal the decision of the county board of equalization to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the date of the decision by the county assessor, a written protest of the denial may be filed within thirty days of the mailing of the denial.

(5) The assessor shall mail notice of any action taken by him or her on an application to the owner and the applicant if different than the owner.

(6) All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section.

(7) The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest.

(8) The clerk shall mail a copy of any decision made by the county board of equalization on a protest filed pursuant to this section to the owner and the applicant if different than the owner within seven days after the board's decision.

(9) Any decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission, in accordance with section 77-5013, within thirty days after the date of the decision.

Sec. 12. Section 77-1347, Reissue Revised Statutes of Nebraska, is amended to read:

77-1347. Upon approval of an application, the county assessor shall value the land as provided in section 77-1344 until the land becomes disqualified for such valuation by:

(1) Written notification by the taxpayer to the assessor to remove such special valuation;

(2) Sale or transfer to an ownership making it exempt from property taxation;

(3) Sale or transfer to the state or its political subdivisions, unless the land continues to qualify as agricultural or horticultural land;

(4) A change in zoning so that the land is no longer zoned predominantly for agricultural or horticultural use;

(5) Except as provided in subsection (2) of section 77-1344, inclusion of the land within the corporate boundaries of any sanitary and improvement district, city, or village; or

(6) The land is no longer used for agricultural or horticultural purposes.

Sec. 13. Section 77-1504, Reissue Revised Statutes of Nebraska, is

amended to read:

77-1504. The county board of equalization may meet on or after June 1 and on or before July 25 to consider and correct the current year's assessment of any real property which has been undervalued, or overvalued, ~~or omitted.~~ The board shall give notice of the assessed value to the record owner or agent at his or her last-known address.

The county board of equalization in taking action pursuant to this section may consider the reports of the county assessor pursuant to sections 77-1315.01 and 77-1317 or any other documented information known to any member of the board.

Action of the county board of equalization pursuant to this section shall be for the current assessment year only.

The action of the county board of equalization may be protested to the board within thirty days after the mailing of the notice required by this section. If no protest is filed, the action of the board shall be final. If a protest is filed, the county board of equalization shall hear the protest in the manner prescribed in section 77-1502, except that all protests shall be heard and decided on or before September 15.

The action of the county board of equalization upon a protest filed pursuant to this section may be appealed to the Tax Equalization and Review Commission on or before October 15.

Sec. 14. Section 77-1507, Reissue Revised Statutes of Nebraska, is amended to read:

77-1507. (1) The county board of equalization may meet at any time for the purpose of assessing any omitted real property which was not reported to the county assessor pursuant to section 77-1318.01 and for clerical errors as defined in section 77-128 that result in a change of valuation. The county board of equalization shall give notice of the assessed value of the real property to the record owner or agent at his or her last-known address. For real property which has been omitted in the current year, the county board of equalization shall not send notice pursuant to this section on or before June 1.

Protests of the value proposed for omitted real property pursuant to this section and or a correction for clerical errors shall be filed with the county board of equalization within thirty days after the mailing of the notice. The procedures for filing a protest under this section shall be the same as those in section 77-1502 except for date restrictions. All provisions of section 77-1502 except dates for filing a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section.

(2) The county clerk shall, within seven days after the board's final decision, send:

(a) For protested action, a notification to the protester of the board's final action; and

(b) For protested and nonprotested action, a report to the Property Tax Administrator which shall state the description of the property, the reason such property was not assessed pursuant to section 77-1301, and a statement of the board's justification for its action. A copy of the report shall be available for public inspection in the office of the county clerk.

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

(4) No omitted real property which was properly reported to the county assessor pursuant to section 77-1318.01 shall be added to the assessment roll after July 25 of the year or years in which the property was omitted. Improvements to real property which were properly reported to the county assessor pursuant to section 77-1318.01 shall only be added to the assessment roll by the county board of equalization from June 1 through July 25.

Sec. 15. Section 77-5027, Revised Statutes Supplement, 2004, is amended to read:

77-5027. (1) The commission shall, pursuant to section 77-5026, raise or lower the valuation of any class or subclass of real property in a county when it is necessary to achieve equalization.

(2) On or before nineteen days following the final filing due date for the abstract of assessment for real property pursuant to section 77-1514, the Property Tax Administrator shall prepare and deliver to the commission and to each county assessor his or her annual reports and opinions.

(3) The annual reports and opinions of the Property Tax Administrator shall contain statistical and narrative reports informing the commission of the level of value and the quality of assessment of the classes

and subclasses of real property within the county and ~~certify his or her opinion~~ a certification of the opinion of the Property Tax Administrator regarding the level of value and quality of assessment of the classes and subclasses of real property in the county.

(4) In addition to an opinion of level of value and quality of assessment in the county, the Property Tax Administrator may make nonbinding recommendations for consideration by the commission.

(5) The Property Tax Administrator shall, for preparation of his or her reports and certification, employ the methods specified in section 77-112, the sales-assessment comprehensive assessment ratio study specified in section 77-1327, other statistical studies, and studies an analysis of the assessment practices of a county. The employed by the county assessor. If necessary to determine the level of value and quality of assessment in a county, the Property Tax Administrator may employ transfers use sales of comparable real property in market areas similar to the county or area in question or from another county as indicators of the level of value and the quality of assessment in a county. The Property Tax Administrator may use any other relevant matter information in providing information the annual reports and opinions to the commission.

Sec. 16. Section 79-1016, Revised Statutes Supplement, 2004, is amended to read:

79-1016. (1) On or before August 25, the county assessor shall certify to the Property Tax Administrator the total taxable value by school district in the county for the current assessment year on forms prescribed by the Property Tax Administrator. The county assessor may amend the filing for changes made to the taxable valuation of the school district in the county if corrections or errors on the original certification are discovered. Amendments shall be certified to the Property Tax Administrator on or before September 30.

(2) On or before October 10, the Property Tax Administrator shall compute and certify to the State Department of Education the adjusted valuation for the current assessment year for each class of property in each school district and each local system. The adjusted valuation of property for each school district and each local system, for purposes of determining state aid pursuant to the Tax Equity and Educational Opportunities Support Act, shall reflect as nearly as possible state aid value as defined in subsection (3) of this section. The Property Tax Administrator shall notify each school district and each local system of its adjusted valuation for the current assessment year by class of property on or before October 10. Establishment of the adjusted valuation shall be based on the taxable value certified by the county assessor for each school district in the county adjusted by the determination of the level of value for each school district from an analysis of the comprehensive assessment ratio study or other studies developed by the Property Tax Administrator, in compliance with professionally accepted mass appraisal techniques, as required by section 77-1327. The Property Tax Administrator shall adopt and promulgate rules and regulations setting forth standards for the determination of level of value for school aid purposes.

(3) For purposes of this section, state aid value means:

(a) For real property other than agricultural and horticultural land, one hundred percent of actual value;

(b) For agricultural and horticultural land, eighty percent of actual value as provided in sections 77-1359 to 77-1363. For agricultural and horticultural land that receives special valuation pursuant to section 77-1344, eighty percent of special valuation as defined in section 77-1343; and

(c) For personal property, the net book value as defined in section 77-120.

(4) On or before November 10, any local system may file with the Property Tax Administrator written objections to the adjusted valuations prepared by the Property Tax Administrator, stating the reasons why such adjusted valuations are not the valuations required by subsection (3) of this section. The Property Tax Administrator shall fix a time for a hearing. Either party shall be permitted to introduce any evidence in reference thereto. On or before January 1, the Property Tax Administrator shall enter a written order modifying or declining to modify, in whole or in part, the adjusted valuations and shall certify the order to the State Department of Education. Modification by the Property Tax Administrator shall be based upon the evidence introduced at hearing and shall not be limited to the modification requested in the written objections or at hearing. A copy of the written order shall be mailed to the local system within seven days after the date of the order. The written order of the Property Tax Administrator may be appealed within thirty days after the date of the order to the Tax

Equalization and Review Commission in accordance with section 77-5013.

(5) On or before November 10, any local system or county official may file with the Property Tax Administrator a written request for a nonappealable correction of the adjusted valuation due to clerical error or, for agricultural and horticultural land, assessed value changes by reason of land qualified or disqualified for special use valuation pursuant to sections 77-1343 to 77-1348. For purposes of this subsection, clerical error means transposition of numbers, allocation of value to the wrong school district, mathematical error, and omitted value. On or before the following January 1, the Property Tax Administrator shall approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from such action to the State Department of Education.

(6) On or before ~~June 30~~ May 31 of the year following the certification of adjusted valuation pursuant to subsection (2) of this section, any local system or county official may file with the Property Tax Administrator a written request for a nonappealable correction of the adjusted valuation due to changes to the tax list that change the assessed value of taxable property. Upon the filing of the written request, the Property Tax Administrator shall require the county assessor to recertify the taxable valuation by school district in the county on forms prescribed by the Property Tax Administrator. The recertified valuation shall be the valuation that was certified on the tax list, pursuant to section 77-1613, increased or decreased by changes to the tax list that change the assessed value of taxable property in the school district in the county in the prior assessment year. On or before the following July 31, the Property Tax Administrator shall approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from such action to the State Department of Education.

(7) No injunction shall be granted restraining the distribution of state aid based upon the adjusted valuations pursuant to this section.

(8) A school district whose state aid is to be calculated pursuant to subsection (5) of this section and whose state aid payment is postponed as a result of failure to calculate state aid pursuant to such subsection may apply to the state board for lump-sum payment of such postponed state aid. Such application may be for any amount up to one hundred percent of the postponed state aid. The state board may grant the entire amount applied for or any portion of such amount. The state board shall notify the Director of Administrative Services of the amount of funds to be paid in a lump sum and the reduced amount of the monthly payments. The Director of Administrative Services shall, at the time of the next state aid payment made pursuant to section 79-1022, draw a warrant for the lump-sum amount from appropriated funds and forward such warrant to the district.

Sec. 17. Original sections 77-101, 77-202.02, 77-202.12, 77-1311, 77-1331, 77-1347, 77-1504, and 77-1507, Reissue Revised Statutes of Nebraska, and sections 23-125, 77-1303, 77-1345.01, 77-5027, and 79-1016, Revised Statutes Supplement, 2004, are repealed.

Sec. 18. Since an emergency exists, this act takes effect when passed and approved according to law.