

AMENDMENTS TO LB1087

(Amendments to E & R amendments, ER178)

Introduced by Harr

1           1. Strike section 22 and insert the following new  
2 sections:

3           Section 1. Section 77-1333, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           77-1333 (1) The Legislature finds that:

6           (a) The provision of safe, decent, and affordable housing  
7 to all residents of the State of Nebraska is a matter of public  
8 concern and represents a legitimate and compelling state need,  
9 affecting the general welfare of all residents;

10          (b) Rent-restricted housing projects effectively provide  
11 safe, decent, and affordable housing for residents of Nebraska;

12          (c) Such projects are restricted by federal law as to the  
13 rents paid by the tenants thereof;

14          (d) Of all the professionally accepted mass appraisal  
15 methodologies, which include the sales comparison approach, the  
16 income approach, and the cost approach, the utilization of  
17 the income-approach methodology results in the most accurate  
18 determination of the actual value of such projects; and

19          (e) This section is intended to (i) further the provision  
20 of safe, decent, and affordable housing to all residents of  
21 Nebraska and (ii) comply with Article VIII, section 1, of  
22 the Constitution of Nebraska, which empowers the Legislature to

1 prescribe standards and methods for the determination of value of  
2 real property at uniform and proportionate values.

3 ~~(1)~~ (2) For purposes of this section, rent-restricted  
4 housing project means a project consisting of five or more houses  
5 or residential units that is financed, in whole or in part, with an  
6 allocation of federal low-income housing tax credits under section  
7 42 of the Internal Revenue Code.

8 (3) The Rent-Restricted Housing Projects Valuation  
9 Committee is created. For administrative purposes only, the  
10 committee shall be within the Department of Revenue. The committee  
11 shall consist of the following three persons:

12 (a) A representative of local government assessing  
13 officials appointed by the Tax Commissioner. Such representative  
14 shall be skilled in the valuation of property and shall hold a  
15 certificate issued under section 77-422;

16 (b) A representative of the low-income housing industry  
17 appointed by the Tax Commissioner. The appointment shall be based  
18 on a recommendation made by the Nebraska Commission on Housing and  
19 Homelessness; and

20 (c) The Property Tax Administrator or a designee of the  
21 Property Tax Administrator who holds a certificate issued under  
22 section 77-422. Such person shall serve as the chairperson of the  
23 committee.

24 (4) The committee shall meet annually in November to  
25 examine the information on rent-restricted housing projects that  
26 was provided pursuant to subsection (8) of this section. The  
27 Department of Revenue shall electronically publish notice of such

1 meeting no less than thirty days in advance. The committee shall  
2 also solicit information on the sale of any such rent-restricted  
3 housing projects. The committee shall, after reviewing all such  
4 information, calculate a market-derived capitalization rate on  
5 an annual basis as provided in subsection (5) of this section.  
6 The annual capitalization rate and information reviewed by the  
7 committee shall be assembled in an annual report and shall be  
8 forwarded by the Property Tax Administrator to each county assessor  
9 in Nebraska no later than December 1 of each year for his or  
10 her use in determining the valuation of rent-restricted housing  
11 projects. The Department of Revenue shall publish the annual  
12 report electronically but may charge a fee for copies. The Tax  
13 Commissioner shall set the fee based on the reasonable cost of  
14 producing the report.

15 (5) (a) The committee shall calculate the capitalization  
16 rate using the band-of-investment technique. The capitalization  
17 rate is a composite rate weighted by the proportions of total  
18 property investment represented by debt and equity. The capital  
19 structure shall weight equity at eighty percent and debt at  
20 twenty percent unless a substantially different market capital  
21 structure can be verified to the county assessor. The yield  
22 for equity is calculated using the capital asset pricing model  
23 as provided in subdivision (b) of this subsection. The yield  
24 for debt is equivalent to the average yield on thirty-year  
25 non-inflation-indexed United States Treasury bonds, also referred  
26 to as the thirty-year Treasury constant maturity rate.

27 (b) (i) The capital asset pricing model used to calculate

1 the yield for equity is represented by the following formula:  $Re =$   
2  $B(Rm-Rf) + Rf$ , where:

3 (A)  $Re$  equals return on equity;

4 (B)  $B$  equals beta;

5 (C)  $Rm$  equals return on the market;

6 (D)  $Rf$  equals risk-free rate of return; and

7 (E)  $Rm - Rf$  equals market-risk premium.

8 (ii) The beta is assumed to be one which indicates the  
9 risk level to be consistent with the market as a whole. The  
10 risk-free rate of return is calculated by averaging the yield of  
11 the three-month and six-month non-inflation-indexed United States  
12 Treasury bonds. The return on the market is calculated based on  
13 the average annual return on the Standard and Poor's 500 Index or  
14 by reference to other published secondary sources that reflect the  
15 rate of return on the market as a whole.

16 (6) The county assessor shall ~~perform~~ utilize an  
17 income-approach calculation for all rent-restricted housing  
18 projects constructed to allow an allocation of low-income  
19 housing tax credits under section 42 of the Internal Revenue  
20 Code and approved by the Nebraska Investment Finance Authority  
21 when ~~considering~~ determining the assessed valuation to place  
22 on the property for each assessment year. The income-approach  
23 calculation shall be consistent with this section and any rules  
24 and regulations adopted and promulgated by the Tax Commissioner,  
25 and shall ~~comply~~ with professionally accepted mass appraisal  
26 ~~techniques~~. Any low-income housing tax credits authorized under  
27 section 42 of the Internal Revenue Code that were granted to

1 owners of the project shall not be considered income for purposes  
2 of the calculation. Each county assessor, when utilizing the  
3 income-approach calculation, shall utilize the capitalization  
4 rate calculated by the Rent-Restricted Housing Projects Valuation  
5 Committee except as otherwise provided in subsection (7) of this  
6 section. but may be considered in determining the capitalization  
7 rate to be used when capitalizing the income stream. The county  
8 assessor, in determining the actual value of any specific property,  
9 may consider other methods of determining value that are consistent  
10 with professionally accepted mass appraisal methods described in  
11 section 77-112.

12 (7) If a county assessor, based on the facts and  
13 circumstances, believes that the income-approach calculation does  
14 not result in a valuation of a rent-restricted housing project  
15 at actual value or that the market-derived capitalization rate  
16 set by the Rent-Restricted Housing Projects Valuation Committee  
17 to value any rent-restricted housing project does not result  
18 in a valuation at actual value, then the county assessor shall  
19 present such facts and circumstances to the county board of  
20 equalization. If the county board of equalization, based on  
21 such facts and circumstances, concurs with the county assessor,  
22 then the county board of equalization shall petition the Tax  
23 Equalization and Review Commission to consider, respectively,  
24 (a) the county assessor's utilization of another professionally  
25 accepted mass appraisal technique that, based on the facts and  
26 circumstances presented by a county board of equalization, would  
27 result in a substantially different determination of actual value

1 of the rent-restricted housing project or (b) an adjustment to  
2 the capitalization rate of such rent-restricted housing project.  
3 Petitions must be filed within thirty days after the property is  
4 assessed. Hearings held pursuant to this section may be held by  
5 means of videoconference or telephone conference. The burden of  
6 proof is on the petitioning county board of equalization to show  
7 that failure to make an adjustment, either to the professionally  
8 accepted mass appraisal technique utilized or the capitalization  
9 rate employed, would result in a value that is not equitable and  
10 in accordance with the law. At the hearing, the commission may  
11 receive testimony from any interested person. After a hearing, the  
12 commission shall, within the powers granted in section 77-5023,  
13 enter its order based on evidence presented to it at such hearing.  
14 Payment of taxes shall be suspended, without penalty or interest,  
15 until the commission enters its order.

16           ~~(2)~~ (8) The owner of a rent-restricted housing project  
17 shall file a statement with the county assessor and the  
18 Rent-Restricted Housing Projects Valuation Committee on or before  
19 October 1 of each year that details income and expense data for  
20 the prior year, a description of any land-use restrictions, and  
21 such other information as the county assessor or the committee may  
22 require.

23           Sec. 23. Section 77-5007, Revised Statutes Cumulative  
24 Supplement, 2012, is amended to read:

25           77-5007 The commission has the power and duty to hear and  
26 determine appeals of:

27           (1) Decisions of any county board of equalization

1 equalizing the value of individual tracts, lots, or parcels of  
2 real property so that all real property is assessed uniformly and  
3 proportionately;

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

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

10 (4) Decisions of the Tax Commissioner determining  
11 adjusted valuation pursuant to section 79-1016;

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

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

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

20 (8) Decisions of the Department of Motor Vehicles  
21 determining the taxable value of motor vehicles pursuant to section  
22 60-3,188;

23 (9) Decisions of the Tax Commissioner made under section  
24 77-1330;

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

27 (11) Any other decision of the Tax Commissioner regarding

1 property valuation, exemption, or taxation;

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

4 (13) Final decisions of a county board of equalization  
5 appealed by the Tax Commissioner or Property Tax Administrator  
6 pursuant to section 77-701; ~~and~~

7 (14) Determinations of the Rent-Restricted Housing  
8 Projects Valuation Committee regarding the market-derived  
9 capitalization rate to be used to value rent-restricted housing  
10 projects pursuant to section 77-1333 or the requirement under such  
11 section that an income-approach calculation be used by county  
12 assessors to value rent-restricted housing projects; and

13 ~~(14)~~ (15) Any other decision, determination, action, or  
14 order from which an appeal to the commission is authorized.

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

17 Sec. 24. Sections 2 to 22 and 26 of this act become  
18 operative on January 1, 2015. The other sections of this act become  
19 operative on their effective date.

20 Sec. 25. Original section 77-1333, Reissue Revised  
21 Statutes of Nebraska, and section 77-5007, Revised Statutes  
22 Cumulative Supplement, 2012, are repealed.

23 2. Renumber the remaining sections and correct internal  
24 references accordingly.