

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 356

FINAL READING

Introduced by Harr, 8.

Read first time January 15, 2015

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
2 77-1333, Reissue Revised Statutes of Nebraska, and section 77-5007,
3 Revised Statutes Cumulative Supplement, 2014; to change provisions
4 relating to the assessment of certain rent-restricted housing
5 projects; to create a committee; to provide powers and duties; to
6 change provisions relating to the Tax Equalization and Review
7 Commission; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

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

3 77-1333 (1) For purposes of this section, rent-restricted housing
4 project means a project consisting of five or more houses or residential
5 units that has received an allocation of federal low-income housing tax
6 credits under section 42 of the Internal Revenue Code from the Nebraska
7 Investment Finance Authority or its successor agency and, for the year of
8 assessment, is a project as defined in section 58-219 involving rental
9 housing as defined in section 58-220.

10 (2) The Legislature finds that:

11 (a) The provision of safe, decent, and affordable housing to all
12 residents of the State of Nebraska is a matter of public concern and
13 represents a legitimate and compelling state need, affecting the general
14 welfare of all residents;

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

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

19 (d) Of all the professionally accepted mass appraisal methodologies,
20 which include the sales comparison approach, the income approach, and the
21 cost approach, the utilization of the income-approach methodology results
22 in the most accurate determination of the actual value of such projects;
23 and

24 (e) This section is intended to (i) further the provision of safe,
25 decent, and affordable housing to all residents of Nebraska and (ii)
26 comply with Article VIII, section 1, of the Constitution of Nebraska,
27 which empowers the Legislature to prescribe standards and methods for the
28 determination of value of real property at uniform and proportionate
29 values.

30 (3) Except as otherwise provided in this section, the The county
31 assessor shall utilize ~~perform~~ an income-approach calculation to

1 ~~determine the actual value of a for all~~ rent-restricted housing project
2 ~~projects constructed to allow an allocation of low income housing tax~~
3 ~~credits under section 42 of the Internal Revenue Code and approved by the~~
4 ~~Nebraska Investment Finance Authority when determining~~ considering the
5 assessed valuation to place on the property for each assessment year. The
6 income-approach calculation shall be consistent with this section and any
7 rules and regulations adopted and promulgated by the Tax Commissioner and
8 shall comply with professionally accepted mass appraisal techniques.

9 (4) The Rent-Restricted Housing Projects Valuation Committee is
10 created. For administrative purposes only, the committee shall be within
11 the Department of Revenue. The committee's purpose shall be to develop a
12 market-derived capitalization rate to be used by county assessors in
13 determining the assessed valuation for rent-restricted housing projects.
14 The committee shall consist of the following four persons:

15 (a) A representative of county assessors appointed by the Tax
16 Commissioner. Such representative shall be skilled in the valuation of
17 property and shall hold a certificate issued under section 77-422;

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

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

24 (d) An appraiser from the private sector appointed by the Tax
25 Commissioner. Such appraiser must hold either a valid credential as a
26 certified general real property appraiser under the Real Property
27 Appraiser Act or an MAI designation from the Appraisal Institute.

28 (5) The owner of a rent-restricted housing project shall file a
29 statement with the Rent-Restricted Housing Projects Valuation Committee
30 and the county assessor on or before October 1 of each year that details
31 actual income and actual expense data for the prior year, a description

1 of any land-use restrictions, a description of the terms of any mortgage
2 loans, including loan amount, interest rate, and amortization period, and
3 such other information as the committee or the county assessor may
4 require for purposes of this section.

5 (6) The Rent-Restricted Housing Projects Valuation Committee shall
6 meet annually in November to examine the information on rent-restricted
7 housing projects that was provided pursuant to subsection (5) of this
8 section. The Department of Revenue shall electronically publish notice of
9 such meeting no less than thirty days in advance. The committee shall
10 also solicit information on the sale of any such rent-restricted housing
11 projects and information on the yields generated to investors in rent-
12 restricted housing projects. The committee shall, after reviewing all
13 such information, calculate a market-derived capitalization rate on an
14 annual basis using the band-of-investment technique or other generally
15 accepted technique used to derive capitalization rates depending upon the
16 data available. The capitalization rate shall be a composite rate
17 weighted by the proportions of total property investment represented by
18 equity and debt, with equity weighted at eighty percent and debt weighted
19 at twenty percent unless a substantially different market capital
20 structure can be verified to the county assessor. The yield for equity
21 shall be calculated using the data on investor returns gathered by the
22 committee. The yield for debt shall be calculated using the data provided
23 to the committee pursuant to subsection (5) of this section. If the
24 committee determines that a particular county or group of counties
25 requires a different capitalization rate than that calculated for the
26 rest of the state pursuant to this subsection, then the committee may
27 calculate an additional capitalization rate that will apply only to such
28 county or group of counties.

29 (7) After the Rent-Restricted Housing Projects Valuation Committee
30 has calculated the capitalization rate or rates under subsection (6) of
31 this section, the committee shall provide such rate or rates and the

1 information reviewed by the committee in calculating such rate or rates
2 in an annual report. Such report shall be forwarded by the Property Tax
3 Administrator to each county assessor in Nebraska no later than December
4 1 of each year for his or her use in determining the valuation of rent-
5 restricted housing projects. The Department of Revenue shall publish the
6 annual report electronically but may charge a fee for paper copies. The
7 Tax Commissioner shall set the fee based on the reasonable cost of
8 producing the report.

9 (8) Except as provided in subsections (9) through (11) of this
10 section, each county assessor shall use the capitalization rate or rates
11 contained in the report received under subsection (7) of this section and
12 the actual income and actual expense data filed by owners of rent-
13 restricted housing projects under subsection (5) of this section in the
14 county assessor's income-approach calculation. Any low-income housing tax
15 credits authorized under section 42 of the Internal Revenue Code that
16 were granted to owners of the project shall not be considered income for
17 purposes of the calculation.

18 (9) If the actual income and actual expense data required to be
19 filed for a rent-restricted housing project under subsection (5) of this
20 section is not filed in a timely manner, the county assessor may use any
21 method for determining actual value for such rent-restricted housing
22 project that is consistent with professionally accepted mass appraisal
23 methods described in section 77-112 but may be considered in determining
24 the capitalization rate to be used when capitalizing the income stream.
25 The county assessor, in determining the actual value of any specific
26 property, may consider other methods of determining value that are
27 consistent with professionally accepted mass appraisal methods described
28 in section 77-112.

29 (10) If a county assessor, based on the facts and circumstances,
30 believes that the income-approach calculation does not result in a
31 valuation of a rent-restricted housing project at actual value, then the

1 county assessor shall present such facts and circumstances to the county
2 board of equalization. If the county board of equalization, based on such
3 facts and circumstances, concurs with the county assessor, then the
4 county board of equalization shall petition the Tax Equalization and
5 Review Commission to consider the county assessor's utilization of
6 another professionally accepted mass appraisal technique that, based on
7 the facts and circumstances presented by a county board of equalization,
8 would result in a substantially different determination of actual value
9 of the rent-restricted housing project. Petitions must be filed no later
10 than January 31. The burden of proof is on the petitioning county board
11 of equalization to show that failure to make a determination that a
12 different methodology should be used would result in a value that is not
13 equitable and in accordance with the law. At the hearing, the commission
14 may receive testimony from any interested person. After a hearing, the
15 commission shall, within the powers granted in section 77-5007, enter its
16 order based on evidence presented to it at such hearing.

17 (11) If the Tax Commissioner, based on the facts and circumstances,
18 believes that the applicable capitalization rate set by the Rent-
19 Restricted Housing Projects Valuation Committee to value a rent-
20 restricted housing project does not result in a valuation at actual value
21 for such rent-restricted housing project, then the Tax Commissioner shall
22 petition the Tax Equalization and Review Commission to consider an
23 adjustment to the capitalization rate of such rent-restricted housing
24 project. Petitions must be filed no later than January 31. The burden of
25 proof is on the Tax Commissioner to show that failure to make an
26 adjustment to the capitalization rate employed would result in a value
27 that is not equal to the rent-restricted housing project's actual value.
28 At the hearing, the commission may receive testimony from any interested
29 person. After a hearing, the commission shall, within the powers granted
30 in section 77-5007, enter its order based on evidence presented to it at
31 such hearing.

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

6 Sec. 2. Section 77-5007, Revised Statutes Cumulative Supplement,
7 2014, is amended to read:

8 77-5007 The commission has the power and duty to hear and determine
9 appeals of:

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

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

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

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

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

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

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

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

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

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

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

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

5 (13) Final decisions of a county board of equalization appealed by
6 the Tax Commissioner or Property Tax Administrator pursuant to section
7 77-701;

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

13 (15 14) The requirement under section 77-1314 that the income
14 approach, including the use of a discounted cash-flow analysis, be used
15 by county assessors; and

16 (16 15) Any other decision, determination, action, or order from
17 which an appeal to the commission is authorized.

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

20 Sec. 3. Original section 77-1333, Reissue Revised Statutes of
21 Nebraska, and section 77-5007, Revised Statutes Cumulative Supplement,
22 2014, are repealed.