

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1022

Introduced by Schumacher, 22.

Read first time January 16, 2018

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-1343 and 77-5023, Reissue Revised Statutes of Nebraska, sections
3 77-201, 77-1363, and 77-1371, Revised Statutes Cumulative
4 Supplement, 2016, and section 79-1016, Revised Statutes Supplement,
5 2017; to adopt the Irrigation Tax Act; to change the valuation of
6 agricultural land and horticultural land for property tax purposes;
7 to create a fund; to disburse funds to certain school districts as
8 prescribed; to harmonize provisions; to provide an operative date;
9 and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 4 of this act shall be known and may be
2 cited as the Irrigation Tax Act.

3 Sec. 2. For purposes of the Irrigation Tax Act:

4 (1) Agricultural land and horticultural land has the same meaning as
5 in section 77-1359; and

6 (2) Covered water well means any water well used to irrigate
7 agricultural land and horticultural land and capable of producing at
8 least five thousand gallons of water per day.

9 Sec. 3. (1) There is hereby imposed a tax upon the use of water to
10 irrigate agricultural land and horticultural land. The tax shall be equal
11 to one cent for every ten gallons of water pumped from a covered water
12 well and shall be paid by the owner of the agricultural land and
13 horticultural land being irrigated.

14 (2) The tax imposed under this section shall be due and payable to
15 the Tax Commissioner annually on or before November 1 of each year. On or
16 before such date, the owner of the agricultural land and horticultural
17 land being irrigated shall submit a return for the year, along with all
18 taxes due, to the Tax Commissioner in such form and manner as the Tax
19 Commissioner may prescribe.

20 (3) All taxes collected by the Tax Commissioner under the Irrigation
21 Tax Act shall be remitted to the State Treasurer for credit to the School
22 Aid Fund to be used as provided in section 11 of this act.

23 (4) Failure to file the return, filing after the required filing
24 date, failure to remit the amount of tax due, or remitting the amount of
25 tax due after the required filing date shall be cause for a penalty, in
26 addition to interest, of ten percent of the amount of tax not paid by the
27 required filing date or twenty-five dollars, whichever is greater.

28 Sec. 4. The Tax Commissioner may adopt and promulgate rules and
29 regulations to carry out the Irrigation Tax Act.

30 Sec. 5. Section 77-201, Revised Statutes Cumulative Supplement,
31 2016, is amended to read:

1 77-201 (1) Except as provided in subsections (2) through (4) of this
2 section, all real property in this state, not expressly exempt therefrom,
3 shall be subject to taxation and shall be valued at its actual value.

4 (2) Agricultural land and horticultural land as defined in section
5 77-1359 shall constitute a separate and distinct class of property for
6 purposes of property taxation, shall be subject to taxation, unless
7 expressly exempt from taxation, and shall be valued at seventy-five
8 percent of the its actual value such land has as dryland. For any such
9 land that is irrigated, the added value associated with such irrigation
10 shall be disregarded for purposes of determining the land's taxable
11 value.

12 (3) Agricultural land and horticultural land actively devoted to
13 agricultural or horticultural purposes which has value for purposes other
14 than agricultural or horticultural uses and which meets the
15 qualifications for special valuation under section 77-1344 shall
16 constitute a separate and distinct class of property for purposes of
17 property taxation, shall be subject to taxation, and shall be valued for
18 taxation at seventy-five percent of its special value as defined in
19 section 77-1343.

20 (4) Historically significant real property which meets the
21 qualifications for historic rehabilitation valuation under sections
22 77-1385 to 77-1394 shall be valued for taxation as provided in such
23 sections.

24 (5) Tangible personal property, not including motor vehicles,
25 trailers, and semitrailers registered for operation on the highways of
26 this state, shall constitute a separate and distinct class of property
27 for purposes of property taxation, shall be subject to taxation, unless
28 expressly exempt from taxation, and shall be valued at its net book
29 value. Tangible personal property transferred as a gift or devise or as
30 part of a transaction which is not a purchase shall be subject to
31 taxation based upon the date the property was acquired by the previous

1 owner and at the previous owner's Nebraska adjusted basis. Tangible
2 personal property acquired as replacement property for converted property
3 shall be subject to taxation based upon the date the converted property
4 was acquired and at the Nebraska adjusted basis of the converted property
5 unless insurance proceeds are payable by reason of the conversion. For
6 purposes of this subsection, (a) converted property means tangible
7 personal property which is compulsorily or involuntarily converted as a
8 result of its destruction in whole or in part, theft, seizure,
9 requisition, or condemnation, or the threat or imminence thereof, and no
10 gain or loss is recognized for federal or state income tax purposes by
11 the holder of the property as a result of the conversion and (b)
12 replacement property means tangible personal property acquired within two
13 years after the close of the calendar year in which tangible personal
14 property was converted and which is, except for date of construction or
15 manufacture, substantially the same as the converted property.

16 Sec. 6. Section 77-1343, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 77-1343 The purpose of sections 77-1343 to 77-1347.01 is to provide
19 a special valuation for qualified agricultural or horticultural land so
20 that the current assessed valuation of the land for property tax purposes
21 is the value that the land would have without regard to the value the
22 land would have for other purposes or uses. For purposes of sections
23 77-1343 to 77-1347.01:

24 (1) Agricultural or horticultural land means that land as defined in
25 section 77-1359;

26 (2) Applicant means an owner or lessee;

27 (3) Lessee means a person leasing agricultural or horticultural land
28 from a state or governmental subdivision which is an owner that is
29 subject to taxation under section 77-202.11;

30 (4) Owner means an owner of record of agricultural or horticultural
31 land or the purchaser of agricultural or horticultural land under a

1 contract for sale; and

2 (5) Special valuation means the value that the land has when used as
3 dryland ~~would have~~ for agricultural or horticultural purposes. Such value
4 shall be determined ~~or uses~~ without regard to the actual value the land
5 would have for other purposes or uses and without regard to any added
6 value associated with irrigation.

7 Sec. 7. Section 77-1363, Revised Statutes Cumulative Supplement,
8 2016, is amended to read:

9 77-1363 Agricultural land and horticultural land shall be divided
10 into classes and subclasses of real property under section 77-103.01,
11 including, but not limited to, ~~irrigated cropland,~~ dryland cropland,
12 grassland, wasteland, nurseries, feedlots, and orchards, so that the
13 categories reflect uses appropriate for the valuation of such land
14 according to law. Classes shall be inventoried by subclasses of real
15 property based on soil classification standards developed by the Natural
16 Resources Conservation Service of the United States Department of
17 Agriculture as converted into land capability groups by the Property Tax
18 Administrator. County assessors shall utilize soil surveys from the
19 Natural Resources Conservation Service of the United States Department of
20 Agriculture as directed by the Property Tax Administrator. Nothing in
21 this section shall be construed to limit the classes and subclasses of
22 real property that may be used by county assessors or the Tax
23 Equalization and Review Commission to achieve more uniform and
24 proportionate valuations.

25 Sec. 8. Section 77-1371, Revised Statutes Cumulative Supplement,
26 2016, is amended to read:

27 77-1371 Comparable sales are recent sales of properties that are
28 similar to the property being assessed in significant physical,
29 functional, and location characteristics and in their contribution to
30 value. When using comparable sales in determining actual value of an
31 individual property under the sales comparison approach provided in

1 section 77-112, the following guidelines shall be considered in
2 determining what constitutes a comparable sale:

3 (1) Whether the sale was financed by the seller and included any
4 special financing considerations or the value of improvements;

5 (2) Whether zoning affected the sale price of the property;

6 (3) For sales of agricultural land or horticultural land as defined
7 in section 77-1359, whether a premium was paid to acquire property. A
8 premium may be paid when proximity or tax consequences cause the buyer to
9 pay more than actual value for agricultural land or horticultural land;

10 (4) Whether sales or transfers made in connection with foreclosure,
11 bankruptcy, or condemnations, in lieu of foreclosure, or in consideration
12 of other legal actions should be excluded from comparable sales analysis
13 as not reflecting current market value;

14 (5) Whether sales between family members within the third degree of
15 consanguinity include considerations that fail to reflect current market
16 value;

17 (6) Whether sales to or from federal or state agencies or local
18 political subdivisions reflect current market value;

19 (7) Whether sales of undivided interests in real property or parcels
20 less than forty acres or sales conveying only a portion of the unit
21 assessed reflect current market value;

22 (8) Whether sales or transfers of property in exchange for other
23 real estate, stocks, bonds, or other personal property reflect current
24 market value;

25 (9) Whether deeds recorded for transfers of convenience, transfers
26 of title to cemetery lots, mineral rights, and rights of easement reflect
27 current market value;

28 (10) Whether sales or transfers of property involving railroads or
29 other public utility corporations reflect current market value;

30 (11) Whether sales of property substantially improved subsequent to
31 assessment and prior to sale should be adjusted to reflect current market

1 value or eliminated from such analysis;

2 (12) For agricultural land or horticultural land as defined in
3 section 77-1359 which is or has been receiving the special valuation
4 pursuant to sections 77-1343 to 77-1347.01, whether the sale price
5 reflects a value which the land has for purposes or uses other than as
6 agricultural land or horticultural land and therefor does not reflect
7 current market value of other agricultural land or horticultural land;
8 and

9 (13) Whether sales or transfers of property are in a similar market
10 area and have similar characteristics to the property being assessed. ~~;~~
11 and

12 ~~(14) For agricultural land and horticultural land as defined in~~
13 ~~section 77-1359 which is within a class or subclass of irrigated cropland~~
14 ~~pursuant to section 77-1363, whether the difference in well capacity or~~
15 ~~in water availability due to federal, state, or local regulatory actions~~
16 ~~or limited source affected the sale price of the property. If data on~~
17 ~~current well capacity or current water availability is not available from~~
18 ~~a federal, state, or local government entity, this subdivision shall not~~
19 ~~be used to determine what constitutes a comparable sale.~~

20 The Property Tax Administrator may issue guidelines for assessing
21 officials for use in determining what constitutes a comparable sale.
22 Guidelines shall take into account the factors listed in this section and
23 other relevant factors as prescribed by the Property Tax Administrator.

24 Sec. 9. Section 77-5023, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 77-5023 (1) Pursuant to section 77-5022, the commission shall have
27 the power to increase or decrease the value of a class or subclass of
28 real property in any county or taxing authority or of real property
29 valued by the state so that all classes or subclasses of real property in
30 all counties fall within an acceptable range.

31 (2) An acceptable range is the percentage of variation from a

1 standard for valuation as measured by an established indicator of central
2 tendency of assessment. Acceptable ranges are: (a) For agricultural land
3 and horticultural land as defined in section 77-1359, sixty-nine to
4 seventy-five percent of the actual value such land has as dryland; (b)
5 for lands receiving special valuation, sixty-nine to seventy-five percent
6 of special valuation as defined in section 77-1343; and (c) for all other
7 real property, ninety-two to one hundred percent of actual value.

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

11 (4) Any decrease or increase to a subclass of property shall also
12 cause the level of value determined by the commission for the class from
13 which the subclass is drawn to be within the applicable acceptable range.

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

18 Sec. 10. Section 79-1016, Revised Statutes Supplement, 2017, is
19 amended to read:

20 79-1016 (1) On or before August 20, the county assessor shall
21 certify to the Property Tax Administrator the total taxable value by
22 school district in the county for the current assessment year on forms
23 prescribed by the Tax Commissioner. The county assessor may amend the
24 filing for changes made to the taxable valuation of the school district
25 in the county if corrections or errors on the original certification are
26 discovered. Amendments shall be certified to the Property Tax
27 Administrator on or before August 31.

28 (2) On or before October 10, the Property Tax Administrator shall
29 compute and certify to the State Department of Education the adjusted
30 valuation for the current assessment year for each class of property in
31 each school district and each local system. The adjusted valuation of

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

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

18 (a) For real property other than agricultural and horticultural
19 land, ninety-six percent of actual value;

20 (b) For agricultural and horticultural land, seventy-two percent of
21 the actual value such land has as dryland ~~as provided in sections 77-1359~~
22 ~~to 77-1363~~. For agricultural and horticultural land that receives special
23 valuation pursuant to section 77-1344, seventy-two percent of special
24 valuation as defined in section 77-1343; and

25 (c) For personal property, the net book value as defined in section
26 77-120.

27 (4) On or before November 10, any local system may file with the Tax
28 Commissioner written objections to the adjusted valuations prepared by
29 the Property Tax Administrator, stating the reasons why such adjusted
30 valuations are not the valuations required by subsection (3) of this
31 section. The Tax Commissioner shall fix a time for a hearing. Either

1 party shall be permitted to introduce any evidence in reference thereto.
2 On or before January 1, the Tax Commissioner shall enter a written order
3 modifying or declining to modify, in whole or in part, the adjusted
4 valuations and shall certify the order to the State Department of
5 Education. Modification by the Tax Commissioner shall be based upon the
6 evidence introduced at hearing and shall not be limited to the
7 modification requested in the written objections or at hearing. A copy of
8 the written order shall be mailed to the local system within seven days
9 after the date of the order. The written order of the Tax Commissioner
10 may be appealed within thirty days after the date of the order to the Tax
11 Equalization and Review Commission in accordance with section 77-5013.

12 (5) On or before November 10, any local system or county official
13 may file with the Tax Commissioner a written request for a nonappealable
14 correction of the adjusted valuation due to clerical error as defined in
15 section 77-128 or, for agricultural and horticultural land, assessed
16 value changes by reason of land qualified or disqualified for special use
17 valuation pursuant to sections 77-1343 to 77-1347.01. On or before the
18 following January 1, the Tax Commissioner shall approve or deny the
19 request and, if approved, certify the corrected adjusted valuations
20 resulting from such action to the State Department of Education.

21 (6) On or before May 31 of the year following the certification of
22 adjusted valuation pursuant to subsection (2) of this section, any local
23 system or county official may file with the Tax Commissioner a written
24 request for a nonappealable correction of the adjusted valuation due to
25 changes to the tax list that change the assessed value of taxable
26 property. Upon the filing of the written request, the Tax Commissioner
27 shall require the county assessor to recertify the taxable valuation by
28 school district in the county on forms prescribed by the Tax
29 Commissioner. The recertified valuation shall be the valuation that was
30 certified on the tax list, pursuant to section 77-1613, increased or
31 decreased by changes to the tax list that change the assessed value of

1 taxable property in the school district in the county in the prior
2 assessment year. On or before the following July 31, the Tax Commissioner
3 shall approve or deny the request and, if approved, certify the corrected
4 adjusted valuations resulting from such action to the State Department of
5 Education.

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

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

21 Sec. 11. (1) The School Aid Fund is created. The fund shall consist
22 of irrigation tax revenue credited to the fund pursuant to section 3 of
23 this act and shall be administered by the State Board of Education. The
24 fund shall be used to provide payments to school districts that did not
25 receive equalization aid under the Tax Equity and Educational
26 Opportunities Support Act. Any money in the fund available for investment
27 shall be invested by the state investment officer pursuant to the
28 Nebraska Capital Expansion Act and the Nebraska State Funds Investment
29 Act.

30 (2) No later than November 15 of each year, the State Treasurer
31 shall certify to the Commissioner of Education the amount of funds in the

1 School Aid Fund available for disbursement under this section. On or
2 before December 15 following receipt of such certification, the
3 Commissioner of Education shall distribute the certified amount to the
4 school districts that did not receive equalization aid in the most
5 recently completed school fiscal year proportionally based on the formula
6 students attributed to each such district for such school fiscal year.

7 (3) For purposes of this section, equalization aid, formula student,
8 and school fiscal year have the meanings given such terms in section
9 79-1003.

10 Sec. 12. This act becomes operative on January 1, 2019.

11 Sec. 13. Original sections 77-1343 and 77-5023, Reissue Revised
12 Statutes of Nebraska, sections 77-201, 77-1363, and 77-1371, Revised
13 Statutes Cumulative Supplement, 2016, and section 79-1016, Revised
14 Statutes Supplement, 2017, are repealed.