

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 385**

Introduced by Lindstrom, 18.

Read first time January 13, 2017

Committee:

- 1 A BILL FOR AN ACT relating to the Tax Equalization and Review Commission
- 2 Act; to amend sections 77-5013 and 77-5016, Revised Statutes
- 3 Cumulative Supplement, 2016; to change provisions relating to who
- 4 may execute appeals and the burden of proof for certain appeals; and
- 5 to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5013, Revised Statutes Cumulative Supplement,  
2 2016, is amended to read:

3 77-5013 (1) The commission obtains exclusive jurisdiction over an  
4 appeal or petition when:

5 (a) The commission has the power or authority to hear the appeal or  
6 petition;

7 (b) An appeal or petition is timely filed;

8 (c) The filing fee, if applicable, is timely received and thereafter  
9 paid; and

10 (d) In the case of an appeal, a copy of the decision, order,  
11 determination, or action appealed from, or other information that  
12 documents the decision, order, determination, or action appealed from, is  
13 timely filed.

14 Only the requirements of this subsection shall be deemed  
15 jurisdictional.

16 (2) A petition, an appeal, or the information required by  
17 subdivision (1)(d) of this section is timely filed and the filing fee, if  
18 applicable, is timely received if placed in the United States mail,  
19 postage prepaid, with a legible postmark for delivery to the commission,  
20 or received by the commission, on or before the date specified by law for  
21 filing the appeal or petition. If no date is otherwise provided by law,  
22 then an appeal shall be filed within thirty days after the decision,  
23 order, determination, or action appealed from is made.

24 (3) The filing fee for each appeal or petition filed with the  
25 commission is twenty-five dollars, except that no filing fee shall be  
26 required for an appeal by a county assessor, the Tax Commissioner, or the  
27 Property Tax Administrator acting in his or her official capacity or a  
28 county board of equalization acting in its official capacity.

29 (4) The form and requirements for execution of an appeal or petition  
30 may be specified by the commission in its rules and regulations. In  
31 addition to any other person or entity provided for by the commission in

1 its rules and regulations, the following persons with a relationship with  
2 the taxpayer may also execute an appeal on behalf of the taxpayer;

3 (a) A person or entity with a contract executed by the taxpayer, or  
4 a legal representative, that includes the power to execute an appeal on  
5 behalf of the taxpayer;

6 (b) A person with a power of attorney;

7 (c) A person with a durable power of attorney; and

8 (d) A person who is a trustee of an estate.

9 Sec. 2. Section 77-5016, Revised Statutes Cumulative Supplement,  
10 2016, is amended to read:

11 77-5016 Any hearing or proceeding of the commission shall be  
12 conducted as an informal hearing unless a formal hearing is granted as  
13 determined by the commission according to its rules and regulations. In  
14 any hearing or proceeding heard by the commission:

15 (1) The commission may admit and give probative effect to evidence  
16 which possesses probative value commonly accepted by reasonably prudent  
17 persons in the conduct of their affairs excluding incompetent,  
18 irrelevant, immaterial, and unduly repetitious evidence and shall give  
19 effect to the privilege rules of evidence in sections 27-501 to 27-513  
20 but shall not otherwise be bound by the usual common-law or statutory  
21 rules of evidence except during a formal hearing. Any party to an appeal  
22 filed under section 77-5007 may request a formal hearing by delivering a  
23 written request to the commission not more than thirty days after the  
24 appeal is filed. The requesting party shall be liable for the payment of  
25 fees and costs of a court reporter pending a final decision. The  
26 commission shall be bound by the rules of evidence applicable in district  
27 court in any formal hearing held by the commission. Fees and costs of a  
28 court reporter shall be paid by the party or parties against whom a final  
29 decision is rendered, and all other costs shall be allocated as the  
30 commission may determine;

31 (2) The commission may administer oaths, issue subpoenas, and compel

1 the attendance of witnesses and the production of any papers, books,  
2 accounts, documents, statistical analysis, and testimony. The commission  
3 may adopt and promulgate necessary rules for discovery which are  
4 consistent with the rules adopted by the Supreme Court pursuant to  
5 section 25-1273.01;

6 (3) The commission may consider and utilize the provisions of the  
7 Constitution of the United States, the Constitution of Nebraska, the laws  
8 of the United States, the laws of Nebraska, the Code of Federal  
9 Regulations, the Nebraska Administrative Code, any decision of the  
10 several courts of the United States or the State of Nebraska, and the  
11 legislative history of any law, rule, or regulation, without making the  
12 document a part of the record. The commission may without inclusion in  
13 the record consider and utilize published treatises, periodicals, and  
14 reference works pertaining to the valuation or assessment of real or  
15 personal property or the meaning of words and phrases if the document is  
16 identified in the commission's rules and regulations;

17 (4) All evidence, other than that described in subdivision (3) of  
18 this section, including records and documents in the possession of the  
19 commission of which it desires to avail itself, shall be offered and made  
20 a part of the record in the case. No other factual information or  
21 evidence other than that set forth in this section shall be considered in  
22 the determination of the case. Documentary evidence may be received in  
23 the form of copies or excerpts or by incorporation by reference;

24 (5) Every party shall have the right of cross-examination of  
25 witnesses who testify and shall have the right to submit rebuttal  
26 evidence;

27 (6) The commission may take notice of judicially cognizable facts  
28 and in addition may take notice of general, technical, or scientific  
29 facts within its specialized knowledge or statistical information  
30 regarding general levels of assessment within a county or a class or  
31 subclass of real property within a county and measures of central

1 tendency within such county or classes or subclasses within such county  
2 which have been made known to the commission. Parties shall be notified  
3 either before or during the hearing or by reference in preliminary  
4 reports or otherwise of the material so noticed. They shall be afforded  
5 an opportunity to contest the facts so noticed. The commission may  
6 utilize its experience, technical competence, and specialized knowledge  
7 in the evaluation of the evidence presented to it;

8 (7) Any person testifying under oath at a hearing who knowingly and  
9 intentionally makes a false statement to the commission or its designee  
10 is guilty of perjury. For the purpose of this section, perjury is a Class  
11 I misdemeanor;

12 (8) The commission may determine any question raised in the  
13 proceeding upon which an order, decision, determination, or action  
14 appealed from is based. The commission may consider all questions  
15 necessary to determine taxable value of property as it hears an appeal or  
16 cross appeal;

17 (9)(a) ~~(9)~~ In all appeals, excepting those arising under section  
18 77-1606 and those described in subdivision (9)(b) of this section, if the  
19 appellant presents no evidence to show that the order, decision,  
20 determination, or action appealed from is incorrect, the commission shall  
21 deny the appeal. If the appellant presents any evidence to show that the  
22 order, decision, determination, or action appealed from is incorrect,  
23 such order, decision, determination, or action shall be affirmed unless  
24 evidence is adduced establishing that the order, decision, determination,  
25 or action was unreasonable or arbitrary;

26 (b) In appeals regarding the assessed value of a property that has  
27 increased by more than five percent over the assessed value for the same  
28 property for the prior tax year, the county board of equalization shall  
29 have the burden of proving, by a preponderance of the evidence, that the  
30 assessed value reflects the property's actual value as defined in section  
31 77-112 or, for agricultural land and horticultural land, the property's

1 value as described in subsection (2) or (3) of section 77-201, as  
2 applicable. This subdivision shall not apply if the assessed value that  
3 is the subject of the appeal is based on improvements made during the  
4 prior tax year;

5 (10) If the appeal concerns a decision by the county board of  
6 equalization that property is, in whole or in part, exempt from taxation,  
7 the decision to be rendered by the commission shall only determine the  
8 exemption status of the property. The decision shall not determine the  
9 taxable value of the property unless stipulated by the parties according  
10 to subsection (2) of section 77-5017;

11 (11) If the appeal concerns a decision by the county board of  
12 equalization that property owned by the state or a political subdivision  
13 is or is not exempt and there has been no final determination of the  
14 value of the property, the decision to be rendered by the commission  
15 shall only determine the exemption status of the property. The decision  
16 shall not determine the taxable value of the property unless stipulated  
17 by the parties according to subsection (2) of section 77-5017;

18 (12) The costs of any appeal, including the costs of witnesses, may  
19 be taxed by the commission as it deems just, except costs payable by the  
20 appellant pursuant to section 77-1510.01, unless (a) the appellant is the  
21 county assessor or county clerk in which case the costs shall be paid by  
22 the county or (b) the appellant is the Tax Commissioner or Property Tax  
23 Administrator in which case the costs shall be paid by the state;

24 (13) The commission shall deny relief to the appellant or petitioner  
25 in any hearing or proceeding unless a majority of the commissioners  
26 present determine that the relief should be granted; and

27 (14) Subdivisions (3), (6), (8), (9), (10), (11), and (12) of this  
28 section apply to hearings or proceedings before a single commissioner  
29 pursuant to section 77-5015.02.

30 Sec. 3. Original sections 77-5013 and 77-5016, Revised Statutes  
31 Cumulative Supplement, 2016, are repealed.