

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1100**

Introduced by Erdman, 47.

Read first time January 18, 2018

Committee:

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections  
2 46-294.03, 77-103.01, and 77-1343, Reissue Revised Statutes of  
3 Nebraska, section 77-1371, Revised Statutes Cumulative Supplement,  
4 2016, and sections 77-1359 and 79-1016, Revised Statutes Supplement,  
5 2017; to change the valuation of agricultural land and horticultural  
6 land as prescribed; to create the Agricultural Land Valuation Board;  
7 to eliminate provisions relating to land classifications; to  
8 harmonize provisions; to repeal the original sections; to outright  
9 repeal section 77-1363, Revised Statutes Cumulative Supplement,  
10 2016; and to declare an emergency.

11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-294.03, Reissue Revised Statutes of Nebraska,  
2 is amended to read:

3 46-294.03 For purposes of assessment of agricultural land and  
4 horticultural land as defined in section 77-1359 ~~pursuant to sections~~  
5 ~~77-1343 to 77-1363~~, neither the temporary transfer or change of an  
6 appropriation nor any resulting land-use changes on the land to which the  
7 appropriation was appurtenant prior to the transfer or change shall cause  
8 the land to be reclassified to a lower value use or the valuation of the  
9 land to be reduced, but the land may be reclassified to a higher value  
10 use and its valuation may be increased if a higher value use is made of  
11 the land while the temporary transfer or change is in effect. Land from  
12 which an appropriation has been permanently transferred shall be  
13 classified and valued for tax purposes in accordance with the use of the  
14 land after the transfer.

15 Sec. 2. Section 77-103.01, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17 77-103.01 Class or subclass of real property means a group of  
18 properties that share one or more characteristics typically common to all  
19 the properties in the class or subclass, but are not typically found in  
20 the properties outside the class or subclass. Class or subclass includes,  
21 but is not limited to, the classifications of agricultural land and ~~or~~  
22 horticultural land listed in section 6 of this act ~~77-1363~~, parcel use,  
23 parcel type, location, geographic characteristics, zoning, city size,  
24 parcel size, and market characteristics appropriate for the valuation of  
25 such land. A class or subclass based on market characteristics shall be  
26 based on characteristics that affect the actual value in a different  
27 manner than it affects the actual value of properties not within the  
28 market characteristic class or subclass.

29 Sec. 3. Section 77-1343, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 77-1343 The purpose of sections 77-1343 to 77-1347.01 is to provide

1 a special valuation for qualified agricultural or horticultural land so  
2 that the current assessed valuation of the land for property tax purposes  
3 is the value that the land would have without regard to the value the  
4 land would have for other purposes or uses. For purposes of sections  
5 77-1343 to 77-1347.01:

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

8 (2) Applicant means an owner or lessee;

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

12 (4) Owner means an owner of record of agricultural or horticultural  
13 land or the purchaser of agricultural or horticultural land under a  
14 contract for sale; and

15 (5) Special valuation means the actual value that the land would  
16 have for agricultural or horticultural purposes or uses, as determined  
17 under section 77-1359 and sections 5 to 8 of this act, without regard to  
18 the actual value the land would have for other purposes or uses.

19 Sec. 4. Section 77-1359, Revised Statutes Supplement, 2017, is  
20 amended to read:

21 77-1359 The Legislature finds and declares that agricultural land  
22 and horticultural land shall be a separate and distinct class of real  
23 property for purposes of assessment. The assessed value of agricultural  
24 land and horticultural land shall not be uniform and proportionate with  
25 all other real property, but the assessed value shall be uniform and  
26 proportionate within the class of agricultural land and horticultural  
27 land.

28 For purposes of this section and sections 5 to 8 of this act ~~section~~  
29 ~~77-1363~~:

30 (1) Agricultural land and horticultural land means a parcel of land,  
31 excluding land associated with a building or enclosed structure located

1 on the parcel, which is primarily used for agricultural or horticultural  
2 purposes, including wasteland lying in or adjacent to and in common  
3 ownership or management with other agricultural land and horticultural  
4 land;

5 (2)(a) Agricultural or horticultural purposes means used for the  
6 commercial production of any plant or animal product in a raw or  
7 unprocessed state that is derived from the science and art of  
8 agriculture, aquaculture, or horticulture;

9 (b) Agricultural or horticultural purposes includes the following  
10 uses of land:

11 (i) Land retained or protected for future agricultural or  
12 horticultural purposes under a conservation easement as provided in the  
13 Conservation and Preservation Easements Act except when the parcel or a  
14 portion thereof is being used for purposes other than agricultural or  
15 horticultural purposes; and

16 (ii) Land enrolled in a federal or state program in which payments  
17 are received for removing such land from agricultural or horticultural  
18 production; and

19 (c) Whether a parcel of land is primarily used for agricultural or  
20 horticultural purposes shall be determined without regard to whether some  
21 or all of the parcel is platted and subdivided into separate lots or  
22 developed with improvements consisting of streets, sidewalks, curbs,  
23 gutters, sewer lines, water lines, or utility lines;

24 (3) Farm home site means land contiguous to a farm site which  
25 includes an inhabitable residence and improvements used for residential  
26 purposes and which is located outside of urban areas or outside a platted  
27 and zoned subdivision; and

28 (4) Farm site means the portion of land contiguous to land actively  
29 devoted to agriculture which includes improvements that are agricultural  
30 or horticultural in nature, including any uninhabitable or unimproved  
31 farm home site.

1           Sec. 5. (1) For tax year 2019 and each tax year thereafter, the  
2 actual value of agricultural land and horticultural land shall be  
3 determined based upon the land's capitalized net earning capacity. County  
4 assessors shall determine capitalized net earning capacity by using an  
5 agricultural land valuation manual developed and updated by the  
6 Agricultural Land Valuation Board under section 8 of this act. Such  
7 manual shall utilize the methods described in subsections (2) and (3) of  
8 this section to determine the actual value of agricultural land and  
9 horticultural land.

10           (2) Except as provided in subsection (3) of this section, the actual  
11 value of agricultural land and horticultural land shall be determined by:

12           (a) Dividing agricultural land and horticultural land into the major  
13 use categories described in section 6 of this act and dividing such  
14 categories into subclasses based on soil productivity classifications;

15           (b) Computing a gross revenue based on a three-year average of  
16 annual gross incomes determined using the method described in section 7  
17 of this act; and

18           (c) Dividing the gross revenue by a discount rate determined by the  
19 Agricultural Land Valuation Board under subdivision (7)(c) of section 8  
20 of this act.

21           (3) The actual value for wasteland, including, but not limited to,  
22 forest land and shelter belts, shall be computed based on five percent of  
23 the assessed value of all agricultural land and horticultural land in the  
24 crop reporting district within which such wasteland is located.

25           Sec. 6. (1) Agricultural land and horticultural land shall be  
26 separated into the following five major categories: Sprinkler irrigated  
27 cropland; gravity irrigated cropland; dryland cropland; grassland; and  
28 wasteland.

29           (2) Intensive agricultural uses such as nurseries, feedlots, and  
30 orchards shall be categorized as sprinkler irrigated cropland, gravity  
31 irrigated cropland, or dryland cropland.

1           Sec. 7. (1) Gross revenue for sprinkler irrigated cropland, gravity  
2 irrigated cropland, and dryland cropland shall be computed by using the  
3 annual gross income per acre, which shall be based on commodity price  
4 multiplied by subclass production capability. Commodity price data shall  
5 come from the Department of Agricultural Economics of the University of  
6 Nebraska-Lincoln. Production capability shall be determined from a  
7 county-wide average and then scaling that average for individual parcels  
8 based on the appropriate index from the Natural Resources Conservation  
9 Service of the United States Department of Agriculture. For dryland  
10 cropland, the appropriate index shall be the National Commodity Crop  
11 Productivity Index. For sprinkler irrigated cropland and gravity  
12 irrigated cropland, the appropriate index shall be an appropriate  
13 irrigation index from the Natural Resources Conservation Service.

14           (2) Gross revenue for grassland shall be computed by multiplying the  
15 carrying capacity in terms of animal unit months by representative gross  
16 income values per animal unit month. Carrying capacity, by subclass,  
17 shall be based on range productivity estimates published by the Natural  
18 Resources Conservation Service.

19           Sec. 8. (1) There is hereby created the Agricultural Land Valuation  
20 Board, which shall consist of eight members, six of whom shall be  
21 appointed by the Governor with approval of the Legislature. The six  
22 members appointed by the Governor shall be chosen from the following  
23 categories:

24           (a) One person involved in livestock production;

25           (b) One person involved in agricultural crop production;

26           (c) One person from a farm advocacy organization;

27           (d) One person with a county assessor certificate issued under  
28 section 77-422;

29           (e) One person from the Department of Agricultural Economics of the  
30 University of Nebraska-Lincoln; and

31           (f) One person from the Nebraska Ethanol Board.

1           (2) The Tax Commissioner shall be the seventh member of the  
2 Agricultural Land Valuation Board and shall be granted the same right to  
3 vote as other members.

4           (3) The Director of Agriculture shall be the eighth member of the  
5 Agricultural Land Valuation Board, shall be the board's chairperson, and  
6 shall have the same right to vote as other members.

7           (4) Members of the Agricultural Land Valuation Board shall be  
8 reimbursed for their actual and necessary expenses as provided in  
9 sections 81-1174 to 81-1177. In addition, appointed board members shall  
10 be compensated at five hundred dollars per meeting of the board, not to  
11 exceed six thousand dollars per year, except that during 2018 appointed  
12 board members may be compensated up to twenty-four thousand dollars for  
13 the year.

14           (5) The initial appointments to the Agricultural Land Valuation  
15 Board shall be made by the Governor on or before June 1, 2018.  
16 Thereafter, appointments to the board shall be made by December 1 of the  
17 relevant year. The appointed members shall serve four-year terms, except  
18 that of the initial members appointed, those specified in subdivisions  
19 (1)(a), (b), and (c) of this section shall serve until December 1, 2020,  
20 and the remaining members shall serve until December 1, 2022.

21           (6) The Agricultural Land Valuation Board shall meet at least twice  
22 annually or more often at the call of the chairperson or at the call of a  
23 majority of the board members.

24           (7) The Agricultural Land Valuation Board shall:

25           (a) Develop and approve by majority vote an agricultural land  
26 valuation manual to be used in determining the actual value of  
27 agricultural land and horticultural land;

28           (b) Select and approve by majority vote the data sources to be used  
29 by the board in developing the agricultural land valuation manual;

30           (c) Set the discount rates to be used for all agricultural land and  
31 horticultural land valuations;

1        (d) Make a written report to the Governor each year stating whether  
2 the agricultural land valuation manual was properly applied in  
3 determining the actual value of agricultural land and horticultural land;

4        (e) Make recommendations to the Revenue Committee of the Legislature  
5 each year as to improvements or refinements in the method used to value  
6 agricultural land and horticultural land; and

7        (f) Participate in a public hearing with the Tax Commissioner and  
8 the Property Tax Administrator on each updated version of the  
9 agricultural land valuation manual.

10       (8) The Agricultural Land Valuation Board shall prepare the  
11 agricultural land valuation manual in accordance with section 77-1359 and  
12 sections 5 to 8 of this act. The board shall create the initial version  
13 of the manual by December 31, 2018, and shall update the manual by  
14 November 30 of each year thereafter. The board shall vote on or before  
15 November 30 of each year to approve the update to the manual. In the  
16 event the board fails to approve an update to the manual by November 30,  
17 the Director of Agriculture shall have ten days after such date to make  
18 final revisions to the manual.

19       Sec. 9. Section 77-1371, Revised Statutes Cumulative Supplement,  
20 2016, is amended to read:

21       77-1371 Comparable sales are recent sales of properties that are  
22 similar to the property being assessed in significant physical,  
23 functional, and location characteristics and in their contribution to  
24 value. When using comparable sales in determining actual value of an  
25 individual property under the sales comparison approach provided in  
26 section 77-112, the following guidelines shall be considered in  
27 determining what constitutes a comparable sale:

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

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

31       (3) For sales of agricultural land or horticultural land as defined



1 in section 77-1359, whether a premium was paid to acquire property. A  
2 premium may be paid when proximity or tax consequences cause the buyer to  
3 pay more than actual value for agricultural land or horticultural land;

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

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

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

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

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

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

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

24 (11) Whether sales of property substantially improved subsequent to  
25 assessment and prior to sale should be adjusted to reflect current market  
26 value or eliminated from such analysis;

27 (12) For agricultural land or horticultural land as defined in  
28 section 77-1359 which is or has been receiving the special valuation  
29 pursuant to sections 77-1343 to 77-1347.01, whether the sale price  
30 reflects a value which the land has for purposes or uses other than as  
31 agricultural land or horticultural land and therefor does not reflect

1 current market value of other agricultural land or horticultural land;

2 (13) Whether sales or transfers of property are in a similar market  
3 area and have similar characteristics to the property being assessed; and

4 (14) For agricultural land and horticultural land as defined in  
5 section 77-1359 which is within a class or subclass of irrigated cropland  
6 pursuant to section 6 of this act ~~77-1363~~, whether the difference in well  
7 capacity or in water availability due to federal, state, or local  
8 regulatory actions or limited source affected the sale price of the  
9 property. If data on current well capacity or current water availability  
10 is not available from a federal, state, or local government entity, this  
11 subdivision shall not be used to determine what constitutes a comparable  
12 sale.

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

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

19 79-1016 (1) On or before August 20, the county assessor shall  
20 certify to the Property Tax Administrator the total taxable value by  
21 school district in the county for the current assessment year on forms  
22 prescribed by the Tax Commissioner. The county assessor may amend the  
23 filing for changes made to the taxable valuation of the school district  
24 in the county if corrections or errors on the original certification are  
25 discovered. Amendments shall be certified to the Property Tax  
26 Administrator on or before August 31.

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

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

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

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

19 (b) For agricultural and horticultural land, seventy-two percent of  
20 actual value as provided in section sections 77-1359 and sections 5 to 8  
21 of this act to 77-1363. For agricultural and horticultural land that  
22 receives special valuation pursuant to section 77-1344, seventy-two  
23 percent of special valuation as defined in section 77-1343; and

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

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

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

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

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

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

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

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

20 Sec. 11. Original sections 46-294.03, 77-103.01, and 77-1343,  
21 Reissue Revised Statutes of Nebraska, section 77-1371, Revised Statutes  
22 Cumulative Supplement, 2016, and sections 77-1359 and 79-1016, Revised  
23 Statutes Supplement, 2017, are repealed.

24 Sec. 12. The following section is outright repealed: Section  
25 77-1363, Revised Statutes Cumulative Supplement, 2016.

26 Sec. 13. Since an emergency exists, this act takes effect when  
27 passed and approved according to law.