

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 228

Introduced by Harr, 8.

Read first time January 10, 2017

Committee:

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-1333, Revised Statutes Cumulative Supplement, 2016; to change
- 3 provisions relating to rent-restricted housing projects; to repeal
- 4 the original section; and to declare an emergency.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-1333, Revised Statutes Cumulative Supplement,
2 2016, is 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 county
31 assessor shall utilize an income-approach calculation to determine the

1 actual value of a rent-restricted housing project when determining the
2 assessed valuation to place on the property for each assessment year. The
3 income-approach calculation shall be consistent with this section and any
4 rules and regulations adopted and promulgated by the Tax Commissioner and
5 shall comply with professionally accepted mass appraisal techniques.

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

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

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

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

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

25 (5) The owner of a rent-restricted housing project shall file a
26 statement electronically on a form prescribed by the Tax Commissioner
27 with the Rent-Restricted Housing Projects Valuation Committee ~~and the~~
28 ~~county assessor~~ on or before July ~~October~~ 1 of each year that details
29 actual income and actual expense data for the prior year, a description
30 of any land-use restrictions, a description of the terms of any mortgage
31 loans, including loan amount, interest rate, and amortization period, and

1 such other information as the committee or the county assessor may
2 require for purposes of this section. The Department of Revenue, on
3 behalf of the committee, shall forward such statements on or before
4 August 15 of each year to the county assessor of each county in which a
5 rent-restricted housing project is located.

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

1 then the committee may calculate an additional capitalization rate that
2 will apply only to such housing type or types.

3 (7) After the Rent-Restricted Housing Projects Valuation Committee
4 has calculated the capitalization rate or rates under subsection (6) of
5 this section, the committee shall provide such rate or rates and the
6 information reviewed by the committee in calculating such rate or rates
7 in an annual report. Such report shall be forwarded by the Property Tax
8 Administrator to each county assessor in Nebraska no later than December
9 1 of each year for his or her use in determining the valuation of rent-
10 restricted housing projects. The Department of Revenue shall publish the
11 annual report electronically but may charge a fee for paper copies. The
12 Tax Commissioner shall set the fee based on the reasonable cost of
13 producing the report.

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

23 (9) If the actual income and actual expense data required to be
24 filed for a rent-restricted housing project under subsection (5) of this
25 section is not filed in a timely manner, the county assessor may use any
26 method for determining actual value for such rent-restricted housing
27 project that is consistent with professionally accepted mass appraisal
28 methods described 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 Sec. 2. Original section 77-1333, Revised Statutes Cumulative
2 Supplement, 2016, is repealed.

3 Sec. 3. Since an emergency exists, this act takes effect when
4 passed and approved according to law.