

Bill Summary, LB 490 (1995)

LB 490, the Tax Equalization and Review Commission Act, creates the Tax Equalization and Review Commission and expressly provides that the Tax Commissioner has no supervision, authority, or control over actions or decisions of the commission relating to its duties prescribed by law.

The commission will have three members appointed to staggered terms of office by the Governor, with the approval of a majority of the members of the Legislature. One commissioner will be appointed from each congressional district, and the Governor may remove a commissioner for cause after notice and a public hearing unless the commissioner waives, in writing, his or her right to such notice and hearing.

Each commissioner must be a qualified voter, taxpayer, and resident of Nebraska; devote his or her full time and efforts to the discharge of the duties of the office and not hold any other public office while serving as a commissioner; not hold any position of profit or engage in any occupation or business interfering with or inconsistent with his or her duties as a commissioner or as an employee of the commission; have appropriate knowledge and understanding of, among other things, appraisal report writing, depreciation theories, cost estimating, methods of capitalization, real property appraisal mathematics, land economics, appraisal processes (including complex 'industrial property valuation and mass-appraisal techniques), Nebraska tax law, training and certification required of Nebraska assessment officers, and other qualifications and skills as reasonably may be required for the effective and reliable performance of the commissioner's duties. Each commissioner must annually attend a two-day seminar sponsored by a recognized assessment or appraisal organization which covers topics such as utility and railroad appraisal, complex industrial property appraisal, mass appraisal, residential and agricultural appraisal, and assessment administration. Additionally, the commission chairperson must have been engaged in the practice of law in Nebraska for at least five years and must be currently admitted to practice before the Nebraska Supreme Court.

The commission will have the power and duty to hear and determine appeals of decisions of any county board of equalization: (1) equalizing individual tracts, lots, or parcels of real property so that all real property is assessed uniformly and proportionately; (2) granting or denying tax exempt status for real or personal property; (3) regarding the valuation of personal property or the imposition of the 50-percent penalty under section 77-1233.04 for failing to list taxable personal property; (4) regarding claims that a levy is or is not for an unlawful or unnecessary purpose or is in excess of the requirements of the county; (5) granting or rejecting an application for a homestead exemption; and (6) any other decision of any county board of equalization.

LB 490 also gives the commission the power and duty to hear and determine appeals of decisions of the Property Tax Administrator determining the taxable value of a railroad company, car company, public service entity, or air carrier within Nebraska and claims for refunds of property taxes alleged to be illegal, unconstitutional, or the result of

clerical error, misunderstanding, or mistake. Furthermore, the commission is authorized to issue writs of mandamus compelling compliance with its orders and compelling the Property Tax Administrator to enforce its orders, and the commission may charge costs incurred by the Property Tax Administrator to any party that is not in compliance with the commission's orders.

A \$25 fee is required of the person filing an appeal with the commission. Fee revenue is to be credited to the state's General Fund.

LB 490 also authorizes the commission to appoint "special masters" to perform fact-finding and other tax-related duties. In discharging their duties, special masters have all the investigative and fact-finding powers that the commission has; however, the recommendation of any special master is advisory only and does not preclude the taking of other testimony if the commission so orders. Special masters may be paid on a fee or salary basis, but any order appointing a special master is required to be in writing.

As stated previously, section 37 of LB 490 provides for the appointment of a Property Tax Administrator, who will be responsible for supervising the Property Tax Division of the Department of Revenue. The Property Tax Administrator must have experience and training in the fields of taxation and property appraisal, and he or she must have all the qualifications required of members of the commission. As passed on Final Reading, section 37 requires the Governor to appoint a Property Tax Administrator by January 1, 1996, with the approval of a majority of the members of the Legislature. However, an amendment to LB 386, which also passed this session, delays that appointment until September 1, 1996. The Property Tax Administrator is to serve a six-year term of office, unless he or she is removed from office for cause by the Governor after notice and a public hearing. (However, the notice and hearing requirements may be waived by the Property Tax Administrator.)

LB 490 passed 29-10 and was approved by the Governor on June 1, 1995.