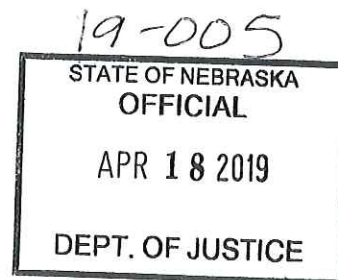




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ATTORNEY GENERAL



SUBJECT: Constitutionality of LB 183 as amended – Taxation of Agricultural and Horticultural Land at Fifty Percent of Actual Value for School District Bond Purposes.

REQUESTED BY: Senator Tom Briese
Nebraska Legislature

WRITTEN BY Douglas J. Peterson, Attorney General
L. Jay Bartel, Assistant Attorney General

INTRODUCTION

LB 183, as amended by AM158 and AM517, proposes to amend the statutes governing valuation of property for taxation to provide that, for purposes of school district taxes levied to pay principal and interest on bonds, agricultural and horticultural land and land receiving special valuation will be valued at fifty percent of its actual value. The bill would also amend the acceptable range for agricultural and horticultural land and land receiving special valuation to forty-four to fifty percent of actual value for school district taxes levied to pay the principal and interest on bonds. These provisions would apply only to school district bonds issued on or after the operative date of the act.

Your request does not articulate a specific constitutional issue to be addressed, or identify any particular constitutional provision the bill may contravene. As it pertains to the valuation of agricultural and horticultural land for property tax purposes, we will limit our consideration to whether the bill, as amended, may violate the uniformity requirements in Neb. Const. art. VIII, §1.

ANALYSIS

Neb. Const. art. VIII, § 1, provides, in part:

Notwithstanding Article I, section 16, Article III, § 18, or Article VIII, § 4, of this Constitution or any other provision of the Constitution to the contrary: (1) Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution; . . .

* * *

(4) the Legislature may provide that agricultural land and horticultural land, as defined by the Legislature, shall constitute a separate and distinct class of property for purposes of taxation and may provide for a different method of taxing agricultural land and horticultural land which results in values that are not uniform and proportionate with all other real property and franchises but which results in values that are uniform and proportionate upon all property within the class of agricultural and horticultural land; (5) the Legislature may enact laws to provide that the value of land actively devoted to agricultural and horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value such land has for other purposes or uses;

Agricultural land and horticultural land is “a separate and distinct class of property for purposes of taxation,” and is “valued for taxation at seventy-five percent of its actual value.” Neb. Rev. Stat. § 77-201(2) (2018). Agricultural land and horticultural land that “meets the qualifications for special valuation” is also a “separate and distinct class of property for purposes of taxation” and is “valued for taxation at seventy-five percent of its special value” Neb. Rev. Stat. § 77-202(3) (2018). All other real property that is not expressly exempt from taxation “shall be subject to taxation and shall be valued at its actual value.” Neb. Rev. Stat. § 77-202(1) (2009). LB 183 would amend § 77-201(2) and (3) to provide that agricultural and horticultural land, and land qualified for special valuation, would be valued at fifty percent of its actual value for school district taxes levied to pay the principal and interest on bonds issued on or after the operative date of the act.

For statewide equalization purposes, the “acceptable range” for agricultural land and horticultural land is “sixty-nine to seventy-five percent of actual value.” Neb. Rev. Stat. § 77-5023(2)(a) (2018). The acceptable range for agricultural and horticultural land receiving special valuation is “sixty-nine to seventy-five percent of special valuation” Neb. Rev. Stat. § 77-5023(2)(b) (2018). For all other real property, the acceptable range is “ninety-two to one hundred percent of actual value.” Neb. Rev. Stat. § 77-5023(2)(c) (2018). LB 183 would amend § 77-5023(2) to provide that the acceptable range for agricultural and horticultural land and land receiving special valuation is forty-four to fifty

percent of actual value for school district taxes levied to pay the principal and interest on bonds issued on or after the effective date of the act.

The language in Article VIII, § 1(4), authorizing the separate classification and taxation of agricultural and horticultural land, was added by a constitutional amendment proposed by the Legislature in 1989 and approved by the voters in 1990. 1989 Neb. Laws LR 2CA. In *Krings v. Garfield County Bd. of Equal.*, 286 Neb. 352, 361, 835 N.W.2d 750, 76 (2013) [*Krings*], the Nebraska Supreme Court, discussing the effect of the amendment, stated:

The amendment clearly provided that although values of agricultural and horticultural land were to be uniform and proportionate within the class, they were not required to be uniform and proportionate with the value of other real property. Because the language of this provision, article VIII, § 1(4) is clear, it is not open to construction.

* * *

[A]fter the amendments to article VIII, § 1, and the enactment of statutes pursuant to authority providing for a different method of taxing agricultural and horticultural land, the constitution does not require uniformity between the class of agricultural and horticultural land and other types of real estate. Therefore, it is no longer required or proper to equalize the value of nonagricultural land with the value of agricultural and horticultural land. Equalization is still required within the class of agricultural and horticultural land, because the constitution still requires uniformity within that class.

Krings recognized that the 1990 constitutional amendment authorized the Legislature to separately classify agricultural and horticultural land, and provide a different method of taxing such land. The Court further found that the constitution, and enabling legislation, no longer required that agricultural and horticultural land be valued and taxed uniformly with other real property, although uniformity is required within the class of agricultural and horticultural land.¹

¹ The Legislature is authorized to provide for the “special valuation” of agricultural and horticultural land under Neb. Const. art. VIII, § 1(5), which states “the Legislature may enact laws to provide that the value of land actively devoted to agricultural or horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value which such land might have for other purposes or uses” The legislation initially implementing this constitutional provision reveals the intent of the “special valuation” or “Greenbelt” amendment was to protect farmers and ranchers owning land near urban areas from being taxed on the speculative market value of the land for potential non-agricultural use. See Committee Statement on LB 359, 83rd Leg., 1st Sess. (1973) (“[T]his bill provides for special assessment for agricultural purposes within agricultural use zones...for...the owner or such land in rural-

Under LB 183 as amended, agricultural and horticultural land, and land qualified for special valuation, would be valued at fifty percent of its actual value for school district taxes levied to pay the principal and interest on bonds issued on or after the operative date of the act. In addition, the acceptable range for statewide equalization purposes for agricultural and horticultural land and land receiving special valuation would be reduced to forty-four to fifty percent of actual value for school district taxes levied to pay the principal and interest on bonds issued on or after the effective date of the act. For property taxes levied for other purposes, agricultural and horticultural land, and land qualified for special valuation, would be valued at seventy-five percent of its actual value, with the acceptable range falling between sixty-nine and seventy-five percent of actual value.

LB 183 is limited to reducing the value of agricultural and horticultural land, including land subject to special valuation, to fifty percent only for purposes of property taxes levied to payment of school district bonds issued after the bill's operative date. There is no question that the Legislature is constitutionally authorized to separately classify agricultural and horticultural land and value such land in a manner that is not uniform in relation to other real property. By limiting its effect to property taxes levied for payment of school district bonds, and establishing a different level of value for property taxes levied on agricultural and horticultural land for this purpose alone, it could be argued that the bill goes beyond the Constitution's intent to allow the Legislature to separately classify agricultural and horticultural land for taxation and establish a non-uniform method of valuing such land. LB 183 establishes a different value for agricultural and horticultural land for one purpose (taxes levied to pay school district bonds) than the value used for all other property tax purposes. While it is true that this results in uniform taxable levels of value of agricultural and horticultural land for these different purposes, there is no precedent for creating such different levels of value within the class of agricultural and horticultural land based on the purpose for which property taxes are levied. Given the broad authority granted the Legislature to tax and value agricultural and horticultural land in a way that results in values that are not uniform with other real property, however, we cannot say that LB 183 as amended clearly violates art. VIII, § 1.²

urban fringe areas subject to high valuations because of nearby residential and industrial developments.”). The Legislature currently allows the special valuation of “[a]gricultural or horticultural land which has an actual value . . . reflecting purposes or uses other than agricultural or horticultural purposes or uses” Neb. Rev. Stat. § 77-1344(1) (2018).

² The uniformity clause also requires that taxes be levied at the same rate on property throughout the taxing district. *Sarpy County Farm Bureau v. Learning Community of Douglas*, 283 Neb. 212, 246, 808 N.W.2d 598, 622 (2012). We understand that, while the tax rate required for school bond payment purposes under LB 183 will be impacted if agricultural and horticultural land, including land subject to special valuation, is valued at only fifty percent of actual value, the rate would be the same for all taxable real property and thus uniform throughout the school district.

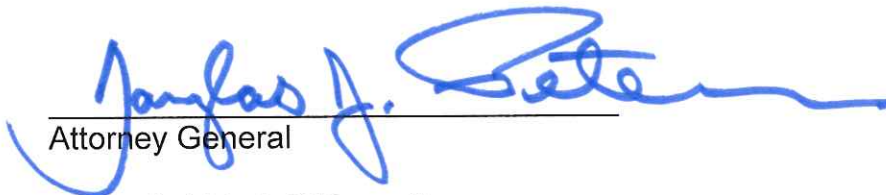
Very truly yours,

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Approved by:



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pc Patrick J. O'Donnell
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