

CHAPTER IV

FINDINGS

School Finance and Organization Before TEEOSA, 1985-1987

A. Introduction

The issues of education funding and taxation have always been closely intertwined. It is the circumstances that surround the dual issues that have often serve as the catalyst for a resolution between them. This is particularly evident when one examines the circumstances facing the Nebraska Legislature in both the 1960s and the 1990s. One of the catalysts that helped launch school finance reform in 1990 was a pending lawsuit that, if successful, could have forced legislative reaction. Some lawmakers sought to change the school finance system before any judicial action would otherwise require the state to do so. The catalyst in the mid-1960s was of a very different sort, a constitutional crisis that could have left the state without any substantial financial means to operate. The crisis not only produced the most wide sweeping changes in taxation in the history of Nebraska, but also produced a new school finance system.

The property tax was established as the sole means to fund public schools under the Common Schools Act, which was passed by the Nebraska Territorial Legislature in 1855.¹ The long-standing debate on property taxes and education funding was established even before Nebraska became a state. What many may not realize is that for a long period of Nebraska's history property taxes were levied at both the local and state levels. In fact, the principal means of financing state government derived from a state general property tax until the mid-1960s. State income taxes and sales taxes were often the subject of legislative consideration in Nebraska, but nothing was ever passed.

¹ 1855 Neb. Laws, *Joint Resolutions and Memorials*, 212-221.

Then, in the 1954 General Election, voters approved the so called “Duis Amendment,” which stated that upon the passage of a state income tax and/or a sales tax system, the state general property tax would be automatically eliminated.² While the people voted in favor of the ballot issue, the Legislature failed to take action for eleven additional years. Finally, in 1965, history would be made and a constitutional, if not financial, crisis would begin.

As an interesting side note, it was not until 1971 that the Nebraska Unicameral Legislature met in annual sessions. The Legislature met every other year until that point in time. Therefore, when the Legislature convened in 1965 there had been no opportunity to address the issue of taxation since two years before, and nothing had been accomplished in the 1963 session. In 1965, Governor Frank Morrison was serving his third and final term in office and a recently elected Jerome Warner of Waverly was serving his second term as a state senator. Senator Warner was among those who advocated an income tax and/or a sales tax over property tax as the general source of revenue for the state. In 1965, the Legislature took action to create the first state income tax, thereby triggering the 1954 Duis Amendment and automatically eliminating the state property tax. Morrison declined to take action on the bill, which became law without his signature.

Opponents of the income tax law, mostly from the business community, quickly took action to form a referendum petition movement to repeal the law at the 1966 General Election. At the same time, however, the Nebraska Farm Bureau was circulating an initiative petition to permanently eliminate the state general property tax provision from the Constitution. If both the referendum and initiative measures passed, the state would be left with no substantial means of revenue. And that is exactly what happened.

On November 8, 1966, the voters overwhelmingly approved the referendum to repeal the income tax law by a wide margin (133,594 or 30% in favor of retention of the law and 310,681 or 70% against retention).³ The voters simultaneously approved,

² NEB. BLUE BOOK, 2002-03 ed., 258.

³ Id., 270.

although just barely, the initiative measure that threw out the state general property tax provision within the Constitution (223,969 or 50.89% in favor, 216,093 or 49.11% against).⁴ At least a strong minority of the voters understood that the adoption of both amendments would mean no revenue system for the state. But the majority spoke and the state, particularly the Legislature, had an emergency on its hands by virtue of the election results. The 1967 Legislature simply had no choice but to produce a solution to the state's revenue situation, and ultimately it did. The dire situation would also serve as a catalyst for change in the arena of school finance.

In 1967, the 100th anniversary of statehood, the Legislature once again convened and once again addressed the issue of taxation. This would be a very focused legislative session. In his biography, Senator Warner recalled that, "The whole session was oriented toward writing a good tax law."⁵ Indeed, the Legislature passed and Governor Norbert Tiemann signed into law a revenue package that included the first-ever Nebraska income tax and sales tax, or at least the first of such taxes that would ultimately remain in law (the initial sales tax rate was set at 2.5%). Along with the passage of the Nebraska Revenue Act of 1967, the Legislature also addressed and ultimately passed a comprehensive school finance reform measure. And it was Senator Warner who helped to lead the charge.

B. The School Foundation and Equalization Act

In 1967, Senator Warner introduced LB 448 to create the School Foundation and Equalization Act.⁶ In the few years since his first election to office in 1962, Warner had already won the respect of his colleagues in the areas of tax policy and public education finance, although no major school finance reform had yet been adopted. Legislative attempts in both the 1963 and 1965 Sessions failed to produce a change in the way

⁴ Id.

⁵ Charlyne Berens, *Leaving Your Mark: The Political Career of Nebraska State Senator Jerome Warner* (Seward, NE: Nebraska Times, 1997), 51.

⁶ Legislative Bill 448, *Create the School Foundation and Equalization Act*, sponsored by Senator Jerome Warner, Nebraska Legislature, 77th Leg., title first read 24 January 1967.

schools were funded. In 1967, however, the situation was one of desperation, and the time was right for change, not only in the area of tax policy but also school finance.

As implied in the name of the law, the School Foundation and Equalization Act would have a dual purpose as Warner's biographer noted:

[P]rovide aid to schools on the basis of average daily pupil attendance during the previous year—the foundation part—and create a formula to regulate distribution of aid in relation to the wealth of the district—the equalization part.⁷

In fact, there was a third element to the legislation, which provided incentive aid to school districts that offered summer school programs and/or employed teachers with advanced degrees.⁸ However, the bulk of the funding under the new formula would be used for foundation aid with the remaining available appropriations used for equalization aid and incentive aid.

Under the Act, state financial assistance to school districts was base upon the annual financial reports submitted by each district.⁹ Foundation aid was distributed at various flat per pupil rates, multiplied by the previous year's average daily membership in each grade category, as shown in Table 1.

Table 1: Foundation Aid Distribution
under the School Foundation and Equalization Act

<i>Grade Category</i>	<i>Per Pupil Rate</i>
Kindergarten.....	\$12.50
Grades one through six	\$25.00
Grades seven and eight	\$30.00
Grades nine through twelve.....	\$35.00

Source: NEB. REV. STAT. § 79-1334 (Cum. Supp. 1967).

School districts had to meet a minimum levy requirement in order to be eligible for foundation aid. Class I (elementary only) districts had to maintain a minimum levy of

⁷ Berens, 51.

⁸ NEB. REV. STAT. § 79-1340 (Cum. Supp. 1967).

⁹ *Id.*, § 79-1333.

ten mills, Class VI (high school only) districts had to maintain a levy of seven mills, and all other classes of districts had to maintain a minimum levy of at least 16 mills.¹⁰ The purpose of the minimum levy was to ensure that each local school district produced a minimum level of funding for its own use and did not rely excessively on state support.

Equalization aid under the new formula was designed to meet the financial needs of a district when such needs exceeded the local revenue and state aid received from the foundation allotment, property taxes, and other funding sources. The Act established a formula to be used in calculating equalization aid along with several factors to adjust the aid for each district. The formula took into consideration low-density county populations and permitted extra aid allocations to those districts.¹¹ The equalization formula also gave additional weight to those districts that provide “a special program for (1) gifted children, or (2) culturally and educationally deprived children... .”¹² Such programs had to be approved by the State Board of Education. The formula also gave weighted status for each student eligible to be “transported by bus”.¹³

In order to determine whether and how much equalization aid was due to each district, the formula subtracted the available funding resources from the target level of funding prescribed in the Act.¹⁴ In other words, the Act specified the level of funding the Legislature believed to be sufficient to provide an education. If a district’s available resources, including state foundation aid and local property taxes, exceeded the level of funding prescribed as sufficient by the Legislature, then no equalization aid would be awarded. If the opposite was true, and the available resources were less than what the Act provided as sufficient funding, then equalization would be owed to that district to make up the difference.

¹⁰ Id., § 79-1335.

¹¹ Id., § 79-1336.

¹² Id., § 79-1337.

¹³ Id.

¹⁴ Id., § 79-1339.

The third funding mechanism under the Act was incentive aid, extra financial support above and beyond any other aid if a district met certain qualifications. These qualifications were obviously designed to encourage districts to enhance the educational experience and opportunity for students. The first qualification provided that each district would receive incentive aid for each teacher holding advanced educational degrees. Districts were to receive \$150 in incentive aid for each teacher with a bachelor's degree, \$250 for each teacher holding a master's degree or equivalent, and \$350 for each teacher holding a doctorate degree.¹⁵ The second qualification related to summer school programs. The Act provided incentive aid in the amount of 20¢ “per student hour for each student participating in a summer school program.”¹⁶

Senator Warner's new school finance system essentially embodied three funding programs, two of which were meant to compliment each other (foundation aid and equalization aid). The incentive aid program would provide additional aid over and above that received under the other two programs. However, the key to the success of the new school finance system was sufficient funding, and this was exactly where things went awry in the 1967 Legislative Session.

In his biography, Warner proclaims that the bill was designed to provide state aid to schools “to cover, on average, 40 percent of their costs.”¹⁷ The estimated cost of the new law was \$67 million for implementation in the first year.¹⁸ In the final analysis, however, the Legislature appropriated only \$20 million, under LB 667 (1967), to fund the new school finance formula.¹⁹ The decreased level of funding meant choices had to be made and priorities had to be established. A provision was added to LB 448, which

¹⁵ Id., § 79-1340.

¹⁶ Id.

¹⁷ Berens, 51.

¹⁸ Id.

¹⁹ *Funding Nebraska's Schools: Toward a More Rational and Equitable School Finance System for the 1990s*, 1990, Final Report of the Nebraska School Financing Review Commission to the Nebraska State Legislature, January 1, Education LRD Report 90-1, NE DOCS # L3800 BO12.0012-1990, Lincoln, NE, Appendix A.

designated the foundation aid as the first priority of funding and incentive aid as the second priority.²⁰ Equalization aid was not mentioned in the bill as a priority, perhaps in part due to the obvious cost involved in providing such financial assistance. The bulk of the cost to fund the new system derived from the foundation aid, the least costly of the three programs was incentive aid.

The inadequate initial appropriation was due largely to arguments by some legislators that the new formula would fail to provide any appreciable level of property tax relief. The Legislature was therefore reluctant to fully fund the measure at the level suggested by Senator Warner. As noted by his biographer, what disheartened Warner was the emphasis of the Legislature on property tax relief rather than worrying about equity in educational opportunities. Warner's biographer wrote:

Dick Herman, who covered the 1967 legislative session for the Lincoln Journal, says Warner's plan to equalize educational opportunities throughout the state was 'corrupted' by politics as senators were pressured by constituents to concentrate on reducing property taxes. Over the years, state aid to education bills have been weighted toward tax relief and haven't done much for equalization. 'The state failed to take Jerry's view,' Herman says regretfully.²¹

Warner would endeavor in later sessions to increase funding for the new formula, but it was always the level of appropriation that "drove" the formula, as opposed to permitting the formula to establish the level of appropriation necessary for adequate funding.

At the height of its existence, the School Foundation and Equalization Act provided only 13% of the total funding for public schools (in 1989-90), which meant the bulk of the funding derived from local property taxes.²² The result was the accusation that the formula failed to provide property tax relief. In truth, the formula was never fully funded to the extent that an accurate measure of its success or failure on property tax relief could be known. Moreover, as Warner lamented, the intent of the formula was to

²⁰ NEB. REV. STAT. § 79-1343 (Cum. Supp. 1967).

²¹ Berens, 52.

²² "Funding Nebraska's Schools", 13.

provide equal educational opportunities for students, not necessarily to provide sweeping property tax relief.

The School Foundation and Equalization Act was amended 20 separate times between 1969 and 1986. The flat rate per-pupil provision under the foundation aid program was eliminated in favor of a more complex system with the grade 1-6 category serving as the base. Average daily membership (ADM) in the kindergarten category was allotted a slightly lower index, while ADM in grade categories 7-8 and 9-12 were awarded a higher index. The general theory, in use even today, is that the cost of educating a student increases in higher grade levels.

C. Class I Reorganization and Referendum 400

Ongoing issues surrounding school finance and the inadequate funding of the School Foundation and Equalization Act would continue to mount over a period of several decades. In the mid-1980s, both school finance and school organization would have a prominent position on the public agenda. The two issues would be coupled together in an effort to address what some lawmakers believed to be a fundamental problem in Nebraska: too many school districts.

On January 22, 1985, a bill was introduced in the Nebraska Legislature that would have a long-lasting impact on both public education and state politics. It would divide policymakers, school officials and citizens along rural and urban lines. It would ultimately play a role in the 1986 General Election, and would have an impact on the gubernatorial race. It would also serve as a rallying cry for groups of citizens some 20 years after its introduction.

The bill was LB 662 (1985), which was chiefly introduced by Senator Peter Hoagland of Omaha, and co-sponsored by Senator Vard Johnson of Omaha and Senator Dave Landis of Lincoln.²³ As introduced, LB 662 had two main features. The first feature related to the method by which agricultural land was valued. The bill suggested a

²³ Legislative Bill 662, *Provide for merger of Class I school districts, 1 percent increase in state sales tax beginning Jan. 1, 1987, to provide increased state aid to education*, sponsored by Sen. Vard Johnson, Nebraska Legislature, 89th Leg., 1st Sess., title first read 22 January 1985, 1.

new method by which such land would be valued based on its earning capacity for purposes of property taxation. Valuation would be determined by applying capitalization rates of 11% for irrigated land, 9.5% for dry land, and 8% for range and meadow land to the earning capacity.²⁴

The second feature related to school consolidation. The bill proposed that Class I (elementary only) school districts that were not within a Class VI (high school only) district on September 1, 1985 be merge with an existing Class II, III, IV or V (K-12) school district prior to September 1, 1989. County reorganization committees would be directed to dissolve Class I districts that do not comply with the merger requirements.²⁵

Prior to 1985, school organization was considered one of the most unmovable, controversial topics faced by the Legislature. It remains so even today. For decades prior to 1985, the issue of school organization was a common feature of legislative sessions, but very little came of the debates in terms of new law. Senior statesman Senator Jerome Warner of Waverly once said, “I’ve been in the education arena for 30 years, and I’ve become pessimistic about the chances for passing any of these (reorganization) bills.”²⁶

LB 662 was not the lone reorganization measure floated in the 1985 Session. LB 679 (1985), introduced by Senator Dan Lynch of Omaha, proposed the concept of one school district per county (93 school districts).²⁷ LB 679 was never advanced from committee, but it did serve to create a political contrast, and actually made LB 662 the more preferable proposal to some lawmakers. Senator Lynch demonstrated his commitment to school reorganization by later adding his name as a co-sponsor of LB 662.²⁸

²⁴ Id., § 1, p. 2.

²⁵ Id., §§ 2-7, pp. 2-6.

²⁶ “School Consolidation Chances Called Better This Year,” *Omaha World-Herald*, 12 February 1985, 1.

²⁷ Legislative Bill 679, *Provide for one school district per county*, sponsored by Sen. Dan Lynch, Nebraska Legislature, 89th Leg., 1st Sess., title first read 22 January 1985.

²⁸ NEB. LEGIS. JOURNAL, 19 February 1985, 654.

Divisive from the Beginning

The underlying purpose of LB 662 was to simultaneously reduce the number of school districts in Nebraska and reduce the overall property tax burden. In a newspaper article published the day after LB 662 was introduced, Senator Vard Johnson said, “This is the school reorganization bill that generates a lot of controversy, but it’s a property tax issue.”²⁹ Senator Warner classified the legislation as having a better chance than in previous years. “There’s more interest in taxes and the disparity between (school) districts,” Warner said.³⁰

The bill was referred for disposition to a rather unusual joint committee comprised of members of the Education Committee and the Legislature’s Executive Board.³¹ Referral to a joint committee is somewhat unique in and of itself, but this particular joint referral was even more unique since the Executive Board typically does not take on such substantive issues. The Executive Board serves a dual role of providing leadership to the Legislative Council (the legislative body) and as the Reference Committee, which assigns each bill or resolution to the appropriate standing committee for disposition.³²

The committee assignment of LB 662 was one of a series of controversies surrounding the legislation. In a rare occurrence, the Reference Committee (i.e., the Executive Board) was initially deadlocked on attempts to assign the bill to a standing committee. On January 31, 1985, the Reference Committee considered three separate

²⁹ “School District Mergers Sought For Tax Relief,” *Omaha World-Herald*, 23 January 1985, 1.

³⁰ “School Consolidation Chances Called Better This Year,” *Omaha World-Herald*, 12 February 1985, 1.

³¹ NEB. LEGIS. JOURNAL, 4 February 1985, 452.

³² The Executive Board is one of five “Special Committees” of the Legislature and is truly unique among all the legislative committees. It is the only committee in which both the chairperson and vice chairperson are elected at large by the whole body. The nine-member board acts as an “administrative subcommittee of the entire Legislature” and provides administrative functions on behalf of the body on a year round basis. These functions include: (1) supervision all of services and service personnel of the Legislature; (2) employment and establishment of compensation and other terms of employment for legislative personnel; (3) appointment of persons to fill various division head positions, such as the Legislative Fiscal Analyst, Director of Research, and Revisor of Statutes; and (4) contracting to obtain legal, auditing, accounting, actuarial, or other professional services or advice on behalf of the executive board or the Legislature itself. NEB. REV. STAT. § 50-401.01.

motions to refer the bill either to the Education Committee, the Revenue Committee, or to both committees jointly. All motions failed to receive a majority vote. Finally, on February 1st, a compromise motion was passed to give jurisdiction of the bill to the Education Committee and Executive Board jointly.³³

Upon the announcement of the referral decision, three separate motions were filed on the floor of the Legislature to re-refer the bill.³⁴ On February 4, 1985, Senator Howard Lamb of Anselmo filed a motion to re-refer the bill to the Education Committee alone, a committee on which he served as a member.³⁵ Senator Lamb would become the chief opponent of LB 662 throughout the 1985 Session. Senator Vard Johnson, a co-sponsor of the bill, filed a motion, also on February 4th, to re-refer LB 662 to the Revenue Committee, on which he served as chairman.³⁶ A day later, Senator Rex Haberman filed a third, compromise motion for re-referral to the Education and Revenue Committees jointly.³⁷

Committee jurisdiction of a bill can be a matter of survival or death for a legislative issue, especially one as controversial as mandatory school consolidation. With regard to LB 662, lines of division were generally drawn along rural versus urban opinions of school organization. The rural-based senators generally opposed “forced” consolidation, while the urban-based senators viewed the issue in terms of property tax relief and the overall efficiency of the public education system. In truth, consolidation measures also were less likely to impact urban communities than rural areas where Class I districts were more prevalent. The issue of proper referral demonstrated the sensitive nature of the bill and the belief that certain committees, and perhaps certain members of certain committees, should or should not have control over such an important issue.

³³ NEB. LEGIS. JOURNAL, 4 February 1985, 452.

³⁴ Any member may object to the reference of a bill and may file a motion for correction of the reference, which motion may be passed by unanimous consent of the Legislature, or by vote of a majority of the elected members. RULES OF THE NEB. LEG., Rule 6, § 2(a).

³⁵ NEB. LEGIS. JOURNAL, 4 February 1985, 454.

³⁶ *Id.*, 455.

³⁷ *Id.*, 5 February 1985, 466.

The re-referral motions were considered by the Legislature on February 5, 1985. Both the Lamb motion (Education Committee only) and Haberman motion (Revenue and Education Committees) lost, and the Johnson motion (Revenue Committee only) was withdrawn.³⁸ The Legislature, in effect, had upheld the decision of the Reference Committee. Senator Lamb was later quoted as saying, “Very clearly, these bills should have been referred to Education Committee.”³⁹ He labeled the referral process as “a power play to put these bills somewhere so they have a good chance of coming out of committee.”⁴⁰ He accused various lobbying groups, including the Nebraska State Education Association (NSEA) and the Nebraska Association of Schools Boards (NASB), of working against his motion to re-refer the bill.

Senator Chris Beutler of Lincoln, then chairman of the Executive Board, denied allegations of a power play and instead called it a compromise based on the sensitive nature of the bill. “It is a matter of trying to accommodate all the competing interests in the Legislature,” Beutler said.⁴¹

Advanced from Committee

The public hearing for LB 662 was held in the evening of February 14, 1985. More than 350 people attended the hearing and another 400 or more listened throughout the Capitol hallways and within the rotunda where TV monitors had been arranged. “It’s a glacier force that we are putting into motion that should not be stopped,” said Senator Vard Johnson, “The bill does everything within its power to protect local authority and autonomy.”⁴² Johnson would later defend the proposal saying that, “This is a state issue, not an urban issue or a rural issue.”⁴³ Opponents of the measure countered with arguments of local control, student/parent choice in educational setting, and a host of

³⁸ Id., 464-466.

³⁹ John Barrette, “School Bill Vote Called Power Play,” *Omaha World-Herald*, 6 February 1985, 1.

⁴⁰ Id.

⁴¹ Id.

⁴² “Legislature passes bill to reorganize schools,” *Unicameral Update*, 19 April 1985, 6.

⁴³ “School merger proposal wins 1st-round approval,” *Unicameral Update*, 8 March 1985, 2.

evidence that seemed to indicate that smaller is better, at least for some communities. “Some Class I (schools) should be merged but not all Class Is should be merged,” Senator Lamb said.⁴⁴

Table 2: Testifiers at Public Hearing for LB 662 (1985)

<i>Proponents</i>	<i>Representing</i>
Joe E. Lutjeharms.....	Nebraska Department of Education
Loren Brakenhoff.....	Nebraska Department of Education
Larry Vontz	Nebraska Department of Education
Charles Bacon	Nebraska Tax Research Council
Jack Ostergard	Self
Laurice Margheim.....	Self
Duane Strasheim.....	Nebraska Association of School Boards
Randy Bruns	Self
Roger Macklem.....	Neligh Oakdale School District; Nebraska Council of School Administrators
<i>Opponents</i>	<i>Representing</i>
Rick Baum.....	Nebraska School Improvement Association
Don Linemann	Self
Debra S. Fischer.....	Cherry County Schools Association
Zeke Lowery.....	Valley, Garfield, Holt, Loup, Wheeler, and Custer Counties
Orville Gaskins	Brown County Rural Schools
Bryce Neidig.....	Nebraska Farm Bureau
Merle Hayward	Nebraska Stock Growers
MaryBell Cooksley	Weissert District # 17, Custer County
Fred Mann	Self

Source: Education Committee, and Executive Board, *Committee Statement, LB 662 (1985)*, Nebraska Legislature, 89th Leg., 1st Sess., 1985, 1.

The selected chair of the joint committee was Senator Tom Vickers, chair of the Education Committee. Five days after the public hearing, on February 19th, the joint committee met in executive session to consider the fate of the legislation. The committee first voted to amend the bill by: (1) removing the provisions relating to agricultural land valuation; (2) allowing Class I districts to become part of existing Class VI districts; (3) providing that elementary school attendance sites would not be closed without a vote of

⁴⁴ “Legislature passes bill to reorganize schools,” 6.

the pre-reorganization district; (4) and providing that Class II districts falling below 25 enrolled students must close and merge only if the high school was within 15 miles of another high school.⁴⁵

The second and final vote taken by the joint committee served to officially advance the bill to General File, the first stage of floor debate. The bill advanced by an 8-5 vote with one member present, not voting, and one member absent. The motion for advancement required a minimum of eight affirmative votes from the 15-member panel.⁴⁶

The Controversy Widens

The first and second rounds of debate on LB 662 involved some of the most heated discussions among lawmakers in recent years. Proponents argued for progress in public education while opponents fought for the survival of their rural communities. The lobbying effort was relentless by education groups, school officials, and the general citizenry. But the true drama of the controversial issue was yet to unfold.

On March 19, 1985, LB 662 had reached Final Reading, the final stage of consideration, and had survived a motion to indefinitely postpone and a separate motion to re-commit the bill to committee. As the bill arrived on Final Reading, it maintained substantially the same provisions as it did upon advancement from committee.

Even when a bill arrives at the final stage, it is not uncommon for one or two additional amendments to be considered late in the process. In such a case, a motion must be made to return the bill to Select File, in order for consideration of a single, specific amendment. The “motion to return” must first pass before a second vote on the actual amendment can take place. In most cases, if the motion to return passes, the amendment itself will likely also be adopted. A separate motion is then made to re-advance the bill to Final Reading.⁴⁷

⁴⁵ Education Committee, and Executive Board, *Executive Session Report, LB 662 (1985)*, Nebraska Legislature, 89th Leg., 1st Sess., 1985, 19 February 1985, 1.

⁴⁶ Id. Voting yes (8) - Senators Vickers, Baack, P. Johnson, Morehead, Nelson, Beutler, Marsh and Chambers; voting no (5) - Senators Barrett, Eret, DeCamp, Pirsch and Schmit; present, not voting (1) - Senator Nichol; absent (1) Senator Lamb. Senator Warner, then chair of the Appropriations Committee, served as an ex officio, non-voting member of the Executive Board.

⁴⁷ RULES OF THE NEB. LEG., Rule 6, § 6.

In the case of LB 662, no less than sixteen separate motions were filed to return the measure to Select File for specific amendment. By any standard, this amounted to a substantial number of efforts to change provisions of the bill very late in the legislative process. From April 10th through April 18th, the Legislature considered each separate motion. Eight of the motions lost, two were withdrawn, and six passed, thereby amending the bill six additional times before a final vote to pass the legislation.

One of the approved motions to return would change the destiny of the bill. On April 11, 1985, Senator John DeCamp of Neligh proposed an amendment that set in motion a firestorm of controversy. The amendment proposed to increase the state sales tax rate by 1% (from 3.5% to 4.5%) in order to both increase funding for education and to provide property tax relief.⁴⁸ The proposed sales tax rate increase would occur on January 1, 1987 and would generate an estimated \$44.5 million in state revenue per year.⁴⁹ The DeCamp amendment was adopted on a 29-6 vote.⁵⁰

The success of the DeCamp amendment was partially due to a morning speech given by Senator Jerome Warner in which he cautioned his colleagues about committing the state to certain program expectations without proper financing. The program expectations to which Warner referred had to do with a major commitment by the Legislature to boost funding to public schools. It was this commitment, as much or more than the reorganization provisions, that gave particular significance to LB 662 in the history of Nebraska school finance.

Prior to the adoption of the DeCamp amendment, the Legislature had amended LB 662 with intent language to establish an “adequate financing system for primary and secondary public schools” recognizing that this was “ultimately a state responsibility.”⁵¹

⁴⁸ NEB. LEGIS. JOURNAL, 11 April 1985, 1497.

⁴⁹ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 662 (1985)*, prepared by S. L. Myers, 89th Leg., 1st Sess., 1985, 15 April 1985, 2.

⁵⁰ NEB. LEGIS. JOURNAL, 11 April 1985, 1497.

⁵¹ Legislative Bill 662, in *Laws of Nebraska, Eighty-Ninth Legislature, First Session, 1985*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 17, pp. 8-9 (1110-11).

The Legislature officially acknowledged that the existing funding of public education unduly relied upon “excessive or unfair property taxes as the financing base for such education system.”⁵² Accordingly, the legislation stated that no more than 45% of total operational costs of public schools would derive from property taxes beginning with the 1987-88 fiscal year. The DeCamp amendment, therefore, was meant to finance the increase in school funding. The 1% sales tax rate increase would become operative on January 1, 1987, and the bulk of this additional funding would be diverted toward state aid to public education.⁵³

Senator Warner’s concern was that the 1% rate increase might not produce enough revenue to adequately meet the funding objective of LB 662. Senator Warner, who served as chair of the Appropriations Committee at the time, unsuccessfully attempted to amend LB 662 with a 2% sales tax rate hike.⁵⁴ Such an increase would have produced about \$90 million in new revenue. “The issue is, if you aren’t willing to put the money in when you make the policy decision, you’ve done nothing,” Warner said.⁵⁵

Senator Warner’s experience with school finance and revenue issues was certainly well known among his colleagues. However, as events would later tell, there was more afoot during the debate and last minute amendments to LB 662 than mere good intentions to fund public education.

In any event, the amended version LB 662 did foreshadow some of what the Legislature would incorporate into a comprehensive school finance measure five years later. It served as a blueprint for the development of a well-designed distribution formula with an emphasis on study and research prior to enactment. As amended, LB 662 created the Education and Taxation Advisory Committee, comprised of members of the Legislature, to:

⁵² Id., p. 9 (1111).

⁵³ Id., § 18, p. 9 (1111).

⁵⁴ NEB. LEGIS. JOURNAL, *Warner AM0890*, 3 April 1985, 1368.

⁵⁵ John Barrette, “Plan Would Hike Sales Tax to Pay For School Aid,” *Omaha World-Herald*, 12 April 1985, 1.

- (1) Study existing laws and practices affecting the public educational system;
- (2) Study financing alternatives for public education;
- (3) Propose recommendations for providing quality education financed equitably, taking into account the diverse needs of the state, and conduct a public hearing on such recommendations on or before December 21, 1985; and
- (4) Present to the Legislature on or before January 1, 1986, the committee's recommendations for alleviating the inequities in the property tax burdens imposed to finance education and for addressing deficiencies in the current educational system.⁵⁶

The committee would be required to meet and confer with local and state education officials, consult with and utilize the services of agency staff, and even employ its own staff, as deemed necessary, to carry out its duties.⁵⁷

LB 662 was passed by the Legislature on April 18, 1985 by the narrowest of margins (a 25-23 vote).⁵⁸ Those monitoring the electronic voting board at the front of the legislative chamber observed that Senator John DeCamp, who proposed the 1% sales tax increase, initially pressed the green light for voting aye, until a majority had voted in the affirmative, at which time he changed his vote to nay.⁵⁹

Table 3: Record Vote: Passage
of LB 662 (1985)

Voting For, 25:

Beutler	Hall	Hoagland	Marsh	Pappas
Chizek	Hannibal	V. Johnson	Miller	Schmit
Conway	Harris	Landis	Morehead	Vickers
Goodrich	Hartnett	Lundy	Nelson	Wesely
Haberman	Higgins	Lynch	Nichol	Withem

⁵⁶ LB 662 (1985), Session Laws, § 24, p. 10 (1112).

⁵⁷ *Id.*, § 25, p. 10 (1112).

⁵⁸ NEB. LEGIS. JOURNAL, 18 April 1985, 1658.

⁵⁹ John Barrette, "Consolidation Plan For Schools Passes; Next Move Kerrey's," *Omaha World-Herald*, 18 April 1985, 1.

Table 3—*Continued*

Voting Against, 23:

Abboud	Chambers	Hefner	Peterson	Scofield
Baack	Chronister	L. Johnson	Pirsch	Smith
Barrett	DeCamp	R. Johnson	Remmers	Warner
Beyer	Eret	Labeledz	Rogers	
Carsten	Goll	Lamb	Rupp	

*Not voting, 1:*Sieck

Source: NEB. LEGIS. JOURNAL, 18 April 1985, 1658.

Governor Bob Kerrey deliberated whether to sign or veto the bill until the very last hour of his allotted five-day consideration period. On April 24, 1985, an estimated 2,000 people marched on the grounds of the Capitol to protest LB 622 but failed to personally meet with the Governor. Finally, at 9:30 p.m., Governor Kerrey signed the bill into law. “I have this evening signed into law LB 662,” Kerrey said at the late night press conference.⁶⁰ He had until midnight to make his decision.

Governor Kerrey said he did not particularly care for the way small schools would be bullied into consolidation, but that the flaws in the existing organizational system warranted his support and action. “I believe the uniformity of taxation which is possible under LB 662 is so desirable that I am willing to run the risks which now surround the tasks that face us,” he said.⁶¹ Kerrey made a public plea to the Legislature that the funding elements of LB 662 be eliminated through an amendment to another pending bill. In short, he did not wish to have the 1% sales tax increase remain law for long.

However, if Governor Kerrey had any hope of cooperation from the Legislature, he would be disappointed, as would most observers believing in a nonpartisan Legislature, at least that particular year. On April 26, 1985, Senator Tom Vickers, a Democrat, attempted to carry out the wishes of Governor Kerrey, a Democrat, by

⁶⁰ John Barrette, “Special Session to Tackle Education Issues Governor Signs Schools Bill,” *Omaha World-Herald*, 25 April 1985, 1.

⁶¹ *Id.*

removing the 1% sales tax increase provision. The Farnam area senator sought to amend a pending bill, LB 505 (1985), with an amendment to eliminate the sales tax increase contained in LB 662 (1985).⁶² LB 505, sponsored by Senator Wiley Remmers of Auburn, proposed to increase funding for public education.⁶³ After a very heated debate, the body voted against the Vickers amendment (21-23) generally along party lines.⁶⁴ At the time, there were 24 Republicans, 24 Democrats, and one independent among the members of the body.

Table 4: Record Vote: Vickers AM1182 to LB 505 (1985) to Eliminate 1% Sales Tax Increase Contained in LB 662 (1985)

Voting For, 21:

Beutler (D)	Harris (D)	V. Johnson (D)	Lynch (D)	Rupp (R)
Chizek (D)	Hartnett (D)	Labeledz (D)	Morehead (D)	Vickers (D)
Conway (D)	Higgins (D)	Landis (D)	Nelson (D)	Wesely (D)
Hall (D)	Hoagland (D)	Lundy (D)	Nichol (R)	Withem (D)
Hannibal (R)				

Voting Against, 23:

Abboud (R)	Chronister (R)	L. Johnson (R)	Peterson (R)	Schmit (R)
Baack (R)	DeCamp (R)	R. Johnson (R)	Pirsch (R)	Sieck (D)
Barrett (R)	Eret (D)	Lamb (R)	Remmers (R)	Smith (R)
Beyer (R)	Goll (R)	Miller (D)	Rogers (R)	Warner (R)
Carsten (R)	Hefner (R)	Pappas (D)		

Present and not voting, 4:

Chambers (I)	Goodrich (D)	Marsh (R)	Scotfield (D)
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Absent, 1:

Haberman (R)

(D) - Democrat; (R) - Republican; (I) - Independent

Source: NEB. LEGIS. JOURNAL, 26 April 1985, 1912.

⁶² NEB. LEGIS. JOURNAL, *Vickers-Wesely AM1182*, 25 April 1985, 1909.

⁶³ Legislative Bill 505, *Use additional sales tax for foundation aid*, sponsored by Sen. R. Wiley Remmers, Nebraska Legislature, 89th Leg., 1st Sess., 1985, title first read 22 January 1985.

⁶⁴ NEB. LEGIS. JOURNAL, 26 April 1985, 1912.

Realizing he did not have the votes to pass, Senator Remmers felt pressured to indefinitely postpone his own bill on the same day. His motion was approved.⁶⁵ While not all were playing politics on the issue, it was relatively clear that an attempt was made to place the blame of a tax increase on the last to touch it: Governor Bob Kerrey. “If Gov. Kerrey believes the financing mechanism of LB 662 creates problems, he shouldn’t have approved a flawed bill in the first place,” said Senator Bill Barrett, a Republican who opposed LB 662 but also opposed removing the 1% sales tax increase under LB 505.⁶⁶

Given the partisan nature of the issue, one might ask whether LB 662 was about school finance, school consolidation, a tax increase, or a means to shape the outcome of the 1986 gubernatorial election. Perhaps it was a little of each. At the time, the race for Governor was wide open since Kerrey had chosen not to run for re-election. Some Republicans and party leaders may have felt that blaming the Democrats for the passage of LB 662 would enhance the odds for a Republican victory in the gubernatorial race.

Within a short time after Governor Kerrey signed the bill into law, a citizen-based group organized to repeal LB 662 through a vote of the people. On one side of the petition movement were the supporters of Class I schools along with a considerable organization of business interests. On the other side were many of the public education interest groups, including the State Board of Education, the Nebraska Association of School Boards, the Nebraska State Education Association, and the Nebraska Council of School Administrators. The subsequent campaign, both for and against the petition, was hard fought with few if any tactics left unused, including legal challenges.

On August 30, 1985, leaders of the petition effort filed the remainder of the signatures gathered to place the measure on the 1986 General Election ballot. Secretary of State Allen Beermann reported that the group had not only gathered sufficient signatures to place the issue on the ballot, but also sufficient signatures to suspend the

⁶⁵ NEB. LEGIS. JOURNAL, 26 April 1985, 1915.

⁶⁶ “Senators Should Not Save Kerrey With Special Session, Barrett Says,” *Omaha World-Herald*, 4 July 1985, 1.

enforcement of LB 662 until the people have spoken on the matter. In total, 83,554 signatures were gathered from around the state and among the requisite number of different counties. The petition group needed to gather valid signatures equaling 5% of the votes cast in the 1982 gubernatorial election to place the issue on the ballot (or 27,395) and twice that number, 10% (or 54,790), to suspend enforcement of the law. Beermann also reported that the number of signatures gathered by the group to repeal LB 662 was the most gathered by any referendum or initiative petition drive in the history of Nebraska to that point in time.⁶⁷

Referendum 400 appeared on the November 4, 1986 General Election ballot and almost 68% of all registered voters participated in the election.⁶⁸ No doubt the heavily publicized and hard fought battle over Referendum 400 had a significant impact on the high turnout. The ballot question to retain LB 662 was answered loud and clear. No. A full 66.5% voted against retention of the 1985 legislation while only 33.5% voted in favor.⁶⁹ No matter why voters voted the way they did, the outcome was the same. LB 662 had been defeated.

Table 5: Canvass Report: Referendum 400 (1986)

Ballot Question: Shall LB 662, enacted by the Eighty-Ninth Legislature of the State of Nebraska in its first session, the purpose of which are to require public elementary-only school districts to merge, affiliate or become a part of public school districts containing a high school, to limit the percentage of total operational costs of the public school system derived from taxes on real property, and to increase the amount of state financial support to the public schools through an increase in the state sales tax be retained?

County	For	%	Against	%	County	For	%	Against	%
Adams	3,235	33.29%	6,484	66.71%	Jefferson	1,532	38.58%	2,439	61.42%
Antelope	804	21.96%	2,858	78.04%	Johnson	697	34.03%	1,351	65.97%
Arthur	24	9.13%	239	90.87%	Kearney	875	31.16%	1,933	68.84%
Banner	59	12.50%	413	87.50%	Keith	852	24.13%	2,679	75.87%
Blaine	85	18.68%	370	81.32%	Keya Paha	93	14.81%	535	85.19%
Boone	755	26.47%	2,097	73.53%	Kimball	491	29.09%	1,197	70.91%
Box Butte	1,253	26.45%	3,484	73.55%	Knox	1,048	28.55%	2,623	71.45%
Boyd	365	26.98%	988	73.02%	Lancaster	27,823	42.41%	37,788	57.59%

⁶⁷ Steven Stingley, "Record Number Sign Referendum Petition To Repeal School Law," *Omaha World-Herald*, 31 August 1985, 1.

⁶⁸ Secretary of State Allen J. Beermann, comp., *Official Report of the State Board of State Canvassers of the State of Nebraska, General Election, November 4, 1986* (Lincoln, Nebr.: Office of Sec'y of State).

⁶⁹ *Id.*

Table 5—Continued

Brown.....	295.....	18.39%.....	1,309.....	81.61%	Lincoln.....	3,778.....	31.15%.....	8,350.....	68.85%
Buffalo.....	4,041.....	34.12%.....	7,804.....	65.88%	Logan.....	54.....	12.13%.....	391.....	87.87%
Burt.....	1,025.....	31.35%.....	2,245.....	68.65%	Loup.....	67.....	16.96%.....	328.....	83.04%
Butler.....	660.....	19.34%.....	2,753.....	80.66%	Madison.....	2,084.....	21.41%.....	7,649.....	78.59%
Cass.....	2,386.....	36.97%.....	4,068.....	63.03%	McPherson.....	21.....	6.02%.....	328.....	93.98%
Cedar.....	1,144.....	33.15%.....	2,307.....	66.85%	Merrick.....	864.....	28.71%.....	2,145.....	71.29%
Chase.....	485.....	26.13%.....	1,371.....	73.87%	Morrill.....	614.....	31.50%.....	1,335.....	68.50%
Cherry.....	515.....	18.31%.....	2,297.....	81.69%	Nance.....	461.....	28.16%.....	1,176.....	71.84%
Cheyenne.....	970.....	34.52%.....	1,840.....	65.48%	Nemaha.....	1,210.....	37.16%.....	2,046.....	62.84%
Clay.....	854.....	26.46%.....	2,374.....	73.54%	Nuckolls.....	847.....	35.12%.....	1,565.....	64.88%
Colfax.....	822.....	22.58%.....	2,819.....	77.42%	Otoe.....	1,748.....	30.75%.....	3,937.....	69.25%
Cuming.....	1,118.....	29.18%.....	2,714.....	70.82%	Pawnee.....	463.....	26.95%.....	1,255.....	73.05%
Custer.....	903.....	17.92%.....	4,135.....	82.08%	Perkins.....	348.....	23.69%.....	1,121.....	76.31%
Dakota.....	1,438.....	34.22%.....	2,764.....	65.78%	Perls.....	1,187.....	29.37%.....	2,855.....	70.63%
Dawes.....	1,116.....	34.93%.....	2,079.....	65.07%	Pierce.....	672.....	22.32%.....	2,339.....	77.68%
Dawson.....	1,940.....	27.26%.....	5,177.....	72.74%	Platte.....	2,229.....	23.12%.....	7,412.....	76.88%
Deuel.....	305.....	31.97%.....	649.....	68.03%	Polk.....	597.....	23.98%.....	1,893.....	76.02%
Dixon.....	830.....	30.71%.....	1,873.....	69.29%	Red Willow.....	1,146.....	26.48%.....	3,182.....	73.52%
Dodge.....	3,876.....	33.58%.....	7,665.....	66.42%	Richardson.....	1,199.....	28.85%.....	2,957.....	71.15%
Douglas.....	46,734.....	38.11%.....	75,900.....	61.89%	Rock.....	123.....	12.71%.....	845.....	87.29%
Dundy.....	225.....	20.85%.....	854.....	79.15%	Saline.....	1,445.....	31.38%.....	3,160.....	68.62%
Fillmore.....	600.....	18.74%.....	2,602.....	81.26%	Sarpy.....	8,650.....	42.09%.....	11,901.....	57.91%
Franklin.....	580.....	30.75%.....	1,306.....	69.25%	Saunders.....	2,120.....	31.28%.....	4,658.....	68.72%
Frontier.....	438.....	31.40%.....	957.....	68.60%	Scotts Bluff.....	3,849.....	38.59%.....	6,125.....	61.41%
Furnas.....	814.....	32.21%.....	1,713.....	67.79%	Seward.....	1,521.....	30.68%.....	3,437.....	69.32%
Gage.....	2,674.....	35.50%.....	4,858.....	64.50%	Sheridan.....	537.....	21.08%.....	2,010.....	78.92%
Garden.....	245.....	20.98%.....	923.....	79.02%	Sherman.....	448.....	26.28%.....	1,257.....	73.72%
Garfield.....	269.....	25.97%.....	767.....	74.03%	Sioux.....	120.....	15.71%.....	644.....	84.29%
Gosper.....	337.....	36.28%.....	592.....	63.72%	Stanton.....	482.....	22.29%.....	1,680.....	77.71%
Grant.....	71.....	17.71%.....	330.....	82.29%	Thayer.....	1,023.....	32.20%.....	2,154.....	67.80%
Greeley.....	337.....	26.60%.....	930.....	73.40%	Thomas.....	99.....	22.25%.....	346.....	77.75%
Hall.....	5,797.....	38.68%.....	9,191.....	61.32%	Thurston.....	614.....	29.58%.....	1,462.....	70.42%
Hamilton.....	961.....	27.02%.....	2,596.....	72.98%	Valley.....	598.....	26.18%.....	1,686.....	73.82%
Harlan.....	557.....	28.59%.....	1,391.....	71.41%	Washington.....	1,917.....	33.86%.....	3,744.....	66.14%
Hayes.....	160.....	21.86%.....	572.....	78.14%	Wayne.....	853.....	28.90%.....	2,099.....	71.10%
Hitchcock.....	417.....	25.36%.....	1,227.....	74.64%	Webster.....	644.....	33.66%.....	1,269.....	66.34%
Holt.....	861.....	16.59%.....	4,329.....	83.41%	Wheeler.....	75.....	16.70%.....	374.....	83.30%
Hooker.....	100.....	25.00%.....	300.....	75.00%	York.....	1,247.....	22.86%.....	4,207.....	77.14%
Howard.....	653.....	24.03%.....	2,064.....	75.97%	TOTAL.....	173,498.....	33.50%.....	344,445.....	66.50%

Source: Secretary of State Allen J. Beermann, comp., *Official Report of the State Board of State Canvassers of the State of Nebraska, General Election, November 4, 1986* (Lincoln, Nebr.: Office of Sec’y of State).

Was it the school consolation issue or tax increase that sank LB 662? Even a few of the advocates for Class I schools took the election results as less an endorsement of their small schools as a resounding defeat of a tax increase. “Oddly enough,” said Rick Baum of the Nebraska School Improvement Association, “it was the finance portion of the bill that seemed to pass the bill in the Legislature, but it was the finance portion of the

bill that defeated the bill on the ballot.”⁷⁰ The Nebraska School Improvement Association was instrumental in launching the referendum effort, but many believe it was the state and local chambers of commerce that had most to do with the success of the repeal effort. The business community was simply unwilling to go along with a sales tax increase.

In fact, some attribute the tough stance taken by Republican candidate Kay Orr against the tax increase as a major contribution to her ascension to the Office of Governor in 1986. Orr, who served as State Treasurer at the time, made the 1% sales tax increase a cornerstone of her 1986 campaign. Helen Boosalis, the Democrat nominee for Governor, supported LB 662. The war of words on the issue never ceased throughout the months leading up to the election. At one point, Orr’s campaign unveiled a television campaign advertisement that included the statement, “There is no doubt about it, LB 662, or Referendum 400, it’s all a tax increase.”⁷¹ The advertisement emphasized Orr’s position against the tax increase while promoting Boosalis’ position in support. “No doubt about it,” a voiceover stated, “Helen Boosalis wants to raise your taxes and Kay Orr does not.”⁷² Kay Orr would win the election by a relatively close 53% to 47% margin (298,325 to 265,156).⁷³

Following the emotional battle over consolidation in 1985 and the subsequent referendum election in 1986, the Legislature was literally back to square one at the outset of the 1987 Legislative Session. Senator Ron Withem, chair of the Education Committee, took it upon himself to address the issue, but this time the hard-hitting provisions found in LB 662 (1985) would be absent. The focus of the next attempt toward consolidation would be procedural in nature rather than overt attempts to force a reduction in the number of school districts statewide. Senator Withem originally

⁷⁰ Nicole Simmons, “Consolidation Bill Doomed by Tax Hike,” *Omaha World-Herald*, 5 November 1986, 1.

⁷¹ C. David Kotok, “Issues: Experience, Endorsements, Taxes New TV Ads Heat Up Campaign,” *Omaha World-Herald*, 21 October 1986, 1.

⁷² *Id.*

⁷³ Beermann, *Official Report of the State Board of State Canvassers, General Election, November 4, 1986*.

introduced LB 444 (1987) in order to change practices at the county level concerning reorganization efforts. The bill lowered the number of petition signatures required to force a consolidation or change boundaries of school districts from 60% of the voters from each district affected to a simple majority of the voters in each district.⁷⁴ The result of this change, as hoped by some proponents of the bill, would be to make consolidation efforts slightly easier for those who favor such a move.

“This bill doesn’t close one single school in this state,” Withem said, “It puts the decision back on the county level.”⁷⁵ Nevertheless, opponents of the bill saw similarities to the legislation faced just a few years before. “You’re going to stir up hard feelings in small communities that have all the problems they need,” Senator Jerome Warner said.⁷⁶ “It’s not worth the price of tearing up a small community and waiting a generation for it to heal,” he added.⁷⁷ But LB 444 was far from just a rural-oriented bill.

During General File debate, Senator Howard Lamb, a rural school supporter, successfully amended the bill to apply to urban Nebraska as well. As amended, the bill required that, “Any independent school district within the incorporated area of a city of the metropolitan class shall be subject to reorganization... .”⁷⁸ The provision was specifically aimed, perhaps for political purposes, at Westside Community Schools (District 66) in Omaha. The Lamb amendment would subject the urban school district to the same reorganization provisions as any other school district in the state. The amendment, according to Lamb, was not vindictive so much as a statement against consolidation in general. Said Lamb, “I believe District 66 should be left alone just as much as the (small districts) should be left alone.”⁷⁹

⁷⁴ Legislative Bill 444, *correctly engrossed and prepared for Final Reading*, Nebraska Legislature, 90th Leg., 1st Sess., 1987, § 1, p. 3.

⁷⁵ “Senators amend, advance proposal to change school reorganization,” *Unicameral Update*, 10 April 1987, 6.

⁷⁶ Henry J. Cordes, “Consolidation Foes ‘Hit Nerve’ With District 66,” *Omaha World-Herald*, 26 March 1987, 1.

⁷⁷ *Id.*

⁷⁸ Legislative Bill 444, *Final Reading*, § 8, p. 16.

⁷⁹ Cordes, “Consolidation Foes ‘Hit Nerve’ With District 66,” 1.

As the bill moved through the legislative process, the old dividing lines between lawmakers on the issue of consolidation were appearing once again. By the time the bill cleared second-round approval (on a close 26-14 vote), it was clear to most that another showdown was on the near horizon.⁸⁰ Governor Orr, trying to avoid the same situation faced by her predecessor, Bob Kerrey, agreed to “pledge her support” to further study and asked that the bill not be considered on Final Reading.⁸¹ Withem relented and LB 444 faded into legislative history, but the bill did serve as a catalyst for an interim study and later a comprehensive study on school organization and finance.

D. Review

As history demonstrates, the issues of education funding and general tax policy have always been closely intertwined. It is the circumstances that surround the dual issues that have often served as the catalyst for a resolution between them. The catalyst in the mid-1960s was a constitutional crisis that left the state without any substantial financial means to operate. The crisis not only produced the most wide sweeping changes in taxation in the history of the State of Nebraska, but also ultimately produced a new school finance formula.

In 1967 Senator Warner introduced LB 448, which created the School Foundation and Equalization Act. The 1967 school finance formula had three basic components. The first was to provide state aid to schools on the basis of average daily attendance during the previous year. This became known as the foundation element of the formula. The second component, the equalization part, was the creation of a distribution formula to equalize aid in relation to the wealth of the school district. The third component provided incentive aid to school districts that offered summer school programs and/or employed teachers with advanced degrees.

The bulk of the funding under the new formula was used for foundation aid with the remaining available appropriations used for equalization aid and incentive aid. But it

⁸⁰ NEB. LEGIS. JOURNAL, 9 April 1987, 1602.

⁸¹ “Truce Talks Begin on School Consolidation,” *Omaha World-Herald*, 10 May 1987, 1.

became painfully clear as the decades went by that the school finance formula was simply under-funded. As would be documented in 1990, the formula produced inequities in educational opportunities and inequities in tax burden.

In 1985, the Legislature committed itself to a bold step concerning school organization and education funding. LB 662 (1985) would have caused the merger of all Class I (elementary only) districts and would have raised the state sales tax rate by 1% in order to dedicate more funding for public schools. LB 662 was then and is still today one of the most controversial education battles of modern Nebraska history. The issue was so hotly contested that it helped to shape the outcome of the 1986 gubernatorial election. Ultimately, the people would have the final word with regard to LB 662 when voters at the 1986 General Election voted against retention of the law.

Interestingly, one of the less noted provisions of LB 662 was the creation of a special Education and Taxation Advisory Committee to study the existing school finance system and to propose alternatives for the Legislature's consideration. This committee, along with all other provisions of LB 662, was eliminated by virtue of the vote on Referendum 400 (1986). Nevertheless, it appeared that the Legislature was willing to look at alternatives for school funding and it was only a matter of time before another such study committee would be formed.

The Commission, 1988-1989

A. Introduction

At the conclusion of the 1987 Session, it was clear the Legislature left unfinished business with regard to public education, particularly on the issue of consolidation. “Education seems adrift,” said Senator Dave Landis of Lincoln, referring in part to the issue of school consolidation.⁸² Senator Dennis Baack of Kimball seemed to agree with Landis’ assessment. “I think we’ll be right back in the middle of that issue,” Baack predicted, noting that the issue was “too emotional” to find an easy solution.⁸³ And the prospects were no better on the general issue of school finance. The 1987 Legislature once again reduced state funding for education by 2% to \$122.6 million for FY1987-88. This was a continuation of a downward trend in state aid since FY1983-84 when the level of appropriation was at \$133.7 million.⁸⁴ To make matters worse, the education groups representing teachers, administrators, school boards, and specific school district classifications were at odds with one another on a range of educational issues, consolidation and school finance certainly not the least among them.

It became necessary for someone to pull the sides together and make sense of the issues that needed to be addressed. And someone did. During the summer of 1987, Senator Ron Withem, chair of the Education Committee, brought various groups and key individuals together to work toward an “educational enhancement package.”⁸⁵ This, of course, required the parties to bury the hatchet and declare a cease-fire long enough to accomplish something of substance. “What I asked them to do was explore whether or not we could do a concentrated effort toward an educational enhancement package, as opposed to fighting each other,” Withem said.⁸⁶

⁸² “Some Senators Say 1988 May Be Year for Education,” *Omaha World-Herald*, 1 June 1987, 1.

⁸³ *Id.*

⁸⁴ “Lawmaker Is Working To Reach Cease-Fire Among All Educators,” *Omaha World-Herald*, 27 July 1987, 1.

⁸⁵ *Id.*

⁸⁶ *Id.*

The meetings called by Withem in the summer of 1987 actually served as the initial stage for an interim study on the issues of school organization and finance. Following the agreement between Governor Orr and Senator Withem to hold off a final vote on LB 444 (1987), Withem filed a study resolution, LR 180 (1987), to research “alternative methods to accomplish an improved school district structure in Nebraska.”⁸⁷ Resolutions for interim studies are typically filed during a legislative session to examine a particular issue for possible legislative action in the following regular session. LR 180 was no exception, and it was clear, particularly by his attempt to bring parties together, that Withem meant to achieve some form of resolution to the issues.

The actual text of LR 180 properly captured the essence of the problem facing the state in just one sentence:

Historically, and especially during recent sessions of the Legislature, school district reorganization has been a divisive and emotional issue, yet in recent years, changing demographics and agricultural adjustments have caused an even greater need to address this issue in an objective and equitable manner.⁸⁸

The study set out to address “various alternative strategies to accomplish an educational structure which promotes educational opportunities, assures tax equity, and retains a legitimate role for local school boards.”⁸⁹

The specific objectives of the study were carefully constructed to provide a sweeping examination of all related issues to school organization in Nebraska, including:

- (1) Revisions in statutes which pertain to the procedures for organizing school districts of all classes;
- (2) Structural changes in the school foundation and equalization formula;
- (3) State aid and tax incentives to promote and encourage the organization of all property into school districts which offer kindergarten through grade twelve;
- (4) Appropriate levels of state and local support for schools;

⁸⁷ NEB. LEGIS. JOURNAL, 13 May 1987, 2237-38.

⁸⁸ Id., 2237.

⁸⁹ Id., 2237-38.

- (5) Revenue sources for support of the schools;
- (6) Establishment of consistent, flexible, and challenging standards for all public schools;
- (7) Transportation of students, including the cost to consolidated districts and state requirements for aid support; and
- (8) Any other factors reasonably related to the issue of school district structure.⁹⁰

The majority of these objectives, particularly (2) through (5), should have served to put everyone on notice that the current school finance formula was at issue in the overall discussion of school organization. It should have put the education community, and the various groups that represent it, on notice that change was in the near offing, and to not be “at the table” for such discussions would be a mistake. They noticed.

John Sullivan, lobbyist for the Nebraska Rural Community Schools Association (NRCSA), said Withem is “bringing people together rather than building moats and putting alligators in them,” referring once again to the divisiveness of the education issues of the day.⁹¹ Herb Schimek, lobbyist for the Nebraska State Education Association (NSEA) said, “People are saying we want to make sure if it’s a ‘year for education,’ we want to make sure it’s not all higher education.”⁹² Schimek was referring to the interests of public education versus postsecondary education since the University of Nebraska was also experiencing a financial crisis at the time. June Remington, lobbyist for the Nebraska Council of School Administrators (NCSA), seemed to agree with her colleagues in the lobby and noted her organization’s willingness to pursue a broadened tax base in order to fund public education. “I think there’s fairly uniform cohesiveness on the fact that we’re going to have to broaden the tax base,” Remington said.⁹³

⁹⁰ Id.

⁹¹ “Lawmaker Is Working To Reach Cease-Fire Among All Educators,” *Omaha World-Herald*, 27 July 1987, 1.

⁹² Id.

⁹³ Id.

In fact, by the end of the fourth meeting of Withem's ad hoc study group, on August 12, 1987, the idea of broadening the tax base to fund public education was one of several official recommendations of the group. One possibility, the committee suggested, was a general income tax rate increase coupled with an income tax rebate to school districts to enhance state support for schools.⁹⁴ However, state funding for education was not the only area of discussion. The group also addressed one of the cornerstone issues of contention between small and large school districts, the issue of a common or combined levy on real property.

One of the often criticized aspects of Class I (elementary only) districts was that the residents of such districts typically paid a much lower property tax levy than those living in a district containing a high school. Some even referred to (or sometimes defended) Class I districts as "tax havens" in contrast to other school districts. The remedy, many suggested, was a common levy whereby all residents of a particular area or county would pay the same property tax levy. The problem, in part, was to determine which Class I districts were "affiliated" with a particular high school district in order to establish which property tax rate to charge residents. Supporters of Class I districts opposed such a scheme for obvious reasons. First, the residents would pay higher property taxes, and, second, there would be a substantial risk of losing autonomy and control over the Class I district.

Following the August 12th meeting, Withem reported that representatives of large and small Nebraska school systems agreed all property in the state should be taxed for the support of high schools, essentially agreeing to a common levy. Withem said representatives reached a "general agreement that we should be moving toward a system where every piece of property is in a K-12 system."⁹⁵ This general agreement would eventually lead to the affiliation bill in 1990 whereby Class I districts were required to

⁹⁴ Nicole Simmons, "Former Opponents Agree On Move to K-12," *Omaha World-Herald*, 13 August 1987, 1.

⁹⁵ *Id.*

affiliate with a high school district (either a Class VI district or a K-12 district).⁹⁶ Over a period of years, other issues addressed at the meeting would eventually be addressed in legislation, including the idea of linking state aid payments to reorganization, encouraging early retirements in consolidated districts, and ensuring that two districts would not lose state aid by the act of merging. In all, the meeting was one of considerable historic importance even though the concepts promoted at the meeting took various lengths of time to materialize.

The LR 180 interim study did not result in any specific recommendations concerning the existing school finance structure and how it could be changed. But this was certainly not due to lack of effort or desire on the part of some members of the ad hoc committee nor Senator Withem himself. The problem encountered had more to do with the overly broad scope of the resolution, and, from a more practical perspective, the lack of resources to conduct such a study. LR 180 was awarded no special funding for research, and legislative staff possessed only so much expertise in areas such as school finance. Nonetheless, LR 180 did produce many valuable ideas and perhaps also some intangible goodwill on the part of the players to continue talking. LR 180 was an important first step that would eventually lead to the drafting and passage of legislation embodying the most comprehensive school finance reform since 1967.

B. Creation of a Commission

In 1988, Senator Withem introduced two important pieces of legislation. Both bills were intended to carry forth the general objectives of the LR 180 study group, at least as Senator Withem believed them to be. The more eye-catching of the two bills, LB 940, was a comprehensive reorganization bill. As introduced, LB 940 required that all real property and all elementary and secondary students must be a part of school districts

⁹⁶ Legislative Bill 259, in *Laws of Nebraska, Ninety-First Legislature, Second Session, 1990*, vol. I, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), §§ 1-35, pp. 1-20 (84-103).

offering instruction in kindergarten through grade twelve.⁹⁷ All Class I districts were to be affiliated with a district offering high school instruction, either a Class VI district or a K-12 district. This was to be accomplished by July 1, 1994.⁹⁸ The bill proposed extensive changes to the procedures for approving reorganization agreements and permitted the county reorganization committees to give final approval, effectively bypassing the need for final approval by the state reorganization committee.⁹⁹ It also changed provisions under the Industrial Relations Act to create a single bargaining unit for all teaching staff within an affiliated system.¹⁰⁰

The original version of LB 940 proposed to change existing law with regard to the creation of new Class VI (high school only) districts. Under the bill, a new Class VI district could be formed if the boundaries are not closer than ten miles of the boundaries of a city with a population of 3,500 (unless the city is within a school district that will be part of the Class VI) and if there will be an enrollment of at least 125 pupils in the new district.¹⁰¹ The purpose of placing restrictions on the creation of Class VI districts was two-fold. First, the general idea behind reorganization was fewer districts, not more. Second, some were concerned that residents of Class I districts might choose to form new Class VI districts rather than merge with a K-12 district. LB 940 would permit the creation of such Class VI districts but only under certain circumstances.

Lastly, LB 940 proposed to require all school districts to be accredited, rather than merely approved, under the rules and regulations of the Department of Education.¹⁰² This was to be accomplished before the 1993-94 school year. The vast majority of all Class I

⁹⁷ Legislative Bill 940, *Require the reorganization of school districts, to create a school financing review commission*, sponsored by Sen. Ron Withem, 90th Leg., 2nd Sess., 1988, title first read 6 January 1988, § 3, p. 11.

⁹⁸ *Id.*, §§ 2-5, pp. 11-13.

⁹⁹ *Id.*, § 8, p. 25.

¹⁰⁰ *Id.*, § 1, pp. 5-6.

¹⁰¹ *Id.*, § 6, pp. 13-14.

¹⁰² *Id.*, § 29, p. 53.

districts were approved but not accredited under existing rules, which meant that such districts met minimum standards of compliance but not what the State Board of Education considered ideal standards. By requiring all districts to be accredited, Senator Withem believed, students would have the maximum educational opportunities and services availed to them.

The second major legislative measure in 1988 was much shorter in terms of length, but no less important in terms of the goals produced by the LR 180 ad hoc committee. LB 916, also introduced by Senator Withem, would accomplish two objectives. First, it would create the School Financing Review Commission to perform an in-depth study on school finance and produce recommendations for change.¹⁰³ The second objective of LB 916 amounted to payback time, literally. The bill required a sizable \$13.8 million appropriation in order to return total state aid to the level it had been six years earlier.¹⁰⁴ The Legislature had incrementally reduced the amount of aid due to budgetary considerations since 1982.

Among the major objectives between the two bills, LB 916 and LB 940, it was the creation of the commission that would win the easy support, perhaps in part because it was the cheapest both in terms of cost and political anguish. As originally proposed, the commission would consist of twelve members:

- The chairperson of the Legislature's Education Committee;
- the chairperson of the Legislature's Appropriations Committee;
- the Commissioner of Education or his or her designee;
- a representative of the Governor;
- a member residing in a Class I school district;
- a member residing in Class II school district;
- a member residing in a Class III school district;
- a member residing in a Class IV school district;
- a member residing in a Class V school district;
- a member residing in a Class VI school district; and
- two members from the state at large.¹⁰⁵

¹⁰³ Legislative Bill 916, *A bill to create a school financing review commission*, sponsored by Sen. Ron Withem, 90th Leg., 2nd Sess., 1988, title first read 6 January 1988, §§ 1-4, pp. 2-4.

¹⁰⁴ *Id.*, § 7, pp. 5-6.

¹⁰⁵ *Id.*, § 1, p. 2.

Conspicuous among the chosen membership was the inclusion of the Governor's representative, signaling the hope for support from the administration. Also noteworthy was the exclusion of the chairperson of the Revenue Committee.

The commission would have a statutory deadline of June 30, 1989 to finish its work. This meant the commission would have slightly over one year to tackle one of the more monumental goals ever assigned to such an ad hoc committee, before or since. The principle objective of the commission was to "conduct an in-depth review of the financing of the public elementary and secondary schools."¹⁰⁶ Specifically, the commission would:

- (1) Examine the option of using income as a component in the financing of schools;
- (2) Examine financing methods used in other states which offer alternatives to the current heavy reliance on property tax;
- (3) Examine financing issues as they relate to the quality and performance of the schools; and
- (4) Prepare a report with recommendations and a plan to implement the recommendations and shall be presented to the Legislature by March 1, 1989.¹⁰⁷

The commission was given the authority to hire staff, including consultants, to obtain assistance from the Department of Education and the Department of Revenue in acquiring data needed to carry out its duties, and to contract for any necessary facilities, equipment, and services, including computer services.¹⁰⁸ The bill appropriated \$100,000 to the commission to carry out its function.¹⁰⁹ While not a tremendous sum, this appropriation would certainly permit the hiring of a consultant, and ultimately it did.

Public Hearing

The Education Committee met in the afternoon of January 26, 1988, in the East Chamber at the State Capitol, to hold a joint public hearing on LB 916 and LB 940. The

¹⁰⁶ Id., § 2, p. 3.

¹⁰⁷ Id.

¹⁰⁸ Id., § 3, p. 3.

¹⁰⁹ Id., § 4, pp. 3-4.

East Chamber is often used for public settings and meetings, but seldom used for purposes of a public hearing on legislation. It was anticipated, however, that the normal hearing rooms in the lower floor of the Capitol would be unable to hold the number of observers and testifiers likely to attend.

Senator Ron Withem, chairman of the committee, both presided at the meeting and delivered the introductory remarks concerning the history of the issue to be addressed. Withem used a cartoon on an overhead to illustrate the need to move forward on the controversial issue of consolidation and to break the palpable tension in the chamber that day. Not since three years earlier, in 1985, had there existed the political alignment necessary to make a consolidation bill even remotely possible. And even with this political alignment, due ostensibly to the work of the LR 180 study group, the prospects of a consolidation bill appeared tentative at best. Withem alluded to the uphill battle ahead, but said he thought the legislation represented a “workable solution to the problem.”¹¹⁰

Withem first addressed LB 916 to create a commission on school finance. He said the LR 180 study group attempted to examine the issue but found that the issues were far too complex to address without the assistance of experts in that area. Said Withem:

[W]e’re saying that a thorough independent look at our state aid distribution and school financing in the state needs to be done through a study. We are suggesting that a commission be appointed by the governor for the purpose of thorough examination of school finance, funds be made available for the type of expertise that we may need to carry this forth and that they be charged with the responsibility of reporting back to us.¹¹¹

He publicly offered the suggestion of the LR 180 group that the commission seriously examine the state income tax and using “income as a factor” in the distribution of state

¹¹⁰ Committee on Education, *Hearing Transcripts, LBs 916, 940 (1988)*, Nebraska Legislature, 90th Leg., 2nd Sess., 1988, 26 January 1988, 4.

¹¹¹ *Id.*

aid.¹¹² Withem also discussed the other major component of LB 916 to restore state aid funds to the 1982-83 level of appropriation.

Having addressed what he regarded as the less controversial of the measures, Withem then turned his attention to the legislation that most were anxious to discuss, LB 940. He labeled the bill the “reorganization slash accreditation proposal,” referring to two of the major components of the measure.¹¹³ Withem mentioned the failure of LB 662 (1985) but suggested LB 940 was more of a compromise on the issue of affiliation. To illustrate how long the issue of school organization had existed in Nebraska, he paraphrased a quotation from William K. Fowler, elected Commissioner of Education in 1900, who emphasized the need for Nebraska to seriously address the reorganization of schools.¹¹⁴ In 1900 there were 6,708 public school districts, only 448 of which were K-12 districts.¹¹⁵

The issue of reorganization, Withem said, was such an old and divisive issue in Nebraska that it impeded if not prevented discussion on other educational issues. Said Withem:

It’s been my experience both as an observer of the history of the public policy of education in this state and as a participant in it that this issue permeates all other issues that we discuss. We really don’t get to the key issues in Nebraska. Key issues that we don’t address are quality of teachers, and quality of teacher preparation. Do we have enough teachers coming in? Are we paying teachers enough? We really don’t discuss those issues? What is quality education? What do we need the schools to be presenting? Are they doing a good job or are they not doing a good job? We really don’t discuss that. How should we fund our schools? Is the property tax a fair method or should we look at other methods? We really don’t discuss those types of issues because everyone of them when we begin to discuss them get dissected based on which side of the reorganization issue you fall upon.¹¹⁶

¹¹² Id.

¹¹³ Id., 5.

¹¹⁴ Id., 6.

¹¹⁵ NEB. BLUE BOOK, 2002-03 ed., 930.

¹¹⁶ *Hearing Transcripts, LBs 916 and 940 (1988)*, 26 January 1988, 6.

Withem encouraged all present at the hearing to look at the future of education in Nebraska and “rise above the politics in this particular case.”¹¹⁷ But as happens at most hearings, individuals set to testify are predisposed to their opinions or the opinions of the organizations they represent. This hearing was no exception. Nevertheless, some interesting discussion points were raised that day.

Not the least of these points concerned the constitutionality of requiring all real property to be a part of school districts offering instruction in kindergarten through grade twelve as outlined in the bill. In essence, a given Class I district would be subjected to taxation by a governing body of another school district, a governing body other than its own. This brought about talk that LB 940 would violate the often-used maxim “no taxation without representation.”¹¹⁸ Asked by a fellow committee member to address the issue, Withem responded, “We’ve got a court case that has indicated that that concept taxation without representation may be a nice maxim of government, but there really isn’t that constitutionally protected right that we all think we do have.”¹¹⁹ In addition, he said, Class I districts do have the option to merge with a K-12 system. Although to most Class I supporters, this was not an option at all.

Several opponents of the bill, including the Nebraska School Improvement Association (NSIA), provided testimony on the issue of constitutionality. Three of the thirteen opponents at the hearing were representatives from the NSIA, including its field service director and two attorneys. One of the attorneys, John Recknor, said LB 940 would fail on constitutional grounds due, in part, to a “disparity in franchise” (relating to voter rights).¹²⁰ “[T]he Supreme Court of this country has said time and time again, if you’re part of a common enterprise, you cannot be artificially divided into classes with

¹¹⁷ Id., 7.

¹¹⁸ The phrase was originally coined by Rev. Jonathan Mayhew in a sermon at Old West Church, Boston, Massachusetts. Wikipedia contributors, “No taxation without representation,” *Wikipedia, The Free Encyclopedia*, http://en.wikipedia.org/w/index.php?title=No_taxation_without_representation&oldid=36980929. Accessed 28 April 2005.

¹¹⁹ *Hearing Transcripts, LBs 916 and 940 (1988)*, 26 January 1988, 8.

¹²⁰ Id., 33.

some parts of the class having a vote and some parts of the class not having a vote,” Recknor said.¹²¹

Sieg Brauer, the other attorney representing the NSIA, admitted his organization’s concurrence with the objectives outlined by the LR 180 study group “in the sense that we agree with the desire to get all the land in Nebraska into a taxing district for high school purposes.”¹²² At the same time, Brauer said, his organization adhered to its own objective to maintain autonomy of Class I school districts even under a system of affiliation, as proposed by LB 940. Brauer agreed with Recknor’s analysis of the bill’s unconstitutionality, saying, “The [U.S.] Supreme Court has left no doubt, no room for interpretation that when a political subdivision involves the school district, all resident electors must have equal voice in the government and representation in that school district.”¹²³ In addition, Brauer noted, the bill would violate the contract clauses of both the U.S. and state constitutions by imposing one taxpayer’s indebtedness on another.¹²⁴

Rick Baum, NSIA Field Service Director, also testified in opposition to LB 940. While he recognized the “helpful” discussions of the LR 180 study group, Baum said the legislation failed to address the concerns of rural Nebraska and that the bill was “skewed” more towards K-12 schools than Class I districts.¹²⁵ Baum said the bill “severely cheats Class I patrons of their constitutional rights” and “unconscionably disenfranchises” the voters of Class I districts.¹²⁶ “We also feel that LB 940 in its language ruthlessly would steal from Class I taxpayers by placing them in the position to pay for preexisting bond issues which they had not vote,” said Baum.¹²⁷ Nevertheless, Baum said, the NSIA was

¹²¹ Id.

¹²² Id., 34.

¹²³ Id., 35.

¹²⁴ Id.

¹²⁵ Id., 28.

¹²⁶ Id.

¹²⁷ Id., 29.

committed to a workable solution. “We’d like to see affiliation work if it can, but there has been some of those political factors that have prevented that,” he said.¹²⁸

While NSIA may have spoken on behalf of Class I districts, it certainly did not speak on behalf of rural Nebraska generally. Bryce Neidig of the Nebraska Farm Bureau, Steve Houtwed of the Nebraska Farmers Union, Eugene Krabel of the Nebraska Livestock Feeders Association, and Duane Stehlik of the Nebraska Rural Community Schools Association all offered general support for LB 940 and the concepts it promoted. Said Neidig:

We believe the time has come for Nebraskans to set aside their parochial ideals and work together on educational issues. LB 940, while not perfect, is a basically fair, realistic and equitable approach to school reorganization. It does not ruin the future existence of Class I school districts.¹²⁹

Most of these proponents did offer suggestions to improve the bill. Neidig, for instance, said his organization could not abide the requirement to make all school districts accredited rather than merely approved. He said the accreditation provision fails to specify the standards that would be expected of schools for compliance.¹³⁰

In general, the proponents of LB 940 mentioned their strong support of LB 916, the commission bill, and tended to reinforce the goals of the LR 180 study group. Interestingly, three of the major education groups each took different positions on the affiliation bill. The Nebraska Council of School Administrators (NCSA) strongly supported both bills, while the Nebraska Association of School Boards (NASB) opposed LB 940 but supported LB 916. The Nebraska State Education Association (NSEA) testified in a neutral position on LB 940 and supported LB 916.¹³¹

The number of proponents and opponents of LB 940 was relatively even and there was no major concern expressed about LB 916 throughout the hearing. It was clear,

¹²⁸ Id.

¹²⁹ Id., 16.

¹³⁰ Id., 17.

¹³¹ Committee on Education, *Committee Statement, LB 940 (1988)*, Nebraska Legislature, 90th Leg., 2nd Sess., 1988, 1-2.

however, that the politics of consolidation had not dissipated. The NSIA was still the lead critic of consolidation efforts just as it was in 1985 concerning LB 662.

Floor Debate

Whatever beneficial impact the LR 180 study may have had to bring the parties together and to generally agree upon certain goals, the outcome of the hearing on LB 940 and LB 916 left the Education Committee in a difficult situation. It was clear that the original version of LB 940, if advanced from committee, would cause yet another major controversy during floor debate. The committee chose instead to drastically water-down the bill in the hope of at least securing a general direction from the Legislature on the issue of reorganization. The goals of the LR 180 study group would simply have to be accomplished piecemeal rather than in one whole bite.

During executive session on February 1, 1988, the Education Committee voted 5-1 to advance LB 940 with committee amendments attached.¹³² The amendments would strike the requirement that all Class I districts affiliate or merge with a K-12 district, or join a Class VI district by 1994. In its place would be intent language “to encourage an orderly and appropriate reorganization of school districts.”¹³³ The amendments would also establish four goals toward the reorganization of school districts:

(1) ... [A]ll real property and all elementary and secondary students should be within school systems which offer education in grades kindergarten through twelve. For purposes of meeting this goal, class I and Class VI school district combinations shall be considered as including all real property and all elementary and secondary students within a school district which offers education in kindergarten through grade twelve;

(2) School districts offering education in kindergarten through grade twelve should be encouraged, when possible, to consider cooperative programs in order to enhance educational opportunities to students;

(3) County reorganization committees should make a renewed effort to consider and plan for reorganization of schools at the local level; and

¹³² Committee on Education, *Executive Session Report, LB 940 (1988)*, Nebraska Legislature, 90th Leg., 2nd Sess., 1988, 1 February 1988, 1. *Voting Yes* - Nelson, Dierks, Withem, Baack, Chizek; *Voting No* - McFarland; *Not voting* - Peterson; *Absent* - V. Johnson.

¹³³ Committee Amendments, *AMI851 to LB 940 (1988)*, Nebraska Legislature, 90th Leg., 2nd Sess., 1988, § 1, p. 1.

(4) The State Department of Education in conjunction with the University of Nebraska should be encouraged to offer greater technical assistance to school districts which are considering reorganization options.¹³⁴

The idea behind the stated goals was to at least establish the direction the Legislature *should* pursue in subsequent legislative sessions.

The amendments also modified the proposed requirements to establish new Class VI districts, and eliminated the LR 180 goal to require all districts to be accredited rather than merely approved.¹³⁵ Instead, the legislation would state a legislative goal that, by 1993-94, all public schools “should” be accredited.¹³⁶ The Department of Education would be required to review and revise existing accreditation rules to assure flexibility for districts in order to meet the standards through alternative service delivery mechanisms. Finally, the committee amendments imposed a two-year sunset provision on the non-resident high school tuition statutes.¹³⁷ At the time, Class I districts paid tuition to a high school district when a student moved on to the high school level. By placing a sunset on these statutes, it effectively forced a resolution to the affiliation issue before the sunset date. This became the only real “hammer” within the bill on the issue of school reorganization.

Overall, the advanced version of LB 940 had much less punch than that originally introduced. Several weeks after it was advanced from committee, Senator Arlene Nelson of Grand Island said of the bill, “LB 940 is a nice little bill and says nice little things, but it doesn’t have a lot of teeth left.”¹³⁸ With or without teeth, the committee amendments actually represented a proffered compromise, a compromise that would win its first battle even before LB 940 was debated on the floor.

¹³⁴ Id., § 1, pp. 1-2.

¹³⁵ Id., §§ 2, 7, pp. 2-4, 12.

¹³⁶ Id., § 7, p. 12.

¹³⁷ Id., §§ 8-9, pp. 12-13.

¹³⁸ Henry J. Cordes, “Legislature Kills Required Merger Of Grade Schools,” *Omaha World-Herald*, 22 February 1988, 1.

The battle occurred on February 22, 1988. The Legislature was taking up carry-over bills from the 1987 Session, including LB 726 introduced by Senator Vard Johnson of Omaha. Johnson, a member of the Education Committee, had introduced LB 726 the year before with the express intent to force all Class I districts to merge by 1990.¹³⁹ The bill was advanced by the Education Committee and carried over to the 1988 Session. But while Johnson remained intent on merging Class I districts, the majority of the Legislature had a different disposition on the issue. Senator Withem's LB 940 appeared to most as a fair compromise to Johnson's more draconian LB 726. Even if Withem may have personally approved of Johnson's idea, he also knew LB 726 would simply lead to the same level of controversy as LB 662 in 1985. Withem, therefore, was among those voting to indefinitely postpone (kill) LB 726 on February 22nd during floor action.¹⁴⁰

The result of the successful kill motion to LB 726 left LB 940 as the only viable option for addressing the issue of consolidation in 1988. The only other bill even remotely related to consolidation was Senator Howard Lamb's LB 1225, which provided for a system of affiliation of Class I districts and gave automatic accreditation to elementary-only districts that affiliate with a high school district.¹⁴¹ Lamb's LB 1225 was indefinitely postponed by the Education Committee shortly after its public hearing, much to the anger of the NSIA and Class I supporters generally.

As the first stage of debate on LB 940 was set to begin, the NSIA was already speaking critically of the proposed version of the bill, principally due to the sunset provision on non-resident high school tuition laws. Rick Baum of the NSIA said the latest version of the bill was "even more horrifying" than the original version of the bill.¹⁴² Withem fired back at the association saying he had "bent over backwards" to

¹³⁹ Legislative Bill 726, *Require the merger of school districts*, sponsored by Sen. Vard Johnson, Nebraska Legislature, 90th Leg., 1st Sess., 1987, title first read 15 January 1987.

¹⁴⁰ The Legislature voted to indefinitely postpone LB 726 (1987) on a 23-14 vote. NEB. LEGIS. JOURNAL, 22 February 1985, 744. At the time, the Rules of the Legislature required only a majority of those voting to approve a motion to indefinitely postpone a bill.

¹⁴¹ Legislative Bill 1225, *Provide plans and procedures for the affiliation of school districts*, sponsored by Sen. Howard Lamb, Nebraska Legislature, 90th Leg., 2nd Sess., 1988, title first read 12 January 1988.

¹⁴² Henry J. Cordes, "Small-School Resistance Irks Withem," *Omaha World-Herald*, 17 February 1988, 1.

amend the bill and make it acceptable to the NSIA.¹⁴³ “If lobbying organizations carried the same responsibility to their clients as lawyers do to their clients, the NSIA would be sued for malpractice,” Withem said, adding that the NSIA had failed to represent the majority of Class I residents.¹⁴⁴ And it was under this cloud of controversy that debate began on LB 940 on March 2, 1988.

In his opening remarks on the bill during first-round floor debate, Withem called the committee version of LB 940 a “road to accommodation,” referring to the elimination of several major components of the original bill.¹⁴⁵ Withem proceeded to outline the amendments while saving the real bite of the bill for last. He said the sunset provision concerning the non-resident tuition laws puts “a gun to all of our heads” to force a resolution on the issues surrounding Class I districts, in essence, the issue of school reorganization.¹⁴⁶ Said Withem:

I believe what you have here with the Education Committee amendments is a statement by a group of people that say, number one, they endorse all of the hard work that the citizens of the state put into LR 180 this summer, all of the countless meetings, and discussions, and compromise, and give and take. They recognize that such a controversial issue as school district reorganization probably is not going to get solved in an amicable, conciliatory fashion in one year. What we want to do is solidify those gains into the statute that were made through the 180 process and put in place those sort of things that will assure that this process will continue on, that we don’t just pass 940 and forget about the issue.¹⁴⁷

Following his opening remarks, the first item of business was an amendment to the committee amendments, which had been filed by Withem a few days earlier.

The Withem amendment effectively merged the contents of LB 916, the commission bill, into LB 940. The amendment offered the same provisions and duties for the commission, except that the membership had increased to thirteen by adding a

¹⁴³ Id.

¹⁴⁴ Id.

¹⁴⁵ Legislative Records Historian, *Floor Transcripts, LB 940 (1988)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 90th Leg., 2nd Sess., 2 March 1988, 9039.

¹⁴⁶ Id., 9041.

¹⁴⁷ Id.

second representative from a Class III district.¹⁴⁸ The idea was that the majority of K-12 districts were Class III districts and that these schools should have a weighted representation on the commission.

Withem noted that the amendment was actually introduced as a separate bill, which was unopposed at the hearing and was advanced to General File by a unanimous vote of the Education Committee.¹⁴⁹ He described the amendment to his colleagues as a reflection of the “work of the finance portion of our work on the LR 180 task force.”¹⁵⁰ He added:

First of all, the task force said that in order to achieve meaningful school district reorganization, to solve the problem, you can't view it in a vacuum, that the underlying pressures behind reorganization are financial and you have got to address the financial components. So we did. ... We had, the folks from Kansas come up and visited us and talked about their program, the one I think is a good method of distributing state aid. We found as a committee, though, that we did not feel that we had adequate knowledge about the Kansas plan or other alternatives so we chose not to adopt that.¹⁵¹

The proper solution, Withem said, was the creation of a separate commission on the issue of school finance with the appropriate funding and staff resources to accomplish a thorough study.

The second major goal of the Withem amendment also was a goal of LB 916 as originally introduced. This goal concerned the reinstatement of state aid funds to bring the total state aid appropriation back to the level appropriated for the 1982-83 school year. Over the years, the Legislature had incrementally whittled away state aid funds in order to address other state budget issues. Withem said it was time to restore these funds

¹⁴⁸ NEB. LEGIS. JOURNAL, *Withem AM2185 to AM1851*, 25 February 1988, 1014.

¹⁴⁹ LB 916 was advanced from committee on February 1, 1988 by a 6-0 vote. Committee on Education, *Executive Session Report, LB 916 (1988)*, 1 February 1988, 1.

¹⁵⁰ Floor Transcripts, *LB 940 (1988)*, 2 March 1988, 9042.

¹⁵¹ *Id.* Withem referred to representatives from the Kansas school community, who were invited by the LR 180 study group to relate the success of their school finance formula. The Kansas model would ultimately play an integral part in the development of Nebraska's new formula within the next few years.

and acknowledged that the Appropriations Committee had included that same recommendation in the 1988 budget revision bill.

The only senator to rise and speak on Withem's amendment was Senator Chris Abboud of Omaha. Abboud criticized the \$100,000 expenditure for a commission, which, he thought, would produce nothing more than a recommendation for the Legislature to invest heavily in public education. Abboud expressed doubt that the commission would provide a "pivotal decision-making point" to the Legislature.¹⁵² He added:

We seem to put off the question in dealing with commissions or dealing with particularly tough issues by forming a commission, having the commission make a recommendation to the Legislature, and then after they make that recommendation to the Legislature, for the most part we reject it or vote for it, but it rarely provides a pivotal decision-making point to the members of this body. I guess I would like to not see us waste the money on the commission because the recommendation, I believe, is already well-established prior to the meeting, and I don't believe that the Legislature will probably follow their recommendation.¹⁵³

Withem did not disagree with Abboud's comment about the commission's likely recommendation for additional dollars for education. At the same time, however, Withem attempted to remind Abboud, and the body as a whole, that the overall objective of the commission would be to study "how we distribute those dollars, how we finance education in the overall."¹⁵⁴

Following the brief exchange between Senators Abboud and Withem, the body voted to adopt the Withem amendment on a 16-2 vote.¹⁵⁵ After further debate, the Legislature voted to advance LB 940 by a 28-6 vote.¹⁵⁶ But Withem would need to guide

¹⁵² Id., 9045.

¹⁵³ Id., 9044-45.

¹⁵⁴ Id., 9045.

¹⁵⁵ NEB. LEGIS. JOURNAL, 2 March 1988, 1133. At the time, the Rules of the Legislature only required a majority vote of those voting for adoption of an amendment to an amendment.

¹⁵⁶ Id., 1134.

the legislation through a somewhat contentious second-stage debate in order to achieve final passage.

On Select File debate, on March 30, 1988, Senator Withem proposed an additional amendment concerning the membership of the commission. The amendment stated that three members of the Legislature would be appointed to the commission, rather than naming specific members by position. The amendment also added two members from higher education with expertise in the area of school finance.¹⁵⁷ With the adoption of the amendment, the commission would consist of sixteen members most of whom would be appointed by the Governor.

On April 7, 1988 the Legislature voted 35-12 to pass LB 940.¹⁵⁸ Interestingly, Senator Lamb, a chief critic of the bill ultimately voted in favor of it. Three of the eight members of the Education Committee (Peterson, McFarland, and Dierks) voted against the bill. On the following day, April 8th, Governor Orr issued a letter to the Legislature, which read in part:

Today I signed and delivered to the Secretary of State LB 940 and LB 940A, a compromise measure that will continue the discussions regarding the structure of elementary-secondary education in Nebraska. The bill preserves the right of elementary-only school districts to exist.

I remain committed to helping our lawmakers develop a fair, effective and constitutional affiliation mechanism. Such a procedure would allow Class I schools to retain their structure, identity and local control, while tying their tax base to a receiving K-12 district for high school purposes. Once that is achieved, Nebraska will have the best of both worlds: sufficient uniformity and tax equity to support a sound K-12 sequence for all students, and, at the same time, the broad flexibility in school structure that is needed to meet the needs of our diverse communities.

Everything from our own heritage to the advice of national experts tells us we need to nurture our rural schools. Together we can develop an educational system that is a model of effectiveness and accountability, and that preserves the high quality of education throughout our state for which Nebraskans are justifiably proud.¹⁵⁹

¹⁵⁷ Id., *Withem AM2417*, 8 March 1988, 1268.

¹⁵⁸ Id., 7 April 1988, 2185.

¹⁵⁹ Id., 8 April 1988, 2242-43.

C. The Commission Report

The members of the Nebraska School Financing Review Commission were appointed by Governor Kay Orr, as required under LB 940 (1988). The sixteen-member commission consisted of representatives from the Legislature, the Governor, higher education, the Commissioner of Education, all classes of public schools, and two at large members.

Table 6: Roster: Nebraska School Financing Review
Commission Membership (1988-89)

<i>Member</i>	<i>Represented</i>
Senator Ron Withem of Papillion.....	Legislature
Senator Howard Lamb of Anselmo.....	Legislature
Senator Scott Moore of Stromsburg.....	Legislature
Cynthia Milligan, Director, Department of Banking.....	Governor Orr
Don Leuenberger.....	Higher Education
Vice Chancellor for Business and Finance, UNMC	
Gene Koepke.....	Higher Education
Dean of Business/Technology, Kearney State College	
Larry Vontz, Deputy Commissioner of Education.....	Commissioner of Education
Charlyne Berens, Publisher, Seward County Independent.....	At Large Member
Lyn Ziegenbein, Peter Kiewit Foundation.....	At Large Member
Pat Neujahr, Valentine.....	Class I Districts
Duane Stehlik, Superintendent, Table Rock Public Schools.....	Class II Districts
Margaret Norton.....	Class III Districts
Jim Merritt, Superintendent, Norfolk Public Schools.....	Class III Districts
Anne Campbell, Lincoln.....	Class IV District
Don Benning, Assistant Superintendent, Omaha Public Schools.....	Class V District
Pat Vinton, Gordon.....	Class VI Districts

Source: "Funding Nebraska's Schools: Toward a More Rational and Equitable School Finance System for the 1990s," LRD Report 90-1, 1 January 1990, 3-4.

The commission also had a tremendous resource in its support staff, which included Larry Scherer, Legal Counsel for the Education Committee, Tim Kemper of the Department of Education, Sandy Myers of the Legislative Fiscal Office, Bill Lock of the Legislative Research Division, Marcelle Williams of the Department of Revenue, Russ Inbody of the Department of Education, and Dick Hargesheimer of the Legislative Research Division. In addition, various senators contributed the services of their own staff including legislative aides, Tim Erickson (Senator Scott Moore), Kim Davis

(Senator Dennis Baack), LaRue Wunderlich and Dawn Rockey (Senator Ron Withem), and Corey Phillips (Senator Roger Wehrbein).¹⁶⁰

The commission was created to perform an in-depth and objective review of the funding of Nebraska's public school system. The commission was specifically charged with the duty to examine whether or not income as a revenue source and indicator of wealth should play a larger role in school finance. It also was to look at methods to reduce the burden on the property tax for support of schools and consider other state aid distribution formulas that provide greater equity for students and taxpayers. Naturally, most of the members of the commission had an interest, perhaps a vested interest, in changing the existing school finance system. Some of the school district representatives, for instance, were aware that a change in the formula might result in a greater distribution of state aid to their districts. Other commission members had an interest in preserving certain aspects of the existing system, such as Senator Howard Lamb with his long standing concern for Class I districts. Nevertheless, the purpose of this diverse group of individuals was to examine "the complex and often emotional issue of school finance in a cooperative and positive spirit."¹⁶¹

Before the commission had a chance to really begin its work, several events occurred to lend credence to its purpose. The first took place in July 1988 when the Maxwell School of Citizenship and Public Affairs at Syracuse University issued its final report on a comprehensive tax study requested by the Nebraska Legislature.¹⁶² The "Syracuse Report," as it came to be called, stated what many had known and perhaps what some did not want to hear. In essence, the report stated that Nebraska was overly dependent upon property taxes to fund schools. To resolve this situation, the report suggested Nebraska increase state taxes to assist schools, overhaul its state aid formula, and implement a major school consolidation program. In fact, the report suggested the consolidation piece come first, followed by tax increases and formula overhaul. "We

¹⁶⁰ Id., 5.

¹⁶¹ Id., vi.

¹⁶² "Metropolitan Studies Program: Nebraska Comprehensive Tax Study," Maxwell School of Citizenship and Public Affairs at Syracuse University, July 1988.

recommend that a school consolidation plan be implemented before reforming state aid to education,” the study concluded.¹⁶³

According to the study, Nebraska collected twice as much property tax per student as the U.S. average (\$2,918 to \$1,570 annually) and gave half as much state aid to school districts (\$842 to \$1,675).¹⁶⁴ State aid typically derives from such revenue sources as sales and income taxes. The plan to address the situation, the report stated, was to reduce the number of school districts and to target state aid to those districts most in need of such assistance. The report presented a possible plan for reorganization that would create considerable savings to the taxpayer and to the state if the number of districts were reduced to 95.¹⁶⁵ In 1988 there were 891 public school districts in Nebraska.¹⁶⁶

Some of the Syracuse Report findings may have been pleasing to the eye of Senator Withem, who fought to establish a commission on the basis of over reliance upon property taxes and the need to overhaul the state aid formula. He also was a proponent of reorganization efforts. But Withem knew the findings of the Syracuse Report were unrealistic given the political climate concerning the issue of reorganization. “They saw we have a serious problem with state aid, and they say before you do anything about it you have to move heaven and earth,” Withem said, referring to past battles on reorganization.¹⁶⁷

Withem, of course, also knew that to take a hard stand in total support of the Syracuse Report might make the work of the commission that much more difficult and prolonged. The purpose of the commission, after all, was to seek ways to change the state aid formula rather than to resolve the issue of school reorganization. The Syracuse Report called for a reverse order of events with reorganization occurring first. At least one legislator, however, was free of political and practical constraints to speak more

¹⁶³ Id., 2.

¹⁶⁴ Id.

¹⁶⁵ Id.

¹⁶⁶ NEB. BLUE BOOK, 2002-03 ed., 931.

¹⁶⁷ Henry J. Cordes, “Lower Costs Predicted School Study Urges District Consolidation,” *Omaha World-Herald*, 2 June 1988.

bluntly about the Syracuse Report. Senator Vard Johnson of Omaha, a vocal advocate of consolidation, said the report told the hard truth. “It tells a story that many people want to ignore,” Johnson said.¹⁶⁸

The other event occurring in the summer of 1988 may or may not have been welcome news to members of the commission as they set out to begin their work. On June 29, 1988 the State Board of Education approved a legislative goal to more than double the amount of state aid for schools.¹⁶⁹ The board was conducting a special meeting to formulate goals for the Department of Education. The board embraced the dual objectives of reducing reliance on property taxes and broadening the tax base in order to increase funding for schools. The board’s state aid goal would ultimately lead to review of a formal proposal in October 1988 to increase state aid and place a 4% spending limitation on school districts. In deferment to the work of the commission, however, the state board chose not to take any immediate action on the proposal.¹⁷⁰

Whether beneficial or detrimental to the commission’s objective study of school finance, both the Syracuse Report and the State Board’s proposal would play a role in the final outcome. The Syracuse Report would be quoted in both public hearing testimony and floor debate on LB 1059 in 1990. Aspects of the state board’s proposal would find its way into the final recommendations of the commission in January 1990. But more than anything else, the Syracuse Report and state board proposal helped to relieve the pressure that the commission might otherwise have had to shoulder itself. That is, in order to reduce reliance upon property taxes, the state would need to increase sales and/or income taxes to offset the revenue for school districts. Therefore, a state revenue increase was officially on the table well before the commission issued its final report.

The commission met approximately twice each month in the latter part of 1988, but it soon became apparent that the assigned task would require an extension of time in order to complete. At a December 7th meeting in Lincoln, the commission took formal

¹⁶⁸ Id.

¹⁶⁹ “Board: Double Education Aid,” *Omaha World-Herald*, 1 July 1988, 15.

¹⁷⁰ “Education Board Gets Aid Plan,” *Omaha World-Herald*, 8 October 1988, 16.

action to approve the concept of using personal income as both a revenue source and a factor in calculating a school district's share of state aid.¹⁷¹ Senator Withem then requested staff to draft legislation that would utilize the Kansas state aid formula as a model for purposes of introduction in the 1989 Session.¹⁷² The Kansas model utilized the 20% income tax rebate concept that would later become a part of the commission's final recommendation.

The commission would meet again in early January 1989 to review the draft legislation and determine whether to have it filed in time for formal consideration. The decision, ultimately, was to hold off on the introduction of a bill until further study could be completed and more public input could be obtained. Instead, Senator Withem introduced a bill seeking an extension of the deadline to finish the study. LB 312 (1989) would extend the life of the commission until June 30, 1990, and would require the commission to submit a final report by January 1, 1990.¹⁷³ The bill also would, for the first time, establish an oversight committee to "aid in the implementation of the plan."¹⁷⁴

During the public hearing for LB 312 on January 23, 1989, Senator Withem praised the commission's work to date and noted that attendance at meetings had been very good. He also reported that the commission had utilized less than 10% of the \$100,000 appropriated to it under LB 940 (1988). He proposed that the remainder of the original funds be re-appropriated for use by the commission. Withem said the commission had agreed upon several principles, including the income tax rebate provision, and that the more tedious task of preparing draft legislation was underway.¹⁷⁵

On January 30, 1989, General File debate began on LB 312. Perhaps *discussion* would be a more accurate description than debate. The Legislature seemed to be in full

¹⁷¹ John Share, "Group Says Income Taxes Should Be Used for Schools," *Omaha World-Herald*, 8 December 1988, 1.

¹⁷² *Id.*

¹⁷³ Legislative Bill 312, *Change the termination date of School Financing Review Commission*, 91st Leg., 1st Sess., 1989, title first read 10 January 1989, §§ 1-2, p. 3.

¹⁷⁴ *Id.*, § 2, p. 4.

¹⁷⁵ Committee on Education, *Hearing Transcripts, LB 312 (1989)*, Nebraska Legislature, 91st Leg., 1st Sess., 1989, title first read 23 January 1989, 76.

agreement that the commission should be granted a continuance in order to finish its work. Interestingly, Senator Scott Moore, a member of the commission, gave a peek into how the commission was actually functioning as a deliberate body. Moore said he voted against extending the life of the commission during its most recent meeting. He said the property tax debate had polarized the commission into what he called two “segments”:

There is a certain segment that say the definition of property tax relief is increased funding for education and then there is the segment that defines property tax relief as dollar for dollar property tax relief and at some time those two facts just have to go to war and fight it out...¹⁷⁶

Moore said his wish would have been to offer a complete proposal in the 1989 Session rather than wait another year.

Withem agreed with Moore’s assessment of the commission and said there had been “a fairly lively debate as to whether we should ask for this extension or not.”¹⁷⁷ The prevailing thought among commission members, noted Withem, was to make sure the proposal was researched thoroughly. The Legislature agreed and presented LB 312 with unanimous votes for advancement and ultimately final passage on May 18, 1989.¹⁷⁸ The life of the commission was extended for another year, but there would be one other change concerning the commission, one not necessarily anticipated at the beginning of the 1989 Session.

While LB 312 sailed through the legislative process, another bill would emerge from the Revenue Committee designed to up the ante on the work of the commission. Senator Moore’s admitted frustration in addressing the property tax issue sooner rather than later lead him to introduce his own bill in 1989 to benefit both education and property taxpayers. The original version of LB 611 (1989) presented a politically far-reaching idea to create a separate income tax dedicated to K-12 education. The bill proposed to establish the Public Education Income Tax Act and impose a public

¹⁷⁶ Legislative Records Historian, *Floor Transcripts, LB 312 (1989)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 91st Leg., 1st Sess., 30 January 1989, 530.

¹⁷⁷ *Id.*

¹⁷⁸ NEB. LEGIS. JOURNAL, 18 May 1989, 2514.

education tax on the income of individuals, trusts, estates and corporations.¹⁷⁹ The tax rate was to be determined by dividing one half of the total state and local school district revenue by the total federal adjusted gross income of resident individuals.¹⁸⁰ The Legislative Fiscal Office anticipated that the initial rate would be 2.43% on adjusted income, which would be in addition to the state's existing general income tax rate.¹⁸¹

The purpose of the bill, as stated by Moore, was to create property tax relief, first and foremost. The natural beneficiary of the tax would be public schools. In his official Statement of Intent, Moore said the bill would provide a similar system to that of Kansas whereby a portion of the income tax is dedicated to public education.¹⁸² Moore said the bill would produce "close to \$350 million in property tax relief."¹⁸³

The second major objective of Moore's LB 611 was more realistic politically and actually provided the needed hammer to ensure the implementation of the commission's final recommendations, as yet undetermined. Moore proposed to place an automatic repeal of the existing school finance formula, the School Foundation and Equalization Act, on July 1, 1991.¹⁸⁴ This would leave less than two years for the Legislature to make sure a replacement formula was implemented.

The public hearing for LB 611 was not particularly well represented by interests that would normally launch a heavy campaign in opposition to such a bill. In fact, there were very few proponents to the bill and no opponents.¹⁸⁵ Senator Moore joked with members of the Revenue Committee during his introductory remarks saying, "I'm here to

¹⁷⁹ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 611 (1989)*, prepared by S. L. Myers, 91st Leg., 1st Sess., 1989, 15 February 1989, 1.

¹⁸⁰ Legislative Bill 611, *A bill to establish the Public Education Income Tax Act*, sponsored by Sen. Scott Moore, Nebraska Legislature, 91st Leg., 1st Sess., 1989, § 4, p. 5.

¹⁸¹ *Fiscal Impact Statement, LB 611 (1989)*, 15 February 1989, 1.

¹⁸² Sen. Scott Moore, *Statement of Intent, LB 611 (1989)*, Nebraska Legislature, 91st Leg., 1st Sess., 1989, 10 February 1989, 1.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Committee on Revenue, *Committee Statement, LB 611 (1989)*, Nebraska Legislature, 91st Leg., 1st Sess., 1989, 1.

introduce LB 611 which is the granddaddy of all property tax relief bills”¹⁸⁶ “You’ve heard \$50 million bills, you’ve heard \$100 million bills, and \$200 million bills,” Moore quipped, “Well this one is the Big Daddy.”¹⁸⁷ “This one is \$350 million in property tax relief,” Moore said to the amusement of committee members.¹⁸⁸

If nothing else, LB 611 served as a precursor to what would eventually follow a year later in terms of a tax increase to fund public education. When LB 611 appeared on General File, on April 10, 1989, Senator Withem rose to applaud Moore’s efforts and said the concept behind the bill was within the “broad philosophical components” of the commission’s work.¹⁸⁹ It also gave Withem a chance to test the water on the issue of a dedicated income tax provision, which would eventually become a part of the commission’s final recommendation. Nevertheless, Moore’s legislative efforts may have been somewhat ahead of the process. The commission first had to arrive at an acceptable distribution formula before determining the necessary level of state support.

By the time it arrived on Final Reading, LB 611 had been dramatically reduced in scope and purpose, but it would still have a bearing on the work of the commission. As amended, the bill would incorporate legislative findings to recognize that, since 60% of all real property taxes were assessed in support of public schools, any future proposal for lasting property tax relief must address the issue of school finance.¹⁹⁰ The bill further provided that it was “appropriate” to share the state’s income tax base with schools in order to:

- (a) Assure all Nebraska children a more equitable opportunity for an appropriate education;

¹⁸⁶ Committee on Revenue, *Hearing Transcripts, LB 611 (1989)*, Nebraska Legislature, 91st Leg., 1st Sess., 1989, 16 February 1989, 1.

¹⁸⁷ *Id.*, 1-2.

¹⁸⁸ *Id.*, 2.

¹⁸⁹ Legislative Records Historian, *Floor Transcripts, LB 611 (1989)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 91st Leg., 1st Sess., 1989, 10 April 1989, 3826.

¹⁹⁰ Legislative Bill 611, in *Laws of Nebraska, Ninety-First Legislature, First Session, 1989*, Session laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 1, p. 1 (1767).

(b) Provide a broad and stable system of financial support for public schools through an appropriate mixture of revenue sources; and

(c) Provide equalization of fiscal ability and property tax burden among school districts through the inclusion of income wealth in the determination of a school district's ability to provide educational programs to the extent that such income is part of the accessible tax base.¹⁹¹

But findings alone would not provide the “hammer” needed to ensure something would be done about property tax relief. Consequently, the bill did call for the automatic repeal of the existing formula on June 30, 1991, and called for a new school finance system to be in place by January 1, 1992.¹⁹²

LB 611 provided intent language to replace the existing school finance system “with a system which shares the income tax base with school districts to provide substantial and enduring property tax relief and a stable and lasting school finance system.”¹⁹³ In addition, the bill provided intent language that any new school finance system should impose spending limitations on school districts “to assure property tax relief and tax equity.”¹⁹⁴ The spending limitations were to be “sensitive to local needs and spending levels,” which at least gave the commission some broad parameters to determine an appropriate spending lid for schools.¹⁹⁵

LB 611 was passed by the Legislature on May 22, 1989, but not without opposition. The two principle concerns were that it committed the Legislature, at least in theory, to using a portion of the income tax to fund public education. The other concern involved the hammer to repeal the existing formula and replace it with an unknown, as yet undetermined, school finance system. Both Senator Howard Lamb, who was a member of the commission, and Governor Kay Orr, who was represented on the commission, opposed LB 611. Orr, however, did not oppose the bill enough to veto the

¹⁹¹ Id.

¹⁹² Id., §§ 2, 4, pp. 1, 8 (1767, 1774).

¹⁹³ Id., § 2, p. 1 (1767).

¹⁹⁴ Id.

¹⁹⁵ Id.

measure. She chose instead to let the bill become law without her signature. In a letter of explanation to the Legislature, Orr wrote:

The Legislature is to be applauded for examining and attempting to address school financing this session. However, the fact that the bill “sunset” the School Foundation and Equalization Act on June 30, 1991, without proposing something to replace it is troubling.

LB 611 also suggests that options other than the state income tax have not, and possibly will not, be fully explored. It must be understood that LB 611 may not represent the ultimate solution for the very complex problem of providing a stable and fair means of supporting Nebraska’s public schools.¹⁹⁶

The automatic sunset provision was obviously subordinate to the larger concern over taxation, which Orr would later use to explain her action concerning LB 1059 (1990). In the meantime, Orr’s action, or inaction in this case, served as the first dividing point between her and the work of the commission, even before the commission released its final proposal.

By majority vote, the Legislature appeared willing to use income tax to help fund education while at the same time the Governor demonstrated her resistance to such a plan. The commission received greater understanding of what the Legislature expected, and perhaps what it would accept, but the battle lines were drawn with regard to the administration and its protectiveness of tax policy. The Governor’s decision not to sign LB 611 did not sit well with several members of the commission, who felt she had given their work a vote of no confidence. “A lot of my enthusiasm and excitement is diminished by this,” Withem said during a commission meeting on May 31, 1989.¹⁹⁷ The Governor’s representative, Cynthia Milligan, defended the Governor’s decision and reasserted the administration’s interest in the commission’s work.

The May 31st meeting marked a renewed intensity by the commission to conclude its work. The group, after all, had received a “drop dead date” to propose a new formula prior to the automatic sunset of the existing formula. Naturally, nothing prevented the

¹⁹⁶ NEB. LEGIS. JOURNAL, 26 May 1989, 2696.

¹⁹⁷ Henry J. Cordes, “Orr Decision On School Bill Stirs Dispute,” *Omaha World-Herald*, 1 June 1989, 11.

Legislature from granting yet another extension and delaying the repeal of the old system, but most everyone expected the commission to produce something prior to the 1990 Session. In fact, the commission was already near the point of unveiling a final proposal shortly after the 1989 Session commenced. The extra interim period, during the summer of 1989, gave the commission much needed time to publicly circulate the final proposal for reaction and fine-tuning.

Over an eighteen-month period, from 1988 to 1989, the commission held 21 meetings, five public hearings and listened to dozens of presentations by staff and outside experts in order to arrive at its conclusions.¹⁹⁸ The five public hearings were held in June and July, after the 1989 Session, at various points across the state in order to give ample opportunity for public discussion. What the commission heard time after time at these hearings was resounding support for the concept of a tax shift away from the property tax for support of public schools. School officials were generally supportive of the overall plan, but they expressed concern over the imposition of spending limitations.

Using the feedback from the public hearings, the commission made a few revisions to the proposal, but the major components, as noted below, remained in tact. On January 1, 1990, the commission formally issued its final report entitled, “Funding Nebraska’s Schools: Toward a More Rational and Equitable School Finance System for the 1990s.” Along with the findings and conclusions, the comprehensive report included a description of the existing formula, historical background materials, and numerous tables and charts to support the commission’s recommendations.

In a letter to Speaker Bill Barrett, Senator Withem officially offered the report for consideration by the Legislature. Withem wrote, “The Report focuses on the closely connected problems of excessive reliance on the property tax for support of our schools and the disparities in school districts’ abilities to provide equitable educational opportunities for all of our students.”¹⁹⁹ Withem wrote that the implementation of the

¹⁹⁸ “Funding Nebraska’s Schools: Toward a More Rational and Equitable School Finance System for the 1990s,” LRD Report 90-1, 1 January 1990, vi.

¹⁹⁹ Sen. Ron Withem, to Speaker Bill Barrett, 1 January 1990, Lincoln, Nebraska.

proposal would dedicate a portion of the income tax for school funding, implement a new equalization formula, which would be “sensitive to current school district needs and income wealth,” and impose limitations on spending by school districts. Withem also specifically stated that the plan would require “enhanced state revenue sources to insure ongoing and stabilized funding for our schools,” referring to the necessary tax increase to fund the plan.²⁰⁰

The commission found two major policy problems with the way Nebraska funded its public school system:

First, the burden on property for school support is excessive by any standard of measurement, resulting in inequities to taxpayers and a narrow and unstable tax base for schools. Second, the current system of school finance, with its overemphasis on the property tax as the primary basis of support for schools and grossly inadequate equalization abilities, does not assure that all students in the state will have equitable access to appropriate and necessary school services.²⁰¹

The commission also found that the historic resistance to greater equalization of school fiscal support in Nebraska was closely related to the inability of Nebraska policymakers to reach consensus on what constitutes “wealth” in terms of school district resources and in terms of taxpayers’ ability to pay for educational services.²⁰²

With regard to the first policy problem, over-reliance upon property taxes to fund education, the report noted several “negative effects” that had occurred, including “inequities between taxpayers residing in rich and poor school districts” and “excessive tax rates on property in comparison to rates in other states.”²⁰³ The report indicated that Nebraska public schools relied more heavily on property taxes for general operation than nearly all other states, only one state, New Hampshire, rated above Nebraska.²⁰⁴ At the same time, state financial support to Nebraska schools was lower than that found in nearly all other states, as demonstrated in Table 7.

²⁰⁰ Id.

²⁰¹ “Funding Nebraska’s Schools,” vi-vii.

²⁰² Id., vii.

²⁰³ Id., 31.

²⁰⁴ Id., 31-32.

Table 7: Percent of Revenue for Public Elementary and Secondary Schools by Government, 1990

	<i>Local</i>	<i>State</i>	<i>Federal</i>
Nebraska	70.3%	24.5%	5.2%
U.S. Average	43.5%	50.2%	6.3%

Source: “Funding Nebraska’s Schools: Toward a More Rational and Equitable School Finance System for the 1990s,” LRD Report 90-1, 1 January 1990, 32.

The commission found that state financial assistance for Nebraska schools was actually declining in relation to the national trend, which was to increase state assistance to schools. Despite the decreases in state support, the Nebraska Legislature continued to heap new mandates upon public schools. The report used the example of LB 994 (1984), which established a longer school year, higher graduation requirements, enhanced accreditation standards, and tests for beginning teachers.²⁰⁵

The commission also found that the heavy reliance on property taxes had resulted in “highly inequitable tax burdens between taxpayers” within school districts of similar size, “where there is a significant disparity in property wealth between the districts.”²⁰⁶ The report demonstrated that districts with relatively the same enrollment and cost per pupil could have vastly different levels of property valuation and levy rates. “The Commission has concluded that this type of inequity between taxpayers cannot be justified,” the report stated.²⁰⁷ On average Nebraska homeowners and farmers were paying more than twice the national average in property tax rates (Nebraska 2.29%, national average 1.21%).²⁰⁸

The second major policy problem found by the commission related to equitable educational opportunities for students from one part of the state to another. The

²⁰⁵ Id., 33.

²⁰⁶ Id., 34.

²⁰⁷ Id.

²⁰⁸ Id., 36.

commission found that, under the existing formula, the state was expending very little in state aid on the basis of school needs in relation to the ability to finance needs. In the 1989-90 school year, only \$33 million was paid out to districts in the form of equalization aid with the majority of funds being used for foundation aid.²⁰⁹ The equalization component of the formula was dramatically under-funded in comparison to the foundation component of the formula. Moreover, the formula, in general, was under-funded. In truth, the School Foundation and Equalization Act had never been fully funded since its inception in 1967.

The commission's report expressed doubt that the existing formula would ever be able to assure that all children receive an "equitable opportunity for an appropriate education."²¹⁰ In comparing various districts under the existing system, the commission found that a district's ability to provide the resources for "equitable education opportunity" could be severely impacted by the taxable valuation base of the school district. The report illustrated this point with a chart containing figures from two actual (undisclosed) districts with similar enrollments but vastly different valuations per pupil. The result was a full \$1,000 difference in cost per pupil, as shown in Table 8.

Table 8. Comparison Example: District
Taxable Valuation Base, 1990

<i>District</i>	<i>Enrollment</i>	<i>Valuation per Pupil</i>	<i>Levy</i>	<i>Cost per Pupil</i>
A	401	255,427	1.4301	4,327
B	415	95,870	1.6991	3,362

Source: "Funding Nebraska's Schools: Toward a More Rational and Equitable School Finance System for the 1990s," LRD Report 90-1, 1 January 1990, 38.

In addition, the commission's hired consultant, John Augenblick, reported an inverse or slightly negative statistical correlation between tax rates and spending. This

²⁰⁹ *Id.*, 38.

²¹⁰ *Id.*

meant that higher taxing does not necessarily produce higher spending capacity. In essence, some school districts would have to “tax much higher than average only to be able to spend much lower than average.”²¹¹ With these considerations in mind, the commission concluded that inequities of educational opportunities existed under the current system.

After arriving at the two principle policy problems with the existing formula, the commission established, perhaps for the first time in Nebraska school finance history, the actual purposes for state aid to schools:

1. First, to assure all Nebraska children an equitable opportunity for an appropriate education;
2. Second, to provide a broad and stable system of financial support for public schools through an appropriate mixture of revenue sources; and
3. Third, to provide equalization of fiscal ability and financial support among school districts and taxpayers through a distribution formula, which recognizes school district needs and school district wealth.²¹²

The report further stated the commission’s belief that “wealth,” as it relates to school districts’ ability to provide educational services and in terms of taxpayers’ ability to pay for such services, must include consideration of income tax revenues as well as property tax revenues.²¹³ Even with this admission, the issue of measuring wealth of a school district would remain one of the major barriers for support of the proposal by some lawmakers. In fact, the issue would re-appear in many legislative sessions to come.

Table 9. Belief Statements Issued by the Nebraska
School Financing Review Commission

1. Income should be considered as school district wealth along with property, but only to the extent that it is an “accessible” revenue source to school districts.
2. All school district general fund revenues except federal categorical funds should be accountable in the computation of a state aid formula.

²¹¹ Id., 39.

²¹² Id., viii.

²¹³ Id.

Table 9—*Continued*

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3. Any formula based on property wealth developed to equalize fiscal ability and property tax burden must address discrepancies in the assessment of property values among counties and, if feasible, among classes of property within counties.
 4. Grant, incentive, categorical or other classified state funding be made available to schools with justifiable need. Any grant, incentive, categorical, or other classified state funding should be separated from equalization funding formulas and/or equalization funding in order to avoid dilution or contradiction of equalization's purpose.
 5. Some means be developed to assure that state funding intended to equalize fiscal ability and property tax burden be used as intended yet retain as much local control on school programs and finances as possible.
 6. A permanent school finance commission be appointed to periodically monitor implementation and operation of the formula and the changes in property value assessments, tax laws, and state mandated education programs to avoid unintentional diversion of state aid purposes.
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Source: "Funding Nebraska's Schools: Toward a More Rational and Equitable School Finance System for the 1990s," LRD Report 90-1, 1 January 1990, 44.

Given these broad philosophical considerations and beliefs, the commission proposed five objectives to be incorporated into the new school finance system. The first of these objectives was that 20% of all state income tax revenues should be dedicated for support of public schools. Specifically, this meant that 20% of all individual income tax proceeds, attributable to each school district, should be returned directly to the school district where the income tax revenues originated.²¹⁴ The idea was to assure a "broadened, growing and more stable base of support for all public schools."²¹⁵ This provision would come to be known as the income tax rebate to public schools.

The second objective involved the increase in the overall level of state support to a "target level" of 45% of the aggregate operational costs of the school system "in order to effectuate a 15% reduction in aggregate property taxes" levied.²¹⁶ Naturally, a 45% level of state financial assistance meant that the remaining 55% of public school revenue

²¹⁴ *Id.*, 45.

²¹⁵ *Id.*

²¹⁶ *Id.*

would derive from property taxes or other sources. The second objective would ultimately be placed in the intent section of LB 1059 (1990). The idea behind this provision was to set a goal for the Legislature to adequately and consistently fund the new formula to “assure a meaningful and realistic reduction, over the short and long term, in the share of school costs which must be supported by the property tax.”²¹⁷

The third objective related to the distribution formula itself. The commission recommended the implementation of an “equalization based distribution formula” to assure that all school districts have the fiscal ability to provide for the “realistic needs of students and which will measure district wealth in terms of both its available income tax resources and property tax resources.”²¹⁸ The idea behind the objective was to “help assure” that the state will meet its responsibilities to provide equitable educational opportunities for students and assure “fair tax treatment of its citizens.”²¹⁹

The fourth objective was essentially mandated, or at least strongly suggested, under LB 611 (1989). The fourth objective called for “real and effective growth limitations” on the budgets of school districts, implying a relatively stringent base spending lid.²²⁰ But the commission also adhered to the admonition in LB 611 to impose a spending limitation that was “sensitive to differences in needs and resources of the schools.”²²¹ This would ultimately result in a spending lid range and a district-by-district growth rate based upon the spending habits of each district the year before. The idea behind the spending lid was to ensure that the additional state financial support to schools would actually result in a reduction of property taxes to support schools. The commission suggested an initial base lid of 4% with a lid range to 6.5%.²²²

²¹⁷ Id.

²¹⁸ Id.

²¹⁹ Id.

²²⁰ Id., ix.

²²¹ Id.

²²² Id.

The fifth and final objective specifically referred to the issue that would cause the greatest amount of controversy. The commission recommended that its proposed school finance plan should be funded on an “ongoing and sustainable basis” from increases in the state sales and/or income taxes as determined necessary and appropriate by the Legislature.²²³ In other words, permanent tax increases. But the report did not specify or suggest tax rate increases, an issue which would later be criticized by opponents of the legislation. Instead, the report suggested that this would be the responsibility of the Legislature and the Governor “to set a budget based on projected revenues and total budget obligations.”²²⁴

The commission’s final product was not necessarily innovative in the arena of school finance. The basis of the new formula would be similar to the formula used by the State of Kansas. The commission also borrowed various aspects of a proposal offered several years earlier by the Nebraska Council of School Administrators (NCSA). And the commission was particularly fortunate to have among its membership several school finance experts of its own. Commission member Larry Vontz and Department of Education staff, Tim Kemper and Russ Inbody, all had a considerable impact on the final result, as did Larry Scherer, Legal Counsel for the Education Committee.

The commission estimated the cost to the state to implement the plan for the 1990-91 school year to be \$211.3 million. This would be funded in part by the dedicated income tax to schools, which accounted for \$118 million of the total projected cost. The commission anticipated a 16.1% reduction in property taxes as a result of the plan in the first year of implementation.²²⁵ Aside from these projections, the commission chose not to recommend a legislative solution to produce the remaining state revenue necessary to fund the plan.

²²³ Id.

²²⁴ Id.

²²⁵ Id., 63.

D. Teacher Supplemental Pay

In addition to the work of the commission during 1988 and 1989, it is well worth noting another major piece of legislation passed during the 1989 Session, relating to teacher compensation. The issue of teacher pay has long been a part of the overall discussion concerning public school finance. Public education, after all, is a labor-intensive operation. The labor force is comprised of skilled, educated professionals. It stands to reason that compensation would be an ongoing issue for those involved and those who care about the quality of instruction for children.

In 1989, the Nebraska State Education Association (NSEA) launched an extraordinary legislative initiative to increase pay for teachers. The effort was in the works for some time prior to 1989, but the actual measure, LB 89, was introduced in the 1989 Session. The chief sponsor was Senator Dan Lynch of Omaha, who designated LB 89 as his personal priority bill for the 1989 Session.²²⁶ Cosponsors would eventually include Senators LaVon Crosby of Lincoln, Brad Ashford of Omaha, Jim McFarland of Lincoln, and Jerry Chizek of Omaha.²²⁷

As introduced, LB 89 proposed to appropriate \$100 million in each of two consecutive years to help local schools establish a minimum salary of \$18,000 for every teacher.²²⁸ The legislation also proposed to appropriate \$50 million for direct property tax relief.²²⁹ The idea was to take some of the burden off the property taxpayer and bring about more reliance upon state government to fund public education, a theme that permeated through the work of the commission.

The public hearing for LB 89 was itself an extraordinary event. On Tuesday, February 7, 1989, the Legislature's Education Committee convened a special hearing at

²²⁶ NEB. LEGIS. JOURNAL, 3 March 1989, 970.

²²⁷ Legislative Bill 89, in *Laws of Nebraska, Ninety-First Legislature, First Session, 1989*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), 1 (328).

²²⁸ Legislative Bill 89, *Create the Help Education Lead to Prosperity Act*, sponsored by Sen. Dan Lynch, 91st Leg., 1st Sess., 1989, title first read 5 January 1989, § 5, p. 4.

²²⁹ *Id.*, § 8, p. 9.

the state fairgrounds in Lincoln where some 3,800 citizens, mostly teachers, gathered to participate in the proceedings.²³⁰ Senator Ron Withem, chair of the Education Committee, believed it was the largest hearing on a single bill in the history of the state. Withem was himself a former public school teacher prior to pursuing a career in the Legislature.

Given the magnitude of the measure, LB 89 was certainly offered at the right time in Nebraska's history. The state was expected to have as much as a \$144 million surplus at the end of the fiscal year.²³¹ The immediate problem, however, was that Governor Kay Orr did not include such lofty ideas as increasing teacher pay in her biennium budget proposal. Any substantive addition to the budget proposal would require negotiation and compromise, something the teachers' labor organization was particularly good at doing.

On February 28, 1989, the Education Committee advanced the bill on a unanimous 5-0 vote, but not in the same condition as introduced.²³² The revised version provided for a \$40 million appropriation in 1989-90 and \$75 million in 1990-91 with an emphasis on helping those teachers with salaries below \$18,000 per year. The property tax relief portion of the original bill was dropped from the committee amendments to LB 89 as advanced.²³³

In keeping with the extraordinary nature of the legislation, LB 89 would become one of the most contentiously debated bills of the 1989 Session. On May 23, 1989 the Legislature gave final approval (on a 37-12 vote) to a dramatically reduced version of the original bill, but it was still a victory for the teachers of Nebraska.²³⁴ Governor Orr signed the bill into law on May 26, 1989.²³⁵

²³⁰ John Share, "Hearing May Be Largest Ever Teacher-Pay Bill Draws 3,800," *Omaha World-Herald*, 8 February 1989, 19.

²³¹ *Id.*

²³² NEB. LEGIS. JOURNAL, 1 March 1989, 921.

²³³ NEB. LEGIS. JOURNAL, *Com AM0629 to LB 89 (1989)*, 1 March 1989, 921.

²³⁴ *Id.*, 23 May 1989, 2685.

²³⁵ *Id.*, 31 May 1989, 2787.

As passed and signed into law, LB 89 created the Help Education Lead to Prosperity (HELP) Act.²³⁶ The purpose of the Act was to promote excellence in education through increased teacher salaries with the intent that public schools have the capacity to recruit new teachers and retain quality teachers through salary increases.²³⁷ The measure established a formula to determine the amount allocated to each school district, educational service unit, or state operated school on behalf of the teachers employed at each institution. The process required public education entities to annually submit to the Department of Education the number of full-time teachers employed.²³⁸ Details concerning the actual disbursement of funds to individual teachers would be a matter of negotiation between the employer and employees of the public education entity.²³⁹

LB 89 and its accompanying appropriation (“A”) bill, LB 89A, dedicated \$20 million for the 1989-90 and 1990-91 fiscal years to carryout the purpose of the Act.²⁴⁰ This was a substantial decrease in the amount sought by proponents of the legislation, but it was still a victory for teachers in the sense that the Legislature officially recognized their underpayment. LB 89 established an automatic sunset of the HELP Act on June 30, 1991, unless the Legislature acted to reestablish it.²⁴¹ This meant that the NSEA and other interested parties would need to fight for reauthorization on a continual basis.

The Legislature would, in fact, periodically reestablish the HELP Act to provide supplemental pay to teachers, but the amount appropriated for such purpose would

²³⁶ Legislative Bill 89, Session Laws, 1989, § 1, p. 1 (328).

²³⁷ Id., § 2, p. 1 (328).

²³⁸ Id., § 5, p. 2 (329).

²³⁹ Id., § 6, p. 3 (330).

²⁴⁰ Legislative Bill 89A, in *Laws of Nebraska, Ninety-First Legislature, First Session, 1989*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 1, p. 1 (331).

²⁴¹ Legislative Bill 89, Session Laws, 1989, § 11, p. 3 (330).

gradually decline over the years. By 1996, the annual amount appropriated was about \$7 million.²⁴²

Finally, in 1996, the NSEA proposed to use the annual appropriation, otherwise set aside for supplemental pay, to help cover the cost of benefit enhancements to the three state defined benefit retirement plans (including the School Employees Retirement System) along with the Omaha Public Schools Retirement Plan. This idea would be accomplished under LB 700 (1996), which effectively repealed the Help Education Lead to Prosperity Act.²⁴³ From then on, the annual \$7 million appropriation to the defined benefit retirement plans was referred to as the “old HELP” money. Naturally, the problem created under this arrangement is that it requires the institutional memory of those involved to maintain it. After all, the HELP Act itself had been repealed, yet an appropriation is made on behalf of the old law each year. The Legislature is effectively honoring, knowingly or unknowingly, the spirit of the HELP Act.

E. Review

In 1988, Senator Ron Withem successfully moved the Legislature toward the next logical step on the joint issues of school organization and finance. With the passage of LB 940 (1988), both the legislative and executive branches of the Nebraska government agreed to a methodical examination of the existing school structure and the examination of what could be. LB 940 created the School Financing Review Commission to perform an in-depth study on school finance and produce recommendations for change. Senator Withem was deliberate in the composition of the commission so that the executive branch would have a voice and would, hopefully, buy into the final recommendations of the study group. The task assigned to this commission would be anything but simple and the one-year allotment of time to finish the work would prove insufficient given the magnitude of the issues involved.

²⁴² Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 700 (1996)*, prepared by Kate Morris, 94th Leg., 2nd Sess., 1996, 25 March 1996, 1.

²⁴³ Legislative Bill 700, in *Laws of Nebraska, Ninety-Fourth Legislature, Second Session, 1996*, vol. I, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 18, p. 9.

One of the key elements of LB 940 was adequate funding. The commission was given the authority to hire staff, including consultants, to obtain assistance from the Department of Education and the Department of Revenue in acquiring data needed to carry out its duties, and to contract for any necessary facilities, equipment, and services, including computer services. To do all this, the bill appropriated \$100,000 to the commission to carry out its function. While not a tremendous sum, this appropriation would certainly permit the hiring of a consultant, and ultimately it did.

The sixteen-member commission consisted of representatives from the Legislature, the Governor, higher education, the Commissioner of Education, all classes of public schools, and two at large members. By the end of 1988, it was clear the commission would need more time to complete its work. Senator Withem successfully sought passage of LB 312 (1989) to give the study group one additional year. The Legislature also passed LB 611 (1989) to provide some statutory guidance to the commission. LB 611 also provided the “hammer” needed to ensure something would be done about property tax relief. The legislation called for the automatic repeal of the existing formula on June 30, 1991, and called for a new school finance system to be in place by January 1, 1992.

Over an eighteen-month period, from 1988 to 1989, the commission held 21 meetings, five public hearings and listened to dozens of presentations by staff and outside experts in order to arrive at its conclusions. The five public hearings were held in June and July, after the 1989 Session, at various points across the state in order to give ample opportunity for public discussion. On January 1, 1990, the commission formally issued its final report entitled, “Funding Nebraska’s Schools: Toward a More Rational and Equitable School Finance System for the 1990s.”

The commission proposed five objectives to be incorporated into a new school finance system. The first of these objectives was that 20% of all state income tax revenues should be dedicated for support of public schools. The second objective involved the increase in the overall level of state support to a “target level” of 45% of the aggregate operational costs of the school system. The third objective related to the actual

formula itself. The commission recommended the implementation of an equalization-based distribution formula to assure that all school districts have the fiscal ability to provide for the needs of students and measure district wealth in terms of both its available income tax resources and property tax resources. The fourth objective called for real and effective growth limitations on the budgets of school districts, implying a relatively stringent base spending lid. The fifth and final objective specifically referred to the issue that would cause the greatest amount of controversy. The commission recommended increases in the state sales and/or income taxes as determined necessary and appropriate by the Legislature to fund the new school financed system.

While the commission was hard at work in 1989, the teachers of Nebraska would enjoy perhaps one of their greatest legislative successes through the passage of LB 89 (1989). In 1989, the Nebraska State Education Association (NSEA) launched an extraordinary initiative to increase pay for its member teachers. The issue of teacher pay had long been a part of the overall discussion concerning public school finance. Public education, after all, is a labor-intensive operation.

As passed and signed into law, LB 89 created the Help Education Lead to Prosperity (HELP) Act. The purpose of the Act was to promote excellence in education through increased teacher salaries with the intent that public schools have the capacity to recruit new teachers and retain quality teachers through salary increases. The measure established a formula to determine the amount allocated to each school district, educational service unit, or state operated school on behalf of the teachers employed at each institution. LB 89 and its accompanying appropriation ("A") bill, LB 89A, dedicated \$20 million for each 1989-90 and 1990-91 to carryout the purpose of the Act. This was a substantial decrease in the amount sought by proponents of the legislation, but it was still a victory for teachers in the sense that the Legislature officially recognized their underpayment.

The Legislature would periodically reauthorize the HELP Act to provide supplemental pay to teachers, but the amount appropriated for such purpose would gradually decline over the years. By 1996, the annual amount appropriated was about \$7

million. This amount would ultimately be dedicated to the assistance of the School Employees Retirement System along with the OPS Retirement System and the two other state operated defined benefit retirement plans.

A New School Finance System, 1990

A. The *Gould* Case

Part of the backdrop to the 1990 Legislative Session was the filing of a lawsuit against the state by several Nebraska citizens. On January 2, 1990, brothers W. Donald Gould and John S. Gould, filed suit on behalf of themselves and John Gould's minor daughters Donna Lee and Rebecca Lynn against Governor Orr and the State of Nebraska generally.²⁴⁴ The suit was filed in Lancaster County District Court seeking the following action:

- (1) A declaration that the plaintiffs were being denied due process of law, equal protection of the law, equal and adequate educational opportunity, and uniform and proportionate taxation in violation of the Constitution of the State of Nebraska;
- (2) a declaration that the present statutory structure for funding public schools in Nebraska is unconstitutional and inadequate;
- (3) an injunction permanently enjoining the defendants from implementing the unconstitutional educational funding statutes currently in effect;
- (4) a mandamus issued to the Governor requiring her to recommend that the Legislature enact legislation pertaining to the schools of Nebraska which will comply with the requirements of the Nebraska Constitution;
- (5) a ruling that the court would retain jurisdiction of the matter for purposes of enforcing its order and judgments; and
- (6) such other relief as the court may deem the plaintiffs to be entitled to.²⁴⁵

At the time of filing, the plaintiffs all resided in Saunders County, Nebraska, where Donna Lee and Rebecca Lynn were students within the Raymond Central School District.²⁴⁶

²⁴⁴ *Gould v. Orr* (1993), 244 Neb. 163.

²⁴⁵ *Id.*, 164.

²⁴⁶ *Id.*

The plaintiffs alleged the existing school finance system “resulted in substantial disparity among districts, with the distribution from the School Foundation and Equalization Fund being insufficient to offset the local tax revenue differentials caused by local wealth disparities.”²⁴⁷ The plaintiffs further argued that Nebraska’s school system was funded by approximately 75% local tax revenue and only 25% by the state.

The plaintiffs provided an example in their court documents to demonstrate just how bad the situation had become:

In 1988-89, for example, the state distributed \$1,202.04 per pupil of its School Foundation and Equalization Fund to the state’s poorest K- 12 school district, Thurston County School District 16, and \$393.86 to the state’s wealthiest K-12 school district, Thayer County School District 47. That same year, the total amount available for each pupil in the Thayer district was \$7,119.97, while the Thurston district had only \$1,313.46 available per pupil.²⁴⁸

Plaintiffs suggested this inequity “resulted primarily from the fact that the poorer districts have materially smaller tax bases than the wealthier districts.”²⁴⁹ This inequity in tax bases also resulted in “significantly higher educational tax levies being assessed against property owners in the poorer districts, with the poorest districts having the highest property tax levies in the state.”²⁵⁰ In short, the plaintiffs alleged that the existing school finance system was unconstitutional based upon these inequities.

A final disposition on the *Gould* case would not arrive until 1993. In the meantime, the case served to motivate some within the Legislature to act upon the recommendations of the commission established in 1988. Even today there is debate about the extent to which the Legislature felt pressured by the 1990 lawsuit. But the issue did surface and resurface during the long and tedious debate of LB 1059.

²⁴⁷ Id., 165.

²⁴⁸ Id.

²⁴⁹ Id.

²⁵⁰ Id.

B. The TEEOSA

The Introduction of LB 1059

In the history of the Nebraska Legislature, there are very few bill numbers that have the fame or infamy of Legislative Bill 1059.²⁵¹ There were bills under the same number designation before 1990 and since, but anyone remotely interested in politics and education in the 1990s, and even today, would conjure the same legislative topic upon hearing the number “1059.” This is particularly understandable given the difficult birth of this legislation coupled with almost incessant attacks, modifications, review, and more review.

LB 1059, of course, was the embodiment of the final report from the School Financing Review Commission, which was established two years earlier. LB 1059 arguably represents one of the most remarkable feats of political achievement in the modern era of Nebraska history. The bill would be passed by the Legislature during a 60-day (short) session, perhaps the most unlikely scenario for a measure proposing wide-sweeping education and revenue reform. The bill would accomplish a major shift in the source of funding for Nebraska’s public schools with the promise of property tax relief in exchange for income and sales tax increases. Finally, LB 1059 would not only survive a gubernatorial veto, but also a popular referendum seeking its repeal. In the final analysis, the people would have the final say on this legislative proposal.

The chief sponsors of the bill were Senator Ron Withem of Papillion and Senator Scott Moore of Stromsburg. Withem and Moore were two of the three members of the Legislature who served on the commission that produced the legislative proposal. The third legislator on the commission, Senator Howard Lamb, declined to attach his name to the bill. But other senators would attach their names to the legislation. In fact, no less than 32 of the 49 members of the Legislature signed on as sponsors or co-sponsors of the bill, including the Speaker of the Legislature, Senator Bill Barrett of Lexington.²⁵² And while some of sponsors would defect to the opposing side and some opponents would

²⁵¹ Legislative Bill 1059, *Tax Equity and Educational Opportunities Support Act*, sponsored by Sen. Ron Withem, Nebraska Legislature, 91st Leg., 2nd Sess., 1990, title first read 9 January 1990.

²⁵² *Id.*, 1.

resolve to become proponents, the same number, 32, would ultimately signal the successful passage of the bill over the Governor's objections toward the end of the session.

LB 1059 was officially introduced on January 9, 1990, just six days after the Second Session of the 91st Legislature convened in Lincoln. The Executive Board of the Legislature, serving in its capacity as Reference Committee, accepted the recommendation to refer LB 1059 to a unique joint panel for disposition.²⁵³ This joint panel would be comprised of members of the Education Committee and the Revenue Committee, sixteen legislators in all, the majority of whom were sponsors or co-sponsors of the bill.

LB 1059, as introduced, consisted of 36 separate sections, most of which explained the method to be used for computation and distribution of state equalization aid. The bill was comprised mostly of new sections, new language to be incorporated into law, but it also included sections to amend existing statutes relevant to the subjects of education and revenue. The first section provided the name of the new school finance system, the "Tax Equity and Educational Opportunities Support Act."²⁵⁴ The name of the act itself, often referred by its acronym, TEEOSA, embodies the two central focuses of its mission: to provide tax equity for both taxpayers and schools, and to provide equity of educational opportunity for students.

The second section housed both a statement of the problems to be resolved and the specific objectives or philosophical goals to be met. This section was divided into two subsections, one to establish the legislative "findings," and the other to spell out the intent of the legislation. The findings involved factual statements that supported, and, perhaps, justified the passage of the bill. Under the findings subsection, the Legislature declared that:

(a) Nebraska currently finances over seventy percent of the costs of operating its public school system from the property tax and other local sources while

²⁵³ NEB. LEGIS. JOURNAL, 10 January 1990, 267.

²⁵⁴ LB 1059 (1990), § 1, p. 3.

nationally only forty-three percent of the costs are supported by property taxes and other local sources;

(b) State support for the public school system has not kept pace with the increased costs of operating such system;

(c) Nebraska has a higher per capita property tax burden than most other states while the overall state and local per capita tax burden in the state is below the national average;

(d) The cost of operating the public school system is near the national average in per pupil cost as well as per capita spending;

(e) The overreliance on property tax for or the support of the public school system has resulted in great disparities in local property tax rates; and

(f) The overreliance on the property tax for the support of the public school system has created inequitable educational fiscal resources for students.²⁵⁵

The majority of these findings were tax-related, but the underlying mission was not solely about tax relief. Enmeshed within the findings were concerns about the ability of school districts to operate, the level of support to be expected from the state, and educational opportunities afforded to students.

The subsection describing the intent of the Legislature set out some specific objectives to be achieved through the creation of the new school finance system. LB 1059 proposed to create a new system that would:

(a) Provide state support from all sources of state funding for forty-five percent of the general fund operating expenditures of school districts;

(b) Reduce the reliance on the property tax for the support of the public school system;

(c) Broaden financial support for the public school system by dedicating a portion of the revenue received from the state income tax for support of the system;

(d) Keep pace with the increasing cost of operating the public school system;

(e) Assure each district a foundation support level for the operation of schools within each district taking into consideration the taxable wealth and other accessible resources of the district;

(f) Assure a greater level of equity of educational opportunities for students in all districts;

(g) Assure a greater level of equity in property tax rates for the support of the public school system; and

²⁵⁵ Id., § 2, pp. 3-4.

(h) Assure that there is a shift to sustainable revenue sources, other than property tax, for the support of the public school system through the establishment of limits on the growth of general fund budgets of districts.²⁵⁶

The intent subsection restated, in many cases, the objectives set out in LB 940 (1988) and also LB 611 (1989), especially as it pertained to the notions of a dedicated income tax rebate, property tax relief, increased state spending on education, and a focus on equity of educational opportunity.

Section 4 of the bill established the income tax rebate to schools. This section dedicated 20% of all income tax receipts collected by the state, minus credits and refunds, to fund public education. It further provided for the direct return of 20% of identifiable individual income tax receipts to the school district where such receipts originated. Class I school districts, Class VI school districts and county nonresident tuition funds would receive a pro rata share of the income tax receipts. Any portion of individual income taxes not identifiable to any school district plus 20% of corporate, nonresident, trust and other non-individual income tax receipts would be distributed through the equalization formula.²⁵⁷

Section 5 of the bill was probably the most complicated part of the bill, but it established the real heart of the distribution formula. This section created a structure whereby all school districts would be placed in a specific “tier” based upon average daily membership (ADM) in various grade groupings (i.e., kindergarten, grades 1-6 plus full-day kindergarten, grades 7 and 8, and grades 9 to 12). The tier structure would provide a basis to calculate each school district’s “tiered cost per student” for use in the equalization formula.²⁵⁸ The tiered cost per student varied among the different grade groupings on the theory that it generally cost more to educate a high school student, for instance, than a kindergarten student.

²⁵⁶ Id., pp. 4-5.

²⁵⁷ Id., § 4, pp. 8-11.

²⁵⁸ Id., § 5, p. 11.

Sections 6 to 11 established various components of the system. This system called for each district's "formula needs" to be subtracted from its "formula resources" in order to arrive at the appropriate amount of state aid.²⁵⁹ This created the basic formula:

$$\text{Needs} - \text{Resources} = \text{Aid}$$

A district's formula needs amounted to the sum of the number of students in each grade grouping multiplied by the corresponding tiered cost per student.²⁶⁰ A district's formula resources would be calculated by adding together the amount of revenue from property taxes, the applicable portion of income tax rebate, and "other actual receipts."²⁶¹

The initial list of additional accountable receipts included the following revenue sources:

- (1) Public power district sales tax revenue;
- (2) Fines and license fees;
- (3) Nonresident high school tuition receipts;
- (4) Tuition on receipts from individuals, other school districts, or any other source except those derived from adult education;
- (5) Transportation receipts;
- (6) Interest on investments;
- (7) Other miscellaneous local receipts;
- (8) Special education receipts;
- (9) Receipts from the state for wards of the court and wards of the state;
- (10) All receipts from the Temporary School Fund;
- (11) Receipts from the Insurance Tax Fund;
- (12) Pro rata motor vehicle license fee receipts;
- (13) Help Education Lead to Prosperity Act funds;
- (14) Other miscellaneous state receipts;
- (15) Impact aid receipts to the extent allowed by federal law;
- (16) Johnson O'Malley receipts; and
- (17) All other noncategorical federal receipts.²⁶²

²⁵⁹ Id., § 6, p. 17.

²⁶⁰ Id., § 7, pp. 17-18.

²⁶¹ Id., §§ 8-11, pp. 18-21.

²⁶² Id., § 11, pp. 20-21.

A few of these receipts require some elaboration. For instance, “impact aid” refers to a federal program that provides funding for a portion of the educational costs of certain students whose parent is a part of a military installation. The Help Education Lead to Prosperity (HELP) Act refers to the state program to supplement teacher salaries. The Johnson O’Malley Program was a supplemental educational program enacted to meet the specialized needs of eligible Native American students.

Sections 14 through 20 established a spending limitation for school districts along with exceptions to the lid, the method of computation, and methods to exceed the lid. For the initial year of implementation, the “base spending limitation” was set at 4% with a “growth range” of up to 6.5%.²⁶³ This meant that a given district’s budget growth rate could be set anywhere between 4% and 6.5%. The Department of Education was assigned the duty to annually determine each district’s “applicable allowable growth rate” based upon each district’s spending from the previous year.²⁶⁴ Essentially, a district would receive a higher growth rate if it did not have high spending the year before. Conversely, a district would receive a lower growth rate if it had high spending the year before. The idea was to balance spending from year to year.

The bill initially provided for three exceptions to the spending lid, but this list would later grow as the Legislature debated and amended LB 1059. The initial list of exceptions included:

- (1) New or expanded programs or services mandated by changes in state or federal law;
- (2) Enrollment increases for the ensuing school year; and
- (3) Construction, expansion, or alterations of school district buildings that cause an increase in building operation and maintenance costs.²⁶⁵

The bill also permitted a school board to exceed its allowable growth rate by an additional 1% if approved by a 75% (“super”) majority vote of the board or, alternatively,

²⁶³ Id., § 16, p. 23.

²⁶⁴ Id., § 17, p. 24.

²⁶⁵ Id., § 19, pp. 26-28.

by any amount upon the approval of the voters at a special election.²⁶⁶ Finally, the bill permitted a district to carry-over unused budget authority from one year to another within prescribed limitations.²⁶⁷

Section 22 required the Department of Education to provide data to enable the Governor to introduce legislation each year to (1) appropriate funds to reach the goal of 45% state support for schools, (2) appropriate 20% of income tax receipts, and (3) set allowable budget growth rates for the upcoming year.²⁶⁸ While the intent may have been to fully fund the formula, this section permitted politics to enter the school finance arena. The Legislature would attempt to come close to meeting the 45% funding goal, but, for one reason or another, the Legislature would never achieve it.

Section 23 of the bill created the School Finance Review Committee to provide oversight of the school finance system. The committee would be composed of representatives of the Department of Education, the Department of Revenue, the Legislative Council, and each class of school district (Classes I-VI). The committee would also consist of an expert in school finance and a member of the general public. Committee members were to be appointed by the Governor.²⁶⁹

The purpose of the committee would be to monitor the operation of the school finance system and suggest needed revisions. The bill gave the committee the specific duty to review the implementation and operation of the average daily membership tiers, budget growth limitations, and expenditures of school districts. The committee was required to submit annual reports to the Governor, the Legislature, and the State Board of Education on (1) the progress of the plan in effectuating property tax relief, (2) broadening the tax base for the support of public schools, (3) equalization of the tax

²⁶⁶ Id., § 20, pp. 28-29.

²⁶⁷ Id., § 21, p. 30.

²⁶⁸ Id., § 22, p. 30.

²⁶⁹ Id., § 23, pp. 31-32.

burden for the support of public schools, (4) equalization of educational opportunities for students, and (5) the effects of budget limitations on district spending patterns.²⁷⁰

Sections 27 and 28 of the bill contained the tax increases to fund the new school finance system. Section 27 increased the state income tax primary rate to 3.7% effective for tax year 1991. Section 28 increased the state sales and use tax rate from 4% to 5% effective July 1, 1990.²⁷¹

Public Hearing for LB 1059

The public hearing for LB 1059 was held in the evening of Tuesday, January 23, 1990.²⁷² Typically, public hearings are held in the early afternoon and conclude in the late afternoon or early evening. Due to the joint committee venue for this particular bill, the hearing was held in the evening. The hearing was conducted jointly by the Education and Revenue Committees with Senator Ron Withem, chairman of the Education Committee, serving as the presiding officer.²⁷³

Table 10. Rosters of the Education
and Revenue Committees (1990)

Education Committee

<i>Position</i>	<i>Senator</i>	<i>District</i>	<i>Member of Legislature Since</i>	<i>Home</i>
Chair	Withem, Ron	14	1983	Papillion
Vice Chair	Dierks, Merton "Cap"	40	1987	Ewing
Member	Baack, Dennis	47	1985	Kimball
Member	Bernard-Stevens, David	42	1988	North Platte
Member	Chizek, Jerry	31	1984	Omaha
Member	Crosby, LaVon	29	1989	Lincoln
Member	McFarland, James	28	1986	Lincoln
Member	Nelson, Arlene	35	1985	Grand Island

²⁷⁰ Id.

²⁷¹ Id., §§ 27-28, p. 36.

²⁷² NEB. LEGIS. JOURNAL, 10 January 1990, 270.

²⁷³ The Education Committee normally meets on Mondays and Tuesdays during the public hearing phase of each regular session of the Legislature. Therefore, it was appropriate for the chair of the Education Committee to serve as the presiding officer of this particular public hearing.

Table 10—Continued

Revenue Committee

<i>Position</i>	<i>Senator</i>	<i>District</i>	<i>Member of Legislature Since</i>	<i>Home</i>
Chair	Hall, Tim	7	1984	Omaha
Vice Chair	Hefner, Elroy	19	1976	Coleridge
Member	Haberman, Rex	44	1979	Imperial
Member	Hartnett, Paul	45	1985	Bellevue
Member	Labedz, Bernice	5	1976	Omaha
Member	Landis, David	46	1979	Lincoln
Member	Peterson, Richard	21	1981	Norfolk
Member	Rogers, Carson	41	1985	Ord

Source: Nebraska Unicameral Legislature Roster, 1990.

The hearing was structured to allow a presentation on the findings of the commission, an explanation of the mechanics of the proposed bill, and public testimony on the measure. Senator Withem began the hearing by explaining the reason for a special joint committee public hearing. The rationale, he explained, was “that we have a bill here that changes significantly the way in which schools are funded in our state.”²⁷⁴ He further explained that the bill also “changes significantly the tax base of the state.”²⁷⁵

Senator Scott Moore, who co-sponsored the legislation, presented the opening remarks at the hearing. He began his comments by stating his belief “that this piece of legislation has the potential to be probably the biggest piece of legislation we passed in this Legislature in the last twenty years and probably the next twenty years after that.”²⁷⁶ He also set the stage for what will, in successive years, be a commonly quoted formula for property tax relief (i.e., the more the state contributes to state aid, the less local governments will have to request in terms of property tax revenue). He reminded those present that the 1989 Legislature passed significant legislation relating to property tax relief. Moore referred specifically to LB 84 and LB 611, which were passed a year earlier. LB 84 (1989) provided a one-year, \$98 million, property tax relief program, and

²⁷⁴ Education and Revenue Committees, *Hearing transcripts, LB 1059 (1990)*, Nebraska Legislature, 91st Leg., 2nd Sess., 1990, 23 January 1990, 1.

²⁷⁵ *Id.*

²⁷⁶ *Id.*, 2.

LB 611 (1989) provided intent language to replace the existing school finance formula and to share the income tax base with public schools in order to bring about lasting property tax relief.²⁷⁷ Moore said that following the 1989 Session, many senators, including himself, believed it was time to “come up with a solution to do some major surgery to the property tax problem in the State of Nebraska.”²⁷⁸

Moore also credited Senator Ron Withem and the work of the School Financing Review Commission, on which both Moore and Withem served as members. He said the commission kept the best interests of both taxpayers and students in mind during its work sessions. He referred to statistics indicating that Nebraska ranked tenth in the nation in terms of property tax rates, but 38th in the nation in terms of “income taxes collected” and 42nd for “sales tax collected.” He believed this meant that the overall tax burden upon Nebraska taxpayers was somewhat average (approximately 27th in the nation). He suggested a tax shift would provide the answer to the property tax issue while at the same time providing increased resources to fund a school finance formula.²⁷⁹

The second focus of the commission, according to Moore, was the best interest of students, which he broke into three objectives:

The first thing we do is, we just overhaul a system that we know is wrong in this state and it causes a lot of problems. If we don't fix it, it's going to cause a lot more problems, and more importantly, cause some problems for those kids out there. Secondly, for once the State of Nebraska is going to have a major commitment to the cost of education in this state and catch up with our peers nationwide on what commitment the state should have that cost of education. Thirdly, we're basically going to try to guarantee that there's, you know, an average dollars per student out there.²⁸⁰

A stable school finance formula, Moore said, would permit a student to receive essentially the same educational opportunities no matter where that student resides.

²⁷⁷ “Legislature OKs Bill To Ease Property Tax,” *Omaha World-Herald*, 23 May 1989, 14.

²⁷⁸ *Hearing transcripts, LB 1059 (1990)*, 23 January 1990, 3.

²⁷⁹ *Id.*

²⁸⁰ *Id.*, 4.

Moore attempted to provide an equal measure of rationale in favor of LB 1059 from both perspectives, the student and the taxpayer, but it was clearly the tax issue that received the bulk of his attention during his opening comments. Toward the conclusion of his remarks, he noted that “there is no magic to fixing our tax system in the State of Nebraska,” referring to the difficulty in satisfying everyone’s interests on the issue of taxation.²⁸¹ He admitted, “[T]his isn’t going to fix our property tax problem in the State of Nebraska.”²⁸² But, he insisted, “[I]t’s going to be a giant step forward.”²⁸³

Following his opening remarks, senators were permitted to pose questions. Several issues raised during this question/answer exercise would reappear throughout the hearing and throughout floor debate on the bill. The first of these issues relates to the act of raising both the sales and income tax rates, and, to some degree, the perceived lateness by the commission to arrive at a revenue solution as part of the overall legislative proposal. Senator Richard Peterson of Norfolk, a member of the Revenue Committee, chastised Moore and the commission generally for coming late with a plan to raise taxes:

Senator Moore, you and a number of them [members of the commission] have spent eighteen months devoted to this issue, but it seems to me that there’s only been about two or three weeks in regards to funding the mechanics of it. Now I’m concerned that this aspect of the proposal needs further analysis. Analyzed how that’s going to effect Nebraska taxpayers, their sales and income tax, and specifically the concern about the elderly, the low income, the people that don’t pay rent, how it’s going to effect them because they’re going to be paying more.²⁸⁴

Moore disagreed with Peterson’s assertion that the addition of a tax increase to the measure was a last minute decision. He said that tax increase had always been a part of the plan and that such a proposal had been discussed at many of the commission’s meetings. The issue had also been raised at public hearings held by the commission across the state prior to the unveiling of the final legislative proposal.

²⁸¹ Id.

²⁸² Id., 5.

²⁸³ Id.

²⁸⁴ Id., 10.

Another major issue brought to Senator Moore's attention related to those school districts that would actually lose state aid by virtue of LB 1059 once implemented. Senator Rex Haberman of Imperial noted that some districts would lose as much as 100% of state aid in comparison to that received under the existing school finance formula. Senator Haberman asked if a "hold harmless" provision had been considered to maintain a minimum level of state aid for each district for at least a couple years after implementation LB 1059. Moore responded that "ninety percent of the kids in the state are in districts that win" under LB 1059, but that he would nevertheless consider such a provision if it would help move the legislation forward in the process.²⁸⁵

Following Senator Moore, several key testifiers were permitted to give their comments and respond to questions from the joint panel. The first of these testifiers were representatives from the Department of Education, Larry Vontz, Deputy Commissioner of Education, and Tim Kemper, Director of Organization and Support Services. Both individuals had provided integral support and assistance to the commission during the research phase of the study and were also instrumental in the development of the actual language used to fashion the legislative proposal. Their testimony was particularly important at the public hearing in order to help those present understand some of the more technical aspects of the bill. These individuals would also play a role during floor debate to help senators understand how the formula would work under LB 1059.

Larry Vontz lead the presentation with a series of overhead visual slides to help participants understand some of the fundamental aspects of the proposed formula. He first explained that all equalization-oriented state aid formulas have three basic components: (1) the financial "needs" of the district to operate, (2) the available financial "resources" of the district, and (3) the amount of state financial "equalization aid" owed to the district under a formula.²⁸⁶

Vontz explained that the existing formula (under the School Foundation and Equalization Act) similarly contained all three components noted above, but that the

²⁸⁵ Id., 5-6.

²⁸⁶ Id., 12.

distribution of equalization aid had not kept pace with the rising needs of school districts. Vontz said with the “amount of money we distribute to schools we can only insure them, as far as needs, about thirty-five percent of the cost of education.”²⁸⁷ In other words, Vontz explained, it costs approximately \$4,000 per school year to educate a high school student, but the existing state aid formula would only contribute about \$1,500 toward that amount.²⁸⁸ The first problem, therefore, was that the needs had far exceeded the level of state support, which necessitated a disproportional level of local support to fund public schools.

According to Vontz, the second problem, which paralleled the first, was that the property tax, and hence property ownership, was the “only indicator of wealth” in the existing formula.²⁸⁹ If you own property, the false theory alleges, you must be rich, and “[t]hat’s how we’re going to determine whether you can afford an education or not, or pay for an education.”²⁹⁰ Part of the problem, of course, is that property ownership may or may not be an indicator of wealth in terms of income. Some school districts, Vontz explained, look “pretty good as far as property is concerned,” but are nevertheless considered income poor.²⁹¹ Other districts are income rich and property poor.

The other part of the problem, related to using property as the sole indicator of wealth, has to do with assessment. Property is assessed at the county level and assessment practices varied from one county to another. Vontz testified that:

Because we use property as the primary component, if it is not assessed properly we are distributing money improperly. For the past twenty years, or more, we’ve been doing that. The district, or the counties which are under-assessed are winners as far as state aid is concerned. They are entitled to more money.²⁹²

²⁸⁷ Id.

²⁸⁸ Id.

²⁸⁹ Id.

²⁹⁰ Id.

²⁹¹ Id.

²⁹² Id.

Income, as a component, was absent in the old formula, and this was something the commission wanted to fix. The answer, according to the commission, was a school finance formula similar to that used by the State of Kansas. “The commission was not interested in reinventing the wheel,” Vontz said.²⁹³

The Kansas model, in part, utilized the level of income from each district as a means to help determine overall wealth. Accordingly, one of the major components of LB 1059 was the 20% income tax rebate provision. Under section 4 of the introduced version of the bill, “twenty percent of the projected state income tax receipts shall be dedicated to the use and support of the public school system.”²⁹⁴ Since income tax receipts fluctuate from year to year, the formula would, theoretically, compensate with lesser or greater equalization aid, as the situation may require. “[T]hat’s what a good state aid formula ought to do ... [i]t ought to take care of those peaks and valleys which occur as far as the income of the residents of a district,” Vontz said.²⁹⁵

Property tax relief was unquestionably one of the principal aims of the commission. As a general rule, Vontz concluded in his testimony, districts profiting the most under LB 1059 would be those with high property tax levies.²⁹⁶ The local contribution for such districts would be considered excessive and those districts would generally be entitled to additional state support to lessen the property tax burden. Property tax relief would be further guaranteed by the inclusion of a spending limitation in the bill. The lid consisted of a 4% base limitation with a maximum range of 6.5%.²⁹⁷

Following Vontz’s testimony, various individuals who served on the commission were invited to present their remarks concerning LB 1059. Included among these individuals were Duane Stehlik, Superintendent at Table Rock Public Schools, Don

²⁹³ Id., 13.

²⁹⁴ LB 1059 (1990), § 4, pp. 8-9. Class I (elementary only) districts and Class VI (high school only) districts would receive a proportionate share under the legislation.

²⁹⁵ *Hearing transcripts, LB 1059 (1990)*, 32 January 1990, 13.

²⁹⁶ Vontz noted that in 1990 school district property tax levies ranged from 50¢ to \$3.50 per \$100 of assessed valuation. *Hearing transcripts, LB 1059 (1990)*, 32 January 1990, 14.

²⁹⁷ LB 1059 (1990), § 16, p. 23.

Leuenberger, Vice Chancellor for Business Finance at the University of Nebraska Medical Center, Gene Koepke, Provost at Kearney State College, and Charlyne Berens, co-publisher and editor of the Seward County Independent. Their testimony essentially endorsed the final product of the commission. Duane Stehlik echoed comments made earlier in the evening concerning the importance of income as a component in the formula. “It is a measure of the wealth of the patrons of the school district and it becomes a resource for your local school district,” Stehlik said.²⁹⁸ The spending limitation, on the other hand, was something less favorable to Stehlik, who noted the ever-rising costs of health insurance and other factors that would make a spending lid difficult for school districts.

Commission member Gene Koepke admitted a personal bias throughout the work of the task force to shift a part of the cost of public education away from property tax and to some other source of revenue. Koepke said:

More than seventy percent of the aggregate cost of running public elementary and secondary schools in Nebraska comes from local support. The average local support in the United States is under forty-five percent. While state governments across the United States have assumed a greater responsibility for public education, Nebraska in recent years has gone the other direction ...²⁹⁹

He also quoted statistics indicating that the typical farmer in Nebraska paid \$1.64 in property taxes for every \$100 of market value of his or her property in 1986, while the national average was 71¢ per \$100. Similarly, the typical homeowner in Nebraska paid an average property tax rate of 2.29% in 1985, while the national average was 1.21%. “[T]hat’s punitive for the people that own property,” Koepke said.³⁰⁰ But the problem, according to Koepke, was not high spending or poorly managed school districts. He quoted statistics indicating per pupil spending in Nebraska for 1988 was \$3,756 per

²⁹⁸ *Hearing transcripts, LB 1059 (1990)*, 23 January 1990, 21.

²⁹⁹ *Id.*, 22.

³⁰⁰ *Id.*, 22-23.

student, while the national average was \$3,977.00 per student. “Our problem is not tied to expenditures; our problem is tied rather to source of funding,” he said.³⁰¹

Eleven individuals, mostly representing school districts that would lose state aid under the bill, provided opponent testimony throughout the evening. Some suggested that a hold harmless provision would assist their districts in coping with the changes in the formula. The Class VI Schools Association and the Nebraska School Improvement Association (NSIA) also opposed the legislation. Former state senator John DeCamp testified on behalf of the Class VI Schools Association and said that the high school only schools opposed the bill for “three philosophical reasons.”³⁰² The foremost of these reasons was their belief that the bill failed to move the state away from property as “the fundamental underpinning of financing education.”³⁰³

The second philosophical reason the Class VI schools opposed LB 1059, as expressed by DeCamp, was their belief that “you cannot divorce the financing of education from the quality of education.”³⁰⁴ DeCamp complained that the commission’s central focus was more about property tax relief and less about improving the quality of education. He seemed to be saying that the formula under LB 1059 would ensure high quality for some schools, particularly urban schools, and would fail for some of the rural schools (presumably by loss of state aid). The third complaint alleged by DeCamp appeared to mirror the first to some extent, but he classified it as the “ability to pay” and focused on the principal that municipal areas are generally property poor and income rich while the rural area is property rich and generally income poor.

Table 11. List of Testifiers: Public Hearing for LB 1059 (1990)

<i>Order*</i>	<i>Name</i>	<i>Representing or Employed by</i>	<i>Position**</i>
1	Scott Moore	Legislative District #24	Proponent
2	Larry Vontz [†]	Nebraska Department of Education	Proponent
3	Duane Stehlik [†]	Table Rock Public Schools	Proponent
4	Don Leuenberger [†]	University of Nebraska Medical Center	Proponent

³⁰¹ Id., 23.

³⁰² Id., 48.

³⁰³ Id.

³⁰⁴ Id., 49.

Table 11—Continued

<i>Order*</i>	<i>Name</i>	<i>Representing or Employed by</i>	<i>Position**</i>
5	Gene Koepke [†]	Kearney State College	Proponent
6	Charlyne Berens [†]	Seward County Independent	Proponent
7	Don Osborne	Big Springs Public Schools	Opponent
8	Mick Karmazin	Lawrence Public Schools	Opponent
9	Scott Butterfield	Macy Public Schools	Opponent
10	Norbert Schuerman	Self	Proponent
11	Larry Dlugosh	Grand Island Public Schools	Proponent
12	Walt Radcliffe	Nebraska Realtors Association	Proponent
13	John DeCamp	Class VI Schools Association	Opponent
14	Rick Baum	Nebraska School Improvement Association	Opponent
15	Monte Romohr	Self	Opponent
16	Jim May	Self	Proponent
17	Larry Belz	Self	Proponent
18	M.L. Smith	Self	Opponent
19	Ron Witt	Millard Public Schools	Proponent
20	Lester Rhoades	Self	Opponent
21	Rich Schlesselman	Petersburg Public Schools	Proponent
22	Dennis Gengebach	Bertrand Public School	Opponent
23	Ken Babcock	Meridian Public Schools	Opponent
24	Marge Young	League of Women Voters	Proponent
25	Deb Thomas	Governor Kay Orr/Dir., DAS	Neutral
26	Walt Thompson	Nebraska State Board of Education	Proponent
27	A. Loy Todd	New Car Dealers Association	Opponent
28	Gary Thompson	Beatrice Board of Education	Proponent
29	Dale DeReise	Holdrege Public Schools	Proponent
30	Carl Newquist	Self	Proponent
31	Glenn Uecker	Pierce Public Schools	Proponent
32	John Hansen	Nebraska Farmers Union	Proponent
33	Dale Siefkes	Nebraska Association of School Boards	Proponent
34	June Remington	Nebraska Council of School Administrators	Proponent

[†] Member, School Finance Review Commission.

* Order in which testifiers appeared at the hearing.

** Position as denoted in Committee Statement for LB 1059.

Source: Education and Revenue
Committees, *Committee Statement*,
LB 1059 (1990), 1-2.

Rick Baum, representing the NSIA, renewed the debate on LB 662 (1985), which was repealed by the voters in the 1996 General Election. Baum presented a brief post mortem of the referendum to repeal LB 662, a ballot issue supported by the organization he represented. His concerns seemed to focus on the fact that Class I districts were once again the target of the Legislature because LB 1059 generally reduced or eliminated state

aid to elementary-only school districts.³⁰⁵ Essentially, Baum contended, LB 1059 would hurt rural schools.

Testifiers in support of LB 1059 included various organizations such as the Nebraska Association of School Boards, Nebraska Council of School Administrators, the Nebraska Realtors Association, the Nebraska Farmers Union, Nebraska Farm Bureau, and the League of Women Voters (although the League emphatically opposed the imposition of a spending lid). The State Board of Education also appeared at the hearing in support of the bill. Representatives for some of the urban public schools appeared in support of LB 1059, including Grand Island, Scottsbluff, Norfolk, Columbus, North Platte, Lincoln, Millard, Beatrice, and Waverly. Several rural public schools, such as Petersburg and Pierce, also testified in favor of the legislation. But some of the real fireworks at the hearing were not tied to opponent or proponent testimony, but rather the sole individual testifying in a neutral capacity.

Governor Kay Orr did not personally appear at the hearing but she did send a representative to deliver her comments concerning LB 1059. Prior to the hearing, there had been rumors that the Governor would oppose the bill based primarily upon the sales and income tax increase portions of the measure. She did not offer any official stance on the bill prior to the hearing except to say that she would “follow the debate” on the school finance issue.³⁰⁶ During the hearing, however, the Governor’s position seemed to lean toward opposition with concerns over the tax increases and the impact on taxpayers.

Deb Thomas, then director of the Nebraska Department of Administrative Services, represented the Governor at the hearing. Thomas said LB 1059 actually represented two distinct yet intertwining proposals, one to revamp the school finance system and the second to provide a funding mechanism in order to achieve the first proposal. Since the proposals intertwined, she alleged, the bill must be “judged by how

³⁰⁵ LB 662 (1985), if enacted, would have required the merging of Class I districts.

³⁰⁶ Steve Thomas, “32 Senators Sponsor Property Tax Relief Key to Education Bill,” *Omaha World-Herald*, 10 January 1990, 1.

their interaction effects all Nebraska taxpayers.”³⁰⁷ To this end, Thomas offered the following suggestion:

Governor Orr recommends that the effect of a funding mechanism be studied and discussed to the same degree as the formula changes were studied and discussed by the education community. In addition, she would like to have assurances that income and sales tax increases would indeed providing property tax relief.³⁰⁸

This cautious recommendation seemed to indicate a back-to-the-drawing-board position by the Governor and a reassertion of earlier comments made during the hearing when Senator Peterson complained that the sales and income tax increases were very late additions to the overall proposal. Perhaps, it was also an attempt by the Governor to demonstrate that the discussion on LB 1059 must not only focus on the winners and losers in terms of school districts and state aid, but also the average taxpayer.

Thomas distributed preliminary figures prepared by the Nebraska Department of Revenue indicating the impact of LB 1059 on various groups of taxpayers. The figures demonstrated a 12% overall reduction in tax burden for farmers but a 5% increase in the overall tax burden of average homeowners.³⁰⁹ The business community would witness a .6% increase in tax burden while renters who own no real property would be particularly impacted by the sales and income tax increases and no form of tax relief.³¹⁰

Thomas emphasized the preliminary nature of the data during her testimony, but this admonition failed to quell the wrath of several key members of the hearing panel. Senator Withem attacked Thomas’ testimony on two fronts. The first concerned the Governor’s recommendation for further study on the revenue component of the bill. “You indicated that there has been ... eighteen months worth of work, discussion about the equalization concept ... [y]ou made allusions to the same type of attention needs to be given to the revenue sources,” Withem said.³¹¹ “Does that imply we need another

³⁰⁷ *Hearing transcripts, LB 1059 (1990)*, 23 January 1990, 74.

³⁰⁸ *Id.*, 74-75.

³⁰⁹ Henry J. Cordes, “Gov. Orr ‘Cautious’ On School Aid Bill,” *Omaha World-Herald*, 24 January 1990, 1.

³¹⁰ *Id.*

³¹¹ *Hearing transcripts, LB 1059 (1990)*, 23 January 1990, 76.

eighteen months?” he asked.³¹² Thomas replied that it did not, but also declined to offer a suggested timeline for such a study.

The second item of contention related specifically to the data on the projected impact on taxpayers. On this matter, Withem said:

The purpose of the bill is to deal with inequities that exist between school districts, and until such time as we have that information that talks about the inequities between school districts, I think the information you present is not particularly worthwhile, and frankly, I think it’s a little bit misleading.³¹³

Thomas defended the data by reiterating the need to examine not only the negative and positive impact on school districts but also to the taxpayers. “[T]here can be as many inequities built into the finance side as through the delivery side,” Thomas cautioned, “And I think, the Governor’s point simply is that those two must be harmonized.”³¹⁴ However, Withem, soon joined by Senator Bernard-Stevens, questioned whether it was proper to release preliminary data that may or may not draw an accurate picture of the measure’s impact.

Floor Debate of LB 1059

The joint panel of the Education and Revenue Committees took relatively quick action on the legislation under their jurisdiction. On January 26, 1990, the group of lawmakers met in executive session to discuss the comprehensive school finance legislation and voted to advance the bill with amendments by a 12-2 vote.³¹⁵ The committee amendments included various technical revisions and also several substantive changes. Perhaps the most significant among the substantive modifications was a hold harmless provision designed to prevent a school district from losing as much state aid as it might under the new formula. Under the hold harmless provision, no district would receive less than 100% of the amount it received in 1990-91 (under the old formula). In

³¹² Id.

³¹³ Id., 77.

³¹⁴ Id.

³¹⁵ Committees on Education and Revenue, *Executive Session Report, LB 1059 (1990)*, Nebraska Legislature, 91st Leg., 2nd Sess., 1990, 26 January 1990, 1.

1991-92, no district would receive less than 80% of the amount it received under the old formula in 1989-90. And for 1992-93, no district would receive less than 60% of the amount it received in 1989-90.³¹⁶ The inclusion of the hold harmless provision was testament to the panel's close attention to the concerns addressed at the public hearing, but there was more to be said on the issue of hold harmless during the long floor debate.

Table 12. Vote to Advance LB 1059 (1990) from Committee

<i>Aye, 12:</i>	Senators Withem, Hall, Dierks, Hefner, Bernard-Stevens, Hartnett, Crosby, Landis, Chizek, Rogers, Nelson, Baack
<i>Nay, 2:</i>	Senators McFarland, Peterson
<i>Not Voting, 1:</i>	Senator Haberman
<i>Absent, 1:</i>	Senator Labeledz

Source: Committees on Education and Revenue, *Executive Session Report, LB 1059 (1990)*, 91st Leg., 2nd Sess., 1990, 26 January 1990, 1.

While the joint panel appeared in a hurry to advance the bill, the Legislature was not in a hurry to debate it. General File debate began on the morning of March 6, 1990, the 40th day of the 60-day session, and concluded later in the day with the successful advancement to the second stage of consideration. Only ten amendments were considered throughout the first stage of debate with five ultimately adopted, three withdrawn, and two defeated. The major issues addressed within those first ten amendments were the same major issues that reappeared on Select File several weeks later. Those issues included: (1) the way in which the Legislature assists districts that lose state aid under the new formula; (2) issues related to the spending lid imposed under LB 1059; and (3) issues related to the sales and income tax increases contained in the bill.

Senator Withem, as chief sponsor of LB 1059, initiated the debate with opening remarks on the legislation and also introduction of the committee amendments. Withem appropriately set the stage for the debate by noting the high level of public attention attributed to the bill, perhaps more than any other measure proposed that session. Withem said “forces in the State of Nebraska” have compelled the Legislature to address

³¹⁶ NEB. LEGIS. JOURNAL, *AM 2309 to LB 1059 (1990)*, 30 January 1990, 580.

the “whole question of how we fund education and how we tax property.”³¹⁷ The “forces,” to which Withem referred, involved several critical factors, as outlined during his opening remarks. Certainly not the least of the factors was the lawsuit filed on January 2, 1990 against the state concerning the constitutionality of the existing school finance system.³¹⁸ Said Withem:

We are facing a legal challenge. There are some farmers from right around the Lincoln area that are taking a case into our court challenging our education system. These types of things have been very successful in states like Kentucky, like Texas, like Montana, other places.³¹⁹

The three court cases to which he referred involved incidents where individuals, school districts, and education groups had filed suit against their respective states alleging the unconstitutionality of their school finance systems. All three cases received final judgments in favor of the plaintiffs.³²⁰

Another important factor addressed by Withem involved what he termed a broken property tax system, both as it relates to the taxpayer and to the educational system. Withem said:

It is irreparably broken unless you do a massive change like the change we have before you. We have in Nebraska huge variances in the amount of dollars that are behind each student, and you can explain some of those away but you can't explain it away in the aggregate.³²¹

From the perspective of the taxpayer, Withem indicated, property tax levies for school funding ranged dramatically across the state from 50¢ to \$3.50 per \$100 of assessed valuation. From the perspective of students, and the educational system generally, per

³¹⁷ Legislative Records Historian, *Floor transcripts, LB 1059 (1990)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 91st Leg., 2nd Sess., 6 March 1990, 10477.

³¹⁸ *Gould v. Orr*, 506 N.W.2d 349 (1993).

³¹⁹ *Floor transcripts, LB 1059 (1990)*, 6 March 1990, 10479.

³²⁰ *Edgewood Independent School District v. Kirby*, 777 S.W.2d 391 (Tex 1989); *Rose v. Council for Better Education*, 790 S.W. 2d 186 (1989); *Helena Elementary School District No. One v. Montana*, 769 P.2d 684 (1989).

³²¹ *Floor Transcripts, LB 1059 (1990)*, 6 March 1990, 10478.

pupil spending also ranged dramatically from \$3,000 per student per year to \$6,000. This, Withem alleged, was an “unfair” system.³²²

In addition to the pending lawsuit and the unfair property tax system, Withem reminded his colleagues that LB 1059 represented a response to the Legislature’s own wishes for a new school finance system. He reminded senators of their commitment made under LB 940 (1988) to formulate a study group on school finance with the intent to recommend changes to the school finance system.³²³ He also spoke of the Legislature’s commitment under LB 611 (1989) to repeal the existing School Foundation and Equalization Act on June 30, 1991 and make operational a new school finance system by January 1, 1992.³²⁴ “[W]e, as a Legislature,” Withem proclaimed, “do not have the luxury of doing nothing,” indicating an urgent need to respond to the issues facing the state.³²⁵

Withem conceded that LB 1059 “doesn’t solve all of the problems in education,” nor, he said, does it purport to do so.³²⁶ He argued, however, that it does take “a major swath down the middle of those problems that are out there.”³²⁷ Furthermore, Withem said, the bill was the result of compromise even before it arrived for floor action. The best example of this spirit of compromise, he said, was the inclusion of a hold harmless provision in the committee amendments.³²⁸ The hold harmless provision, Withem said, was the result of listening to the concerns expressed at meetings across the state and also at the public hearing held in January.

The hold harmless provision was particularly important to Senator Dennis Baack of Kimball, who, as a member of the Education Committee, proposed the concept during

³²² Id.

³²³ Id.

³²⁴ LB 611, Session Laws, 1989, §§ 2, 4, pp. 1, 8.

³²⁵ *Floor Transcripts, LB 1059 (1990)*, 6 March 1990, 10479.

³²⁶ Id.

³²⁷ Id.

³²⁸ NEB. LEGIS. JOURNAL, *Com AM2309*, 30 January 1990, 580.

committee deliberations. Baack rose to speak immediately after Withem's opening comments and said the provision was a necessary and fair thing to do for those districts that lose state aid under LB 1059. But he fell short of saying, at least publicly, that his support for the bill was contingent upon the inclusion of the hold harmless provision. Baack said:

I think that my support for this bill is based on the philosophy that the system that we have now is not fair and it is not correct, and I am willing to change that system, and I want that system to be changed so that we go away from such a heavy reliance on the property tax to begin to rely on other sources of income for the financing of schools, and I think that 1059 does that. I come from a district that has a number of school districts, probably over half of my school districts are losing school districts under 1059.³²⁹

The overriding concern to his constituents, Baack said, was reducing the reliance upon property taxes to pay for public education and moving toward other "financing mechanisms for schools."³³⁰

Of course, not all legislators were willing to cast their support for LB 1059, not even all members of the School Finance Review Commission would ultimately support the measure. Senator Howard Lamb of Anselmo, for instance, had been the chief opponent of LB 662 (1985), relating to the merger of Class I school districts. He also was one of the chief supporters of the referendum to repeal LB 662 (Referendum 400), which passed overwhelmingly by the voters in 1986. However, despite his involvement in its development, Lamb chose not to endorse LB 1059 in order to, as he said on the opening day of debate, "keep my options open and take what I would like to think is an objective view of the bill and the work of the commission."³³¹ He said he favored one part of the bill, the income tax rebate. "For the first time ... we have income taken into consideration when we consider state aid," he said.³³² Nevertheless, Lamb ultimately

³²⁹ *Floor Transcripts, LB 1059 (1990)*, 6 March 1990, 10480.

³³⁰ *Id.*, 10481.

³³¹ *Id.*, 10485.

³³² *Id.*

voted against advancement of the bill throughout the entire process, and was one of the more outspoken critics of the measure.

Lamb's opposition to the bill, however, did not prevent him from offering an amendment in an effort to improve the legislation. Following the opening remarks and a brief discussion on the bill, Senator Lamb offered an amendment to the committee amendments to require permanent hold harmless status for all school districts. Under his amendment, no school district would ever receive state aid less than that received for the 1989-90 school year.³³³ Lamb argued that the committee amendment version of the hold harmless provision would eventually leave residents of some counties with a higher property tax burden to compensate for the lost state aid to their respective school districts.

Following the introduction of Lamb's perpetual hold harmless amendment, Withem rose to offer his opposition to such a plan. He called it a legitimate policy question but said the additional cost to the bill would have to be studied first. Withem also cautioned members of the body concerning hold harmless clauses by drawing upon the recommendations of school finance consultants against such provisions. Said Withem:

[I]f you're going to build your education finance system on a theory of equity and you don't want to be challenged on equity, you need to stick consistent with that equity. And if our philosophy is that programs need to be funded based on needs of students and the state ought to make up for dollars that aren't available on the local level, anything you do for a hold harmless shifts dollars away from that.³³⁴

On the other hand, a hold harmless provision with a limited duration, Withem argued, has both practical and political merit and would have the effect of "cushioning the shock" while moving into a new school finance system.³³⁵ Naturally, the shock, to which Withem referred, would be felt by those taxpayers who witness tax increases under LB 1059 and also the school districts that would lose state aid under the new formula.

³³³ NEB. LEGIS. JOURNAL, *Lamb AM2848 to Com AM2309*, 6 March 1990, 1174.

³³⁴ *Floor Transcripts, LB 1059 (1990)*, 6 March 1990, 10490.

³³⁵ *Id.*

Asked by Withem if he had any figures on the cost of a permanent hold harmless, Lamb responded that he did not. He did note, however, that the fiscal analysis on the first year of implementation for the committee amendment version of the hold harmless indicated a cost of \$3 million.³³⁶ The committee amendment version provided for 100% hold harmless to all school districts for the first year of implementation of the new formula. This, Lamb suggested, should give legislators an idea of the annual cost for a permanent hold harmless clause.

Other lawmakers rose to support the Lamb amendment, including Senators Schellpeper and Schmit. Senators Moore and Landis argued against the amendment. Senator Elmer also opposed the amendment saying it would merely continue the tax inequities between school districts.³³⁷ After a spirited debate, the Lamb amendment was defeated on a 14-25 vote.³³⁸

More debate followed the vote on the Lamb amendment, most of which focused on the impact of LB 1059 on taxpayers. In his closing remarks on the committee amendments, Senator Withem did his best to get potential opponents of the measure to support adoption of the committee amendments. He reminded his colleagues that the failure to adopt the committee amendments meant the exclusion of a hold harmless provision. The amendments were adopted just prior to the noon recess on a 33-1 vote.³³⁹

Following the noon recess, the Legislature once again took up General File debate. Speaker Barrett permitted Senator Scott Moore to provide an official introduction of the bill since the courtesy had not yet been extended to the senator who designated the measure as his personal priority bill for the 1990 Session.³⁴⁰ Moore had the benefit of observing the direction of the morning debate and used the opportunity to

³³⁶ Id.

³³⁷ Id., 10499.

³³⁸ NEB. LEGIS. JOURNAL, 6 March 1990, 1174-75.

³³⁹ Id., 1175.

³⁴⁰ The presiding officer will call on the senator who prioritized a bill for an official opening on the bill. This practice had been inadvertently denied Moore at the outset of General File debate.

redirect the body's attention to the principal goals of the School Finance Review Commission and the legislation itself. "I think it's important as we begin the debate this afternoon, we couch the debate in terms of ... our goals and does 1059 accomplish those goals?" Moore asked rhetorically.³⁴¹

The first goal, Moore said, "[W]as to try and shift the burden of taxes in this state from property to sales and income, [and] do away with the overreliance on property taxes."³⁴² The second goal was:

[T]o equalize some of the disparities in the funding we have of school districts in the State of Nebraska, particularly because of lawsuits around the country and lawsuits in this state and this county, there is a reason that it would be prudent for this body to be out in front of that and do something about it.³⁴³

Moore presented the often-used statistics indicating Nebraska's low rank among other states on sales and income tax burden while ranking high in property tax burden. LB 1059 would attempt to reduce one tax burden while increasing the other to keep pace on a national perspective. He also referred to the recent decisions in Kentucky, Montana, and Texas where the courts ruled the respective school finance systems as unconstitutional. "I think if LB 1059 is passed, we'll take us a long step towards keeping us out of court," Moore said, alluding to the equalizing characteristics of the legislation.³⁴⁴ Both goals, he concluded, would be met at least to some degree by the passage of the bill.

Having already completed the first round of discussion on the hold harmless provision, the afternoon debate focused on the remaining two major themes that arose throughout the debate process: taxes and the spending limitation. The focus of debate concerning taxes took a different direction in the afternoon session, from property taxes to sales taxes. Senator Rex Haberman introduced an amendment to exclude motor vehicles from the sales tax increase, thereby creating one sales tax rate for motor vehicles

³⁴¹ *Floor Transcripts, LB 1059 (1990)*, 6 March 1990, 10513.

³⁴² *Id.*

³⁴³ *Id.*, 10514.

³⁴⁴ *Id.*, 10515.

(4%) and another rate (5% as proposed under LB 1059) for all other taxable items covered under the Nebraska Revenue Act.³⁴⁵

Haberman acknowledged the sales tax increase to help fund public schools, but said he could not support increased funding to the Highway Trust Fund. Prior to 1990 and still to this day, the sales tax collected on the sale of motor vehicles in Nebraska is dedicated (credited) to the Highway Trust Fund for purposes of highway construction.³⁴⁶ Haberman explained his viewpoint:

I can stand up here and support an increase in the sales tax to support the schools, but I really can't understand why we should also take a 1 percent sales tax increase and put it in the Highway Trust Fund. That has nothing to do with schools. ... The amendment leaves the sales tax on motor vehicles at 4 percent instead of raising it to 5 percent.³⁴⁷

In subsequent debate, it became apparent that the fiscal impact of the Haberman amendment would mean about \$15 million less revenue to the Highway Trust Fund.

The amendment came at a particularly bad time for Senator Jerome Warner, the unofficial guardian of the Highway Trust Fund since 1969 and chief critic of any proposal to alter or otherwise raid the fund. Senator Tim Hall explained during debate on the Haberman amendment that Senator Warner was ill and unable to attend session that day, but Hall, chair of the Revenue Committee, volunteered to say what he thought Warner would express if he were present. If adopted, Hall said, the Haberman amendment would set a precedent concerning the untouchable nature of the fund and would permit future Legislatures to raid the fund or deprive the fund of monies. Hall admitted to past legislative attempts to raid the fund, but had since taken a different view about the fund and its important purpose.

The Haberman amendment represented the first attempt at chipping-away the sales and income tax increases proposed under LB 1059, something the chief proponents of the measure expected to arise during debate. However, since this first amendment did

³⁴⁵ NEB. LEGIS. JOURNAL, *Haberman AM2615*, 5 March 1990, 1141.

³⁴⁶ NEB. REV. STAT. § 77-27,132 (Cum. Supp. 2003).

³⁴⁷ *Floor Transcripts, LB 1059 (1990)*, 6 March 1990, 10528.

not directly impact the funding level or mechanism for schools, the chief proponents may or may not have deemed it necessary to enter the fray. Perhaps they knew instinctively that one of the “sacred cows” of the Legislature has always been, and still is today, the Highway Trust Fund. Whatever the reason, the amendment failed to garner sufficient support and was defeated by a 13-26 vote.³⁴⁸

The second major amendment addressed in the afternoon debate of March 6, 1990, concerned the spending limitation contained in LB 1059. The amendment, offered by Senator Elroy Hefner, would extend the duration of the 4% base spending lid from one school year, as proposed in the original bill, to three school years (from 1990-91 to 1992-93).³⁴⁹ Hefner made clear his principal concern and reason for offering the amendment:

Why do we need a lid? Well, I believe we need a lid because we want to be certain, ... we want to be 100 percent sure that this will replace property taxes. I've been down here 14 years now and as we've increased state aid to education we find that many times it does not replace property taxes and so we want to be sure that it does.³⁵⁰

A three-year spending lid, Hefner reasoned, as opposed to a one-year lid, would provide more assurance for property tax relief. Hefner also rationalized his amendment by alleging major public support for spending lids in general. He also reminded his colleagues that county governments have had resource/spending lids for some time and, while a county may “get into trouble” once in awhile, “eventually they work it out.”³⁵¹ Finally, Hefner offered aloud, the Nebraska School Board Association had reportedly told him that, “[T]hey do not have a problem with this, that they could support it.”³⁵²

Following Hefner’s opening on the extended lid amendment, no senator, not even sponsors of the legislation, spoke against the idea. Most mentioned their general dislike

³⁴⁸ NEB. LEGIS. JOURNAL, 6 March 1990, 1177.

³⁴⁹ *Id.*, *Hefner AM2385*, 2 February 1990, 649.

³⁵⁰ *Floor Transcripts, LB 1059 (1990)*, 6 March 1990, 10519-20.

³⁵¹ *Id.*, 10520.

³⁵² *Id.*

for lids, but said they supported the amendment to further the goal of real property tax relief. Senator Withem, for instance, gave unqualified support for the Hefner amendment:

[B]udget limitations are a necessity not just in the short term, not just because of another lid proposal out there that we may like less, but because with this proposal if we are underwriting, guaranteeing the support of education at the 45 percent level, not just for a year, not just for a one-time shift, but ideally in perpetuity, we have to have a say over how much is spent.³⁵³

The other “lid proposal” Withem mentioned was the initiative petition measure promoted by tax activist Ed Jaksha of Omaha to impose a constitutional 2% spending lid on state government and all local governments.

For some senators, certainly not all, the Jaksha amendment was a real threat. It was as much a motivating factor for some legislators as the potential that the pending *Gould* case could force the Legislature to change the school finance system. Senator Hefner mentioned the Jaksha amendment during the opening on his own amendment and Senator Schmit reminded his colleagues of the “terror” in the Legislature from a previous Jaksha amendment:

[I]f you recall a number of years ago when we were under some pressure because we thought Mr. Jaksha was going to put a lid in the Constitution, I recall the almost terror that was on this floor as we attempted to circumvent Mr. Jaksha and install a statutory lid as opposed to a constitutional lid, the argument being that we can get rid of the statutory lid and thereby we can go back to realistic financing for schools when the time-comes.³⁵⁴

Schmit offered a “hunch” that the 1990 Jaksha amendment “might actually be successful” implying that it might be beneficial to beat the petition movement to the punch and adopt the Hefner amendment.³⁵⁵ (Jaksha’s petition group was still in the process of collecting signatures at the time of the debate on LB 1059.)

³⁵³ Id., 10525.

³⁵⁴ Id., 10521. Referring to the 1978 Initiative measure to limit political subdivision budget increases to 5% per year. The constitutional amendment failed by a 45% to 55% margin. NEB. BLUE BOOK, 2002-03, 270.

³⁵⁵ *Floor Transcripts, LB 1059 (1990)*, 6 March 1990, 10521.

Senator Hall also supported the Hefner amendment saying that it may even be prudent to keep the lid in place permanently. “I’m looking at drafting an amendment that would make the proposal that Senator Hefner has offered one that would stay in statute unless there was an affirmative act by the Legislature to change that lid,” Hall said.³⁵⁶ Senator Hall did, in fact, file such an amendment but ultimately withdrew it during Select File debate.

The Hefner amendment marked one of the few instances throughout the debate on LB 1059 when proponents and opponents of the measure came together in a strong and united way. The message was clear. School districts must demonstrate restraint in spending and the 4% lid would not only force accountability but also ensure property tax relief. The Hefner amendment was adopted by a 38-1 vote.³⁵⁷

Table 13. Disposition of General File Amendments
to LB 1059 (1990) on March 6, 1990

(Listed in order of disposition)

<i>Amendment</i>	<i>Purpose</i>	<i>Filed</i>	<i>Vote*</i>	<i>Result</i>
Lamb AM2848	Permanent hold harmless provision on state aid	3/6/90	14-25-2-8	Failed
Com AM2309	Committee amendments, includes gradual hold harmless provision	1/30/90	33-1-7-8	Adopted
Labeledz AM2349	Private school tuition tax credit	1/31/90	—	Withdrawn
Hefner AM2385	Extend duration of spending lid from one year to three years	2/2/90	38-1-4-6	Adopted
Haberman AM2454	Eliminate sales and income taxes entirely	2/7/90	—	Withdrawn
Morrissey FA395 to Haberman AM2615	Exempt sales tax increase on farm equipment	3/6/90	—	Withdrawn
Haberman AM2615	Exempts sales tax increase on motor vehicles	3/5/90	13-26-9-1	Failed
Hall AM2794	Technical amendment concerning income tax increase	3/6/90	30-0-19-0	Adopted

³⁵⁶ Id., 10523.

³⁵⁷ NEB. LEGIS. JOURNAL, 6 March 1990, 1176.

Table 13—*Continued*

<i>Amendment</i>	<i>Purpose</i>	<i>Filed</i>	<i>Vote</i> [*]	<i>Result</i>
Withem AM2820	Technical amendment to modify provisions of committee amendments	3/5/90	29-0-20-0	Adopted
Dierks AM2837	Exempt funds received for the Low Level Radioactive Waste Disposal Policy Act from formula resources	3/6/90	32-0-17-0	Adopted

* Yes – No – Present/not voting – Excused/not voting.

Source: NEB. LEGIS. JOURNAL, 6 March 1990, 1174-81.

Following disposition of all pending General File amendments, the discussion turned to the merits of the bill on the whole since the only vote remaining before the body was whether the bill should be advanced to the next stage of consideration. Those senators opposing the bill emphasized the severity of the property tax problem and questioned whether LB 1059 would improve the situation. Senator Loran Schmit, one of the more outspoken critics of the measure, insisted there would be no real shift or change from the heavy reliance upon property taxes to fund education. Rural Nebraska, he insisted, would continue to be unfairly burdened under the new school finance system. Senator Bernice Labeledz argued that parents of children who attend private schools would be unfairly burdened by increased sales and income taxes. She suggested that a tuition tax credit should be afforded those individuals if they were expected to bear more of the cost to operate public schools.

Senator Jim McFarland, among others, was concerned for the property renters of the state, those individuals who own no real property and would be forced to accept higher sales and income taxes. “[W]here are they going to benefit from this tax bill?” he asked aloud.³⁵⁸ Perhaps realizing the magnitude of his own comment, Senator McFarland reiterated:

And it really is, a major portion of it, is a tax bill. They are not going to see any property tax relief whatsoever, and yet they are going to see, on the average, an increase of 17.5 percent in their state income tax, and they’re going to see an

³⁵⁸ *Floor Transcripts, LB 1059 (1990)*, 6 March 1990, 10560.

increase of 25 percent in their sales tax when it goes from 4 cents to 5 cents. They do not benefit.³⁵⁹

McFarland's comments were certainly shared by others and bolstered by reports issued by the Department of Revenue, which indicated a heavier impact from LB 1059 on those who rent but do not own real property.

The proponents, for the most part, took the strategy of accepting and acknowledging some of the complaints and allegations made by the opponents. Rather than denying the validity of the opponents' concerns, some of the proponents embraced the same concerns themselves but at the same time called on the Legislature to look beyond the issue of taxes. Perhaps no proponent delivered this argument more effectively than Senator Dave Landis of Lincoln, who, just prior to the vote to advance, spoke about a constituent who had called his office that day and inquired about his position on LB 1059. When the senator's aide replied that Senator Landis would support the bill, "the anonymous caller indicated that with that act I had lost, forever, the support of this particular constituent and the phone slammed down and that was the end of the conversation."³⁶⁰ Landis continued:

I suppose there is an obligation to explain why I would vote for a bill that I know will raise taxes in my home district and probably in greater measure than the property tax relief that those constituents will receive. I first do it because they will receive a certain amount of property tax relief, and for that I'm grateful. For the extra costs which they bear, and which they will not receive in the form of property tax reductions, I would give as my rationale this language from Article VII of the Nebraska Constitution. Section 1 of Article VII says, 'The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of 5 and 21 years.'³⁶¹

While others had alluded to the Constitution during the debate or generally referred to the pertinent constitutional language, no one until that point in time had actually read aloud the section concerning the obligation of the state to public education.

³⁵⁹ Id.

³⁶⁰ Id., 10555.

³⁶¹ Id.

Landis was trying to instill in his colleagues a need to view the legislation at a higher level in order to overcome whatever shortcomings it may or may not possess.

Said Landis:

You cannot go through the checkered history of Nebraska school finance without coming to the conclusion that there are kids in this state who did not receive education of the first quality because of the areas that they come from. It's not because it's not wished for, or hoped for, but because the wealth of the district is such that they are just not capable of providing it.³⁶²

Landis reminded his fellow senators that the obligation under the Nebraska Constitution begins with the Legislature, "It begins with that constitutional principle that says, this is our obligation."³⁶³ "In fact, it is exactly the failure of states to make a living, breathing reality of those kinds of promises that have brought states before the bar to justify and explain their school financing system," he said referring once again to the recent successful court challenges in other states.³⁶⁴

Whether by design or accident, the Lincoln senator provided exactly the right words at the right time to properly focus attention on the real purpose of the legislation.

Landis concluded, saying:

We owe kids in this state a good public education, no matter where they come from, no matter how wealthy their parents are, no matter how wealthy their district is, that's our constitutional obligation. And 1059 seeks to replace a system which falls short, in my estimation, of that constitutional obligation.³⁶⁵

The passion behind Landis' comments seemed to touch even some of the ardent opponents of the bill. Senator Schmit, for instance, said he agreed with the principals raised by Landis, but also said his opposition would stand.

For his closing on advancement of the bill, Senator Withem outlined the two objectives of LB 1059:

³⁶² Id.

³⁶³ Id.

³⁶⁴ Id.

³⁶⁵ Id., 10556.

This bill does two things, basically. It shifts from overreliance on property tax to other methods of funding education, using the sales and income tax. Secondly, it provides for a different distribution formula to provide greater equity of funding for students. It does those two things. Simplistically, that's what the bill does.³⁶⁶

Withem candidly admitted the “bill does not right a property tax system that has been crumbling for the last 20 years.”³⁶⁷ LB 1059 was not designed to resolve the entire property tax problem, but to take a positive step in that direction. “What this bill should be expected to do is provide a fairer basis of educating children in our state by providing a fairer distribution of funds, and it should get away from our overreliance on property tax to fund education,” he said.³⁶⁸

Following a day-long debate on the bill, the Legislature took a record vote to advance the measure to Select File, the second stage of consideration. The measure advanced on a 34-12 vote.³⁶⁹

Table 14. Record Vote: Advance LB 1059 (1990) to E&R Initial

Voting in the affirmative, 34:

Baack	Conway	Hartnett	Lindsay	Schimek
Barrett	Coordsen	Hefner	Lynch	Scofield
Bernard-	Crosby	Johnson, L.	Moore	Smith
Stevens	Dierks	Johnson, R.	Morrissey	Wehrbein
Beyer	Elmer	Korshoj	Nelson	Weihing
Byars	Goodrich	Kristensen	Rogers	Wesely
Chizek	Hall	Landis	Schellpeper	Withem

Voting in the negative, 12:

Abboud	Chambers	Lamb	McFarland	Robak
Ashford	Hannibal	Langford	Peterson	Schmit
Beck	Labeledz			

Present and not voting, 3:

Haberman	Pirsch	Warner
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Source: NEB. LEGIS. JOURNAL, 6 May 1990, 1183.

³⁶⁶ Id., 10565.

³⁶⁷ Id.

³⁶⁸ Id.

³⁶⁹ NEB. LEGIS. JOURNAL, 6 May 1990, 1183.

Select File debate occurred over a two-day period and, as with so many major pieces of legislation, this is when the majority of amendments were offered and considered. This is typically the time when opponents of a legislative proposal make their individual or collective stands, either to delay indefinitely or to at least hold out until some of their demands are met. In the case of LB 1059, over 30 amendments were considered on Select File in comparison to the ten considered on General File. And yet the focus of the debate really did not change from the first stage to the second. Legislators continued to express concern about the sales and income tax increases, the content and scope of the spending limitation, and the effect the new formula would have on those districts that would lose state aid (i.e., the hold harmless provision).

The Legislature took up second-round debate on the morning of Tuesday, March 20, 1990. Two weeks had passed since the contested bill had been advanced to the next stage of consideration, and legislators used the time to file numerous amendments, form alliances, and, perhaps, seek compromises. Some of the behind-the-scenes politicking became obvious on March 20th and also March 21st, the second and last day of Select File debate. In the end, there were just as many issues left unresolved as there were issues resolved, and this became clear as the discussion progressed.

Between the three major issues addressed on Select File, sales/income taxes, spending limitations, and the hold harmless provision, the award for efficient resolution would be given to the latter issue. As LB 1059 advanced from General File, the existing hold harmless provision ensured each school district would receive in the first year of implementation no less than 100% of the amount of state aid it had received in school year 1989-90. In the second year of implementation, each district would receive no less than 80% of the state aid received in 1989-90. In the third year of implementation, each district would receive no less than 60% of the state aid received in 1989-90.

To some legislators, this represented sufficient redress to those districts otherwise entitled to little or no state aid under the new formula. For the majority of the Legislature, however, this was not sufficient, and they wanted change. Accordingly, Senator Dennis Baack, co-sponsor of the bill, and Senator Doug Kristensen, who

ultimately voted against passage of the bill, co-filed an amendment to put the hold harmless issue to rest. The amendment would also address several other substantive issues, including the spending lid and special education.

The Baack-Kristensen amendment would accomplish five items. First, it would eliminate the gradual, phase-out hold harmless provision described above in favor of three-year, 100% hold harmless provision.³⁷⁰ The second item was to require the oversight committee, to be created under the bill, to also monitor the progress of the hold harmless provision, presumably to make suggestions for change as necessary. The third item was to establish a minimum levy requirement to ensure that each district produces a minimum level of local revenue (60% of the local effort rate) before being eligible to receive state aid. The fourth item would establish a separate growth rate for special education expenditures. The fifth and last item would permit a district to apply to the Department of Education in order to exceed the spending lid in the event of higher than expected special education enrollment.³⁷¹

The separate spending limit for special education was actually one of the most far reaching changes to LB 1059 that could have been made. Special education costs have always been one of the great uncertainties for school districts each year, especially when, in some cases, the addition of just one special education student could cause major financial burdens. School officials were constantly trying to keep pace with federal mandates dictating how and what special education services were to be offered. Senators Baack and Kristensen realized there had to be some measure of flexibility to school districts in this arena. Accordingly, under the amendment, an annual special education budget growth rate would be established by averaging the growth in special education expenditures from the previous two-year period.³⁷²

In spite of the number of major items contained in the Baack-Kristensen amendment and the fact that it had been filed the very day of the debate, it took little time

³⁷⁰ NEB. LEGIS. JOURNAL, *Baack-Kristensen AM3062*, 20 March 1990, 1487-88.

³⁷¹ *Id.*

³⁷² *Id.*

for the Legislature to be convinced of its merit. This may have been due to Senator Baack's thorough explanation of the amendment, but it may also have been due to the support it received from the chief sponsor of the bill, Senator Ron Withem.

Senator Moore, who prioritized LB 1059, expressed his conditional support for the amendment. He did not want to see the hold harmless provision extend beyond three years since it would impede the realization of property tax relief. In addition, Moore did not want education groups and lobbying entities to believe that, since the Legislature agreed to add special education enrollment as another lid exception, it would be willing to add other excluded items to the list. Said Moore:

[T]he special ed exemption to the lid is something that I support, but I must say, I support a little bit nervously or anxiously. The fact of the matter is there are some people, when we open up this provision, people in the back here are going to say, holy, shucks, hallelujah, the dam is broke, we're going to take a run at that lid. I guess I'm serving notice to you this is the only one that I'm going to support because I think it's different than the other things and there are going to be some other amendments that are going to be brought to us I think later today that will try and further loosen that lid.³⁷³

Moore added that he would "stand bitterly opposed" to any other amendments that in his opinion weaken the purpose of a spending limitation.³⁷⁴ The Baack-Kristensen amendment was ultimately adopted by a 26-0 vote.³⁷⁵

Senator Moore would oppose other attempts to broaden the list of exclusions from the spending limit. But he would fail to prevent one other "exclusion" amendment from successful adoption. Later in the same day, Senator Brad Ashford of Omaha would attempt to exclude increases in employee salaries when the district was bound by a long-term collective bargaining contract and the salary increase exceeded the applicable allowable growth rate for the following year.³⁷⁶ In essence, districts would be able to exclude from the spending lid that amount in excess of the applicable allowable growth

³⁷³ *Floor Transcripts, LB 1059 (1990)*, 20 March 1990, 11499.

³⁷⁴ *Id.*

³⁷⁵ NEB. LEGIS. JOURNAL, 20 March 1990, 1488.

³⁷⁶ *Id.*, *Ashford AM3069*, 1506.

rate. In this particular case, Senators Withem and Moore were at odds with one another on the correct course for the Legislature to take. Withem supported the Ashford amendment and Moore, true to his word, opposed the amendment. “You once again just further erode that lid,” Moore warned his colleagues.³⁷⁷ The Ashford amendment was adopted by a 28-10 vote.³⁷⁸

Yet another attempt was made on the second day of Select File debate to exclude an item from the spending limitation. Senator Wesely of Lincoln offered an amendment to exclude a portion of any increase in health insurance costs from the lid.³⁷⁹ Wesely argued that health insurance costs would continue to rise and such increases were beyond the control of school districts. This time it was Senator Withem rather than Moore who reminded the body that the list of exclusions could continue ad infinitum, but the Legislature really needed to draw the line somewhere. The Wesely amendment failed after a very short discussion on a 7-16 vote.³⁸⁰

One of the last amendments to be considered during Select File debate concerned spending limitations on all other political subdivisions. It must be remembered that LB 1059, in its original form, was intended to impose spending limits on school districts alone and only for one year. During General File debate, Senator Hefner successfully amended the bill to extend the duration of the spending lid to three years (i.e., school years 1990-91, 1991-92, and 1992-93).³⁸¹ Senator Gerald Conway of Wayne proposed to change this with an amendment to extend the 4% spending lid to all other political subdivisions, including municipalities, counties, and educational service units.³⁸² Interestingly, this particular lid proposal would have a two-year duration in contrast to the three-year lid imposed on schools through the Hefner amendment.

³⁷⁷ *Floor Transcripts, LB 1059 (1990)*, 20 March 1990, 11513.

³⁷⁸ NEB. LEGIS. JOURNAL, 20 March 1990, 1506-07.

³⁷⁹ *Id.*, *Wesely AM3098*, 21 March 1990, 1539.

³⁸⁰ *Id.*

³⁸¹ Hefner AM2385 was adopted on March 6, 1990.

³⁸² NEB. LEGIS. JOURNAL, *Conway AM3140*, 21 March 1990, 1540-46.

The concern, as expressed by Senator Withem and other supporters of the Conway amendment, was that any headway made on property tax relief via the schools' spending lid could be negated by increased spending by other political subdivisions. Naturally, there was no evidence available to prove that various local governments were simply waiting for the chance to increase spending upon the passage of LB 1059. Therefore, perhaps more than anything else, the Conway amendment, which was adopted by a 29-7 vote, was a demonstration of good faith to the general public that property tax relief was a major objective under the bill.³⁸³

While not all senators supported the Conway amendment, perhaps due to territorial protection of one class of political subdivision or another, they did appear unanimous on the goal to provide property tax relief. Schools, after all, were the largest consumers of property tax dollars. Accordingly, one of the few unanimous votes to occur during Select File debate was an amendment jointly offered by Senators Stan Schellpeper and Cap Dierks. The amendment expounded upon the existing intent language within the bill to declare that state aid was to be used specifically for the purpose of reducing property taxes in each district receiving such aid.³⁸⁴ Senator Schellpeper called it a "clarifying amendment" to ensure the public knew where the reduction in property taxes derived.³⁸⁵ The Schellpeper amendment was adopted by a 34-0 vote.³⁸⁶

Except for a few technical amendments to revise the sales and income tax provisions, no other tax-related amendment was adopted. That is not to say there were no attempts. For instance, Senator Jim McFarland proposed an amendment to impose a higher income tax increase upon the wealthy.³⁸⁷ Senator Jacklyn Smith sought an amendment to exempt the sales tax increase on motor vehicles.³⁸⁸ Senator Tim Hall tried

³⁸³ Id., 1546.

³⁸⁴ Id., *Schellpeper-Dierks AM3090*, 1531.

³⁸⁵ *Floor Transcripts, LB 1059 (1990)*, 21 March 1990, 11541.

³⁸⁶ NEB. LEGIS. JOURNAL, 21 March 1990, 1532.

³⁸⁷ Id., *McFarland AM2897*, 8 March 1990, 1287-88.

³⁸⁸ Id., *Smith AM2952*, 12 March 1990, 1303.

to reduce the sales tax increase to one-half percent rather than a full one percent.³⁸⁹ Senators Schimek and Wesely attempted an amendment to create a tax refund program for those who rent property.³⁹⁰ All such amendments failed, some after short debates and some after lengthy consideration. Some failed by close votes while some failed by wide margins. The Legislature appeared committed to the concept of greater state support in exchange for reduced local support for schools.

After two full days of Select File debate, the body had simply exhausted itself of reasons to delay a second-stage vote to advance. And there was little fanfare in the closing remarks before advancement. Senator Moore had the last word before the vote to advance. His remarks were both brief and poignant considering the length to which issues were addressed and readdressed. Moore said:

I've had more than one [person], some gently, some not so gently inform me that I've pretty well ruined my political future by pushing this bill. And if that be it, so be it. But, nevertheless, the time has come, let's move this puppy over.³⁹¹

And move the "puppy over," they did. Interestingly, LB 1059 advanced to the final-round of debate by the same vote margin (34-12) as it advanced to the second-round.³⁹² The twelve individuals in opposition to the bill remained relatively consistent. Several senators who were present, not voting on General File had switched their votes to the affirmative on the second-round vote.

Table 15. Record Vote: Advance LB 1059 (1990) to E&R Final

Voting in the affirmative, 34:

Baack	Conway	Hartnett	Lindsay	Schimek
Barrett	Coordsen	Hefner	Lynch	Scofield
Bernard-	Dierks	Johnson, L.	Moore	Smith
Stevens	Elmer	Johnson, R.	Morrissey	Warner
Beyer	Goodrich	Korshoj	Nelson	Wehrbein

³⁸⁹ Id., *Hall AM2749*, 14 March 1990, 1362.

³⁹⁰ Id., *Schimek-Wesely AM3057*, 21 March 1990, 1532.

³⁹¹ *Floor Transcripts, LB 1059 (1990)*, 21 March 1990, 11640.

³⁹² NEB. LEGIS. JOURNAL, 21 March 1990, 1547-48.

Table 15—*Continued*

Byars Chizek	Haberman Hall	Kristensen Landis	Rogers Schellpeper	Weihing Withem
<i>Voting in the negative, 12:</i>				
Abboud	Chambers	Lamb	McFarland	Pirsch
Ashford	Hannibal	Langford	Peterson	Schmit
Beck	Labeledz			
<i>Present and not voting, 3:</i>				
Crosby	Robak	Wesely		

Source: NEB. LEGIS. JOURNAL, 21 March 1990, 1547-48.

Table 16. Summary and Disposition of Amendments
and Motions to LB 1059 (1990) on Select File

(In the order of disposition)

<i>Amendment</i>	<i>Purpose</i>	<i>Filed</i>	<i>Vote</i>	<i>Disposition</i>
Labeledz AM2349	Income tax deduction for tuition and related educational expenses	1/31/90	—	Withdrawn
Warner AM2474	Give Legislature flexibility on growth rate and range	3/6/90	—	Withdrawn
Warner AM2803	Strike sections on budget lid computation	3/6/90	—	Withdrawn
Warner AM2805	Strike sections on budget lid; insert different method	3/6/90	—	Withdrawn
Byars AM2847	Exclude Enron reimbursements from the lid	3/6/90	27-2-17-3	Adopted
Withem AM2821	Change target budget level range provisions	3/6/90	—	Withdrawn
Withem AM3066	Tweak spending lid; income tax rebate	3/20/90	30-0-16-3	Adopted
McFarland AM2792	Strike budget lid provisions	3/7/90	—	Withdrawn
Warner AM2872	Effective date of sales/income tax increases	3/7/90	18-22-7-2	Failed
McFarland AM2897	Greater income tax increase for wealthy	3/8/90	19-21-9-2	Failed
Smith AM2952	Exempt sales tax increase on motor vehicles	3/12/90	17-20-6-6	Failed
Hall AM2949	Make permanent budget lid for schools	3/12/90	—	Withdrawn
Hall AM2845	Delay school district assessment for one year	3/6/90	28-0-15-6	Adopted

Table 16—*Continued*

<i>Amendment</i>	<i>Purpose</i>	<i>Filed</i>	<i>Vote</i>	<i>Disposition</i>
Hall AM2749	Reduce sales tax increase to 1/2 cent; reduce sales tax exemptions	3/14/90	6-24-14-5	Failed
Withem AM3001	Amend Warner AM2805	3/14/90	—	Withdrawn
Hefner AM3030	Amend Hall AM2749 to exclude farm equipment	3/15/90	—	Withdrawn
Baack-Kristensen AM3062	Change hold harmless clause to 100% for three years; different growth rate for SPED	3/20/90	26-0-19-4	Adopted
Hall AM2855	Make permanent spending lid for schools	3/6/90	—	Withdrawn
Warner AM2475	Allow adjustments to appropriations	3/6/90	—	Withdrawn
Landis AM3105	Add projected formula student provision	3/20/90	13-16-17-3	Failed
Ashford AM3069	Collective bargaining agreements; lid exclusion	3/20/90	28-10-7-4	Adopted
Hall FA414 to Hefner-Withem	Tuition tax deduction	3/20/90	22-20-3-4	Failed
Hefner-Withem AM3091	Permit part-time students in ADM	3/20/90	19-19-6-5	Failed
Schellpeper-Dierks AM3090	Intent language on property tax relief	3/21/90	34-0-12-3	Adopted
Conway AM3099	Technical on income tax rate increase	3/21/90	30-4-14-1	Adopted
Schimek-Wesely AM3057	Tax refund program for renters	3/21/90	5-20-22-2	Failed
Smith AM3017	Highway Trust Fund – distribution of sales tax receipts	3/21/90	11-13-23-2	Failed
Smith AM3017	Chambers motion to reconsider Smith AM3017	3/21/90	18-27-2-2	Failed
Smith AM2953	Change budget lid provisions	3/21/90	—	Withdrawn
Nelson AM3006 renewed	Impact on LB 775 provisions	3/16/90	—	Withdrawn
Wesely AM3098	Exclude from lid increases in health insurance to employees	3/21/90	7-16-13-13	Failed
Schmit AM3118	Implements Jaksha amendment	3/21/90	—	Withdrawn
Abboud AM2953	Removes sunset on hold harmless	3/12/90	4-9-26-10	Failed
Warner AM3115	Technical on sales tax increase implementation date	3/21/90	29-1-16-3	Adopted
McFarland AM2915	Change income tax increase provisions	3/8/90	14-15-19-1	Failed

Table 16—*Continued*

<i>Amendment</i>	<i>Purpose</i>	<i>Filed</i>	<i>Vote</i>	<i>Disposition</i>
Conway AM3140	4% lid for all other political subdivisions with 7/1/1992 sunset	3/21/90	29-7-11-2	Adopted
Smith AM2952	Chambers motion to reconsider Smith AM2952	3/21/90	21-25-1-2	Failed

Source: NEB. LEGIS. JOURNAL, 91st Leg., 2nd Sess., 1990, passim.

Final Reading/Veto Override of LB 1059

LB 1059 remained remarkably consistent from its introduced version as it moved to the third and final stage of consideration. All the major provisions of the bill, from the tax increases to the distribution formula itself, had remained essentially the same as that originally proposed by the commission. There were a few additions, some major and some minor, but no real change in the direction of the legislation.

The Legislature strengthened the intent language in the bill to remind all concerned that the additional state aid was meant to reduce property taxes.³⁹³ The bill had acquired a few additional terms in the definition section to help administer the formula.³⁹⁴ A new factor was added to the formula relevant to calculating tiered cost per student for students residing on Indian lands.³⁹⁵ The section defining “other actual receipts” for purposes of calculating formula resources had been amended to exclude receipts for private foundations, individuals, associations, or charitable organizations.³⁹⁶

One of the major additions was the three-year 100% hold harmless clause to preclude any district from receiving less state aid than it received in school year 1989-90.³⁹⁷ Another major change was the inclusion of a minimum levy provision to ensure a

³⁹³ Legislative Bill 1059, in *Laws of Nebraska, Ninety-First Legislature, Second Session, 1990*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 2(3), p. 3 (802).

³⁹⁴ *Id.*, § 3, pp. 3-5 (802-04).

³⁹⁵ *Id.*, § 5(10), p. 9 (808).

³⁹⁶ *Id.*, § 11(7), p. 12 (811).

³⁹⁷ *Id.*, § 6(2), p. 10 (809).

minimum local effort.³⁹⁸ Another major change was the creation of a separate growth rate for special education costs based upon the average of each district's growth in actual expenditures for special education for the most recently available two-year period.³⁹⁹ The spending lid for general fund expenditures remained mostly in tact, except that several new lid exclusions had been added. The new exclusions involved (i) the incursion of unexpected costs due to additional special education students enrolled in a district for the ensuing school year, and (ii) collective bargaining agreements that bind a district to a certain level of budget increase over its applicable allowable growth rate.⁴⁰⁰

The fiscal impact of the bill was meant to be revenue neutral in that the state would expend essentially no more than it would receive in new revenues. In fact, the projected figures indicated a relatively close match on new state expenditures and new revenue. The Legislative Fiscal Office reported on March 26, 1990 that the bill would produce expenditures of \$211,687,410 in 1990-91 while producing \$185,889,900 in new revenue due to the sales and income tax increases.⁴⁰¹ This would create a slight loss to the state for the first year of implementation. For 1991-92, it was projected that the state would expend \$229,160,466 in new appropriations to fund LB 1059 while it produced \$242,971,136 in new revenue.⁴⁰²

The new revenue would derive from approximately equal amounts of new sales tax receipts and new income tax receipts. The bill would increase the primary income tax rate from the previous rate of 3.15% to 3.43% on January 1, 1990 and a second increase to 3.7% on January 1, 1991.⁴⁰³ LB 1059 would also increase the sales tax rate from 4% to 5% on July 1, 1990.⁴⁰⁴ Since property tax relief was one of the major objectives of the

³⁹⁸ Id., § 6(3), p. 10 (809).

³⁹⁹ Id., § 16, p. 13 (812).

⁴⁰⁰ Id., §§ 19(4-5), pp. 16-17 (815-16).

⁴⁰¹ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 1059 (1990)*, prepared by S.L. Myers, 91st Leg., 2nd Sess., 1990, 26 March 1990, 1.

⁴⁰² Id.

⁴⁰³ LB 1059 (1990), Session Laws, § 32, p. 23 (822).

⁴⁰⁴ Id., § 33, p. 23 (822).

bill, LB 1059 was projected to cause a reduction in local property taxes by approximately \$192 million in 1990 and \$255 million in 1991.⁴⁰⁵

What appeared before the Legislature on April 3, 1990, the day of Final Reading, was a policy proposal that, on balance, would produce the results it was designed to produce. It was on this day that the Legislature would give final consideration to one of the truly historic pieces of legislation since statehood. It represented a dramatic re-direction of policy concerning public education and the extent to which the state would offer its direct financial assistance. It also was meant to produce a greater equity of educational opportunity for each Nebraska student enrolled in public schools regardless of the student's geographic residence. Finally, the bill would address the on-going issue of over-reliance upon property taxes to fund public education and the need to provide tax relief to property owners.

At least in theory, these objectives would be met or partially met by the passage and implementation of LB 1059. To some policymakers, the projections provided sufficient basis for voting in favor of the bill. The concept was worth whatever political risks might be at stake. To other lawmakers, the tax increases could not be justified, and genuine property tax relief could not be guaranteed by the passage of LB 1059.

The first victory relevant to the passage of LB 1059 was initiated the day before the bill was set for Final Reading. On April 2, 1990, the Legislature debated Speaker Barrett's motion to suspend the rules and take a final vote on LB 1059 without further amendment, motion, or debate.⁴⁰⁶ The Barrett motion actually applied to a whole list of bills, twenty bills in all, that were pending before the Legislature in 1990 and LB 1059 was one of bills on the list. Debate on the Barrett motion began on April 2nd but was eventually laid-over until the next day. On April 3rd the Legislature once again took up debate on the Barrett motion and approved it by a 39-8 vote.⁴⁰⁷ With the adoption of the

⁴⁰⁵ *Fiscal Impact Statement, LB 1059 (1990)*, 26 March 1990, 4.

⁴⁰⁶ NEB. LEGIS. JOURNAL, 2 April 1990, 1811.

⁴⁰⁷ *Id.*, 1826.

Barrett motion, the remaining, pending amendments would simply fall away in order to permit a final vote on the bill.

Since LB 1059 contained the emergency (“E”) clause, the bill would require a two-thirds vote, or 33 affirmative votes, for final passage.⁴⁰⁸ The E-clause would make the bill operational one day after the Governor signs it into law, or, if the Governor vetoes it, one day after the Legislature votes to override the veto, assuming such an override was successful. When the record vote was taken on April 3rd, supporters of the measure would find themselves three votes short. LB 1059 would fail to pass on Final Reading with the E-clause attached by a 30-15 vote.⁴⁰⁹

Table 17. Record Vote: Passage of LB 1059 (1990)
with E-Clause Attached

Voting in the affirmative, 30:

Baack	Conway	Hefner	Moore	Scofield
Barrett	Coordsen	Johnson, L.	Morrissey	Smith
Bernard-	Dierks	Johnson, R.	Nelson	Warner
Stevens	Elmer	Korshoj	Rogers	Wehrbein
Beyer	Hall	Landis	Schellpeper	Weihing
Byars	Hartnett	Lindsay	Schimek	Withem
Chizek				

Voting in the negative, 15:

Abboud	Chambers	Kristensen	Langford	Robak
Ashford	Goodrich	Labeledz	McFarland	Schmit
Beck	Hannibal	Lamb	Peterson	Wesely

Present and not voting, 1:

Crosby

Excused and not voting, 3:

Haberman	Lynch	Pirsch
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Source: NEB. LEGIS. JOURNAL, 3 April 1990, 1841.

⁴⁰⁸ RULES OF THE NEB. LEG. Rule 6, § 10.

⁴⁰⁹ NEB. LEGIS. JOURNAL, 3 April 1990, 1841.

Under the Rules of the Legislature, a bill failing to pass on Final Reading with the E-clause attached will automatically receive a second vote with the E-clause removed.⁴¹⁰ In such cases, the bill would require a simple majority vote to pass. And pass it would on the second try. The Legislature approved LB 1059 on a 30-16 vote and also LB 1059A, the accompanying appropriation (“A”) bill, by a 30-14 vote.⁴¹¹

Table 18. Record Vote: Passage of LB 1059 (1990)
without E-Clause

Voting in the affirmative, 30:

Baack	Conway	Hefner	Moore	Scofield
Barrett	Coordsen	Johnson, L.	Morrissey	Smith
Bernard-	Dierks	Johnson, R.	Nelson	Warner
Stevens	Elmer	Korshoj	Rogers	Wehrbein
Beyer	Hall	Landis	Schellpeper	Weihing
Byars	Hartnett	Lindsay	Schimek	Withem
Chizek				

Voting in the negative, 16:

Abboud	Crosby	Kristensen	Langford	Robak
Ashford	Goodrich	Labeledz	McFarland	Schmit
Beck	Hannibal	Lamb	Peterson	Wesely
Chambers				

Excused and not voting, 3:

Haberman	Lynch	Pirsch
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Source: NEB. LEGIS. JOURNAL, 3 April 1990, 1842.

Without the emergency clause, LB 1059 would become operative 90 days after the Legislature adjourned sine die, which, in this case, was July 8, 1990 (the session adjourned on April 9, 1990). Supporters of the bill had wanted as early an effective date as possible in order to provide necessary time to implement the legislation. The July 8th effective date would not leave much time for school districts to prepare for a new school finance system, not to mention time for the Department of Education to set up the

⁴¹⁰ RULES OF THE NEB. LEG. Rule 6, § 10.

⁴¹¹ NEB. LEGIS. JOURNAL, 3 April 1990, 1842-43.

administration of the new formula. But a late effective date would become the least of the problems faced by supporters of the measure as events unfolded.

Governor Kay Orr announced to reporters the day after LB 1059 passed that she would indeed veto the bill. “I think it’s a foregone conclusion I will veto 1059,” Orr said, adding that the Legislature had not addressed her concerns about the bill.⁴¹² She opposed the legislation on the grounds that it raised state taxes and had no guarantee of producing property tax relief. Orr pulled no punches in her criticism of the Legislature. Referring to LB 1059 Orr said, “It’s got such a head of steam, some [senators] still have blinders on.”⁴¹³ Orr promptly vetoed both LB 1059 and LB 1059A on April 6th, three days before the session was set to adjourn sine die.⁴¹⁴

In a lengthy message to the Legislature, Orr “applauded the tremendous efforts” of the School Financing Review Commission, the study group whose representatives Orr had appointed.⁴¹⁵ Orr wrote that she supported some of the commission’s findings, particularly, “the concept that state aid to education is more equitable when distributed to school districts based on a definition of need that includes both assessed valuation of property and income within a school district.”⁴¹⁶ Nevertheless, her objections with the bill stemmed from the “hastily included tax provisions that were added to the Commission’s studiously prepared work without any analysis of the impact and essential fairness of the provisions.”⁴¹⁷ She criticized the lateness to which the tax proposal was added as a “second part” of the legislation, especially since the commission had been at work for 18 months.⁴¹⁸ She wrote:

⁴¹² Henry J. Cordes, “Fight Likely After Orr Veto Of School Bill,” *Omaha World-Herald*, 4 April 1990, 1.

⁴¹³ *Id.*

⁴¹⁴ NEB. LEGIS. JOURNAL, 9 April 1990, 1985.

⁴¹⁵ *Id.*, 1986.

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

I believe that it would have been apparent that the combination of the tax provisions with the school finance provisions prevents LB 1059 from meeting either of its two purported purposes. It does NOT achieve property tax relief, and it does NOT promote educational equity. Rather, it is simply the largest spending and tax increase measure to be considered in the history of the State of Nebraska.⁴¹⁹

She added that her objections with the bill had been substantially ignored by the Legislature and that other flaws in the legislation had come to light since final passage.

Orr believed the issues of educational equity and property tax relief were not addressed “well or wisely” under LB 1059 and warranted her sustained veto.⁴²⁰ To bolster her viewpoint, Orr included a list of ten major objections to the bill.

Table 19. Governor Orr’s Objections to LB 1059 (1990)

1. LB 1059 is not property tax relief. Even though sales taxes increase 25% and income taxes increase 17.5%, property taxes are still projected to increase next year. This is not the kind of property tax relief Nebraskans can afford.
2. LB 1059 is unfair to the one in three households, whether in town or on the farm, who rent, as well as to the elderly and disabled who receive the homestead exemption. This group, with the least ability to pay, receives a cruel tax increase.
3. Property tax relief can not be guaranteed given the ineffective spending lids contained in LB 1059. The lid on school districts is too loose and too full of exceptions to have any impact, while the lid on other political subdivisions terminates in just two years. For example, some school districts will be able to increase their tax levies over 19.5% annually without a vote of the people. Specifically, the lid proposal allows the following tax taking increases:

Base Growth Rate	Up to 6.5%
Enrollment Increase	Up to 10.0%
Reserve Requirement	Up to 2.0%
75% Board Approval	Up to 1.0%
Building Maintenance	Unlimited
Special Ed. Costs	Unlimited
Current Employee Contracts	Unlimited
New Mandated Programs	Unlimited
Total	19.5% +

⁴¹⁹ Id.

⁴²⁰ Id.

Table 19—*Continued*

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4. LB 1059 does not promote educational equity. Although it redistributes tax burdens by shifting funding sources, it does not permit financially poor school districts to achieve “average spending per pupil” levels within a reasonable time period. While the lid is ineffective in guaranteeing property tax relief, it restricts these poorer districts from increasing their spending to achieve educational equity. Consequently, for this and other reasons, LB 1059 is not the solution to the pending court challenge of our school finance system, as has been claimed.
 5. The Legislature designates education funding as the top state appropriation priority in LB 1059. However, the Legislature failed to meet their commitment in the First year of funding LB 1059, as the bill is underfunded by \$33 million. This reluctance to meet their commitment from the outset bodes ill for the future stability of education funding under this scheme.
 6. The funding assumptions of LB 1059 include the state’s continued funding of teachers’ salary supplements (LB 89) at \$20 million per year. However, LB 89 expires next year. Consequently, after 1991 taxes will need to be raised or other current obligations will need to be raided in order to fully fund the provisions of LB 1059. Since the Legislature failed to fully fund LB 1059 this year, I question their willingness to increase taxes further in the future to fulfill the commitment made in this legislation.
 7. LB 1059 raises \$17 million in sales taxes that will go into the Highway Trust Fund, rather than for education.
 8. The use of “tiers” within LB 1059 to group school districts gives an unfair advantage to some school districts in the funding formula. Conversely, the groupings also hurt school districts who are growing faster than other schools in their tier.
 9. LB 1059’s “hold-harmless” clause contradicts the “equity” purpose of the bill. It provides many school districts with more aid than the formula computes their need to be. Conceptually this provision defeats the purpose of the bill.
 10. Finally, the sponsors of LB 1059 admit that there are problems with this bill that have not yet been found. Two major flaws, including the unintentional repeal of the sales tax for two and a half months, were found hours before the bill was passed. There may well be other flaws with equally dire consequences that have not yet been discovered.
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Source: NEB. LEGIS. JOURNAL, 9 April 1990, 1987-88.

Orr’s catalogue of concerns seemed to mirror, to some degree, a few of the concerns expressed by both proponents and opponents of the bill throughout the legislative process. Senator Withem, for instance, was not an immediate supporter of the

hold harmless provision, but was ultimately willing to compromise on the issue in a concession to opponents of the bill. Senator Moore argued against further adoption of spending lid exclusions because it would weaken the purpose of the lid. The issues surrounding the Highway Trust Fund and the disparate impact of the tax increases on renters of property were both subjects of failed amendments.

The veto action was certainly not a surprise to anyone. If boiled down, the Governor's objections principally concerned the state sales and income tax increases and this was not a secret to anyone. Proponents, nevertheless, remained optimistic about the prospects of overriding the Governor's veto. Using a baseball analogy, Senator Moore quipped, "We're going into the bottom of the ninth with a two-run lead," referring to the 32 senators lined up to support a veto override (two votes over the required 30 to successfully override).⁴²¹ Senator Withem also had reason for confidence in a successful override. Speaking to reporters, Withem referred to a recent report by the Legislative Fiscal Office that predicted a 16.5% increase in property taxes in the coming year. Approaching the 60th and final day of the session, Withem said the failure to override the veto would mean the Legislature does nothing about the projected property tax increase. "If you don't vote the override," Withem said, "you're voting for a 16 1/2 percent increase in property taxes."⁴²²

But not *all* proponents of the bill were as optimistic about a successful override. Senator Jerome Warner, for instance, had recently changed his view on the bill from opposition to support and had voted in favor of the bill on Final Reading. He also noted the 16.5% projected property tax increase, but thought an override would not be possible. "Obviously it will not have 30 votes," Warner said.⁴²³ Conversely, several senators who supported LB 1059 in the early stages of debate had changed their minds and now opposed the bill. Senator Doug Kristensen of Minden, for instance, supported the bill but then voted against the bill on Final Reading. Kristensen, a co-sponsor of the bill, was

⁴²¹ Henry J. Cordes, "Fight Likely After Orr Veto Of School Bill," *Omaha World-Herald*, 4 April 1990, 1.

⁴²² Id.

⁴²³ Id.

quoted as saying, “I think 1059 is the right way to go for the state, but I’ve got to make this decision for my district.”⁴²⁴ He said about half the school districts in his legislative district would fair well under LB 1059 and half would not.

The Legislature convened early in the morning of April 9th, the 60th and final day of the 1990 Session, to take up motions to override vetoes and to conclude its business for the year. The body convened at 8:00 a.m. that morning and would not conclude until after 10:00 p.m. that night. For Governor Orr, in particular, this would be a final session day to remember, or perhaps forget. Five motions to override line-item vetoes were successfully passed concerning LB 1031 (1990), the mid-biennium budget bill. And no less than 21 motions to override vetoes of legislative bills and accompanying appropriation (“A”) bills were passed throughout that long day.⁴²⁵

It was late in the afternoon by the time the body reached LB 1059 on the agenda. Lt. Governor Bill Nichol had returned to the chamber to serve as presiding officer and, upon reaching LB 1059 on the list of override motions, aptly said, “The one you have all been waiting for, LB 1059.”⁴²⁶ Nichol then called on Senator Withem to open on his motion to override.

Withem made it simple for his colleagues by way of introducing his motion. Without overriding the Governor’s veto, he said, there would be no school finance system in existence and there would be no property tax relief for the coming year. He reminded his colleagues of the recent report projecting an aggregate property tax rate increase of 16.5% in the coming year. Finally, Withem reminded his colleagues of the pending lawsuit concerning the constitutionality of the existing school finance system and that such suits had been successful in other states.

Withem also took some time to address a few of the objections provided in the Governor’s letter to the Legislature after she vetoed LB 1059. The first and foremost, he said, was the Governor’s complaint that the commission introduced the revenue portion

⁴²⁴ Id.

⁴²⁵ NEB. LEGIS. JOURNAL, 9 April 1990, passim.

⁴²⁶ *Floor Transcripts, LB 1059 (1990)*, 9 April 1990, 13339.

of the bill “at the last minute.”⁴²⁷ Withem said the Governor was well aware of the commission’s proposal to “raise the state funding to 45 percent to be funded with 20 percent of the state income tax and probably a one cent sales tax or some other source that we may come up with, so it wasn’t anything new.”⁴²⁸

On the Governor’s charge that property tax relief was not guaranteed under LB 1059, Withem said simply that it was guaranteed. But he saved the real venom for Orr’s objection relating to the spending lid and that some districts could have as high as a 19% growth rate. “I don’t know where in the world that came from, that’s wrong,” Withem said.⁴²⁹ Most districts, he said, would be at or near the base growth rate of 4% with only a small number of districts receiving spending authority at the higher end of the growth range of 6.5%. He added that most school districts in the state do not have major growth in enrollment and most school districts do not have major growth in special education costs. In short, Withem said, LB 1059 moved the state forward:

It moves the state from being the next to the last in the terms of state support for education up to the middle. We aren’t going to be any leaders, but we’re going to be up to the middle. It deals with the inequities that exist. You’re not going to see the types of gross, gross, gross inequities where an individual that owns property, the same type of property paying four or five, six times as much as another individual the same type of property, just based simply on the school district in which they live.⁴³⁰

He acknowledged to his colleagues that there would be criticism of the bill “when it passes,” but added, “You’re also going to get the thanks from an awful lot of people in the state that realize it’s the right thing to do.”⁴³¹

Debate on the motion to override may have lasted longer in any other situation but this one. The body had already considered and voted on numerous motions to override on other bills, and, by the time the LB 1059 motion arrived, the body was simply tired. A

⁴²⁷ Id., 13340.

⁴²⁸ Id.

⁴²⁹ Id.

⁴³⁰ Id., 13341.

⁴³¹ Id.

quick and successful motion to cease debate allowed Senator Moore to have the final word on the matter. Moore said:

Now much has been said about LB 1059 and there's probably been more newsletters written, more press releases, more TV shows, more analysis than any bill in a long, long time and it all comes down to a few people are nervous with good reason about a few unknowns that probably, simply cannot ever, never be answered. You can't take the total risk out of everything.⁴³²

What *was* known, Moore said, was that the Legislature might never again come this close to doing something about the issues of property tax relief and the problems with the existing school finance formula. LB 1059, he said, was an idea "whose time has come."⁴³³

Following the closing comments, the Legislature proceeded to vote on the motion, which was approved by a 32-16 vote.⁴³⁴ The vote, as predicted by Senator Moore, had two votes to spare over the 30-vote minimum to override.

Table 20. Record Vote: Motion to Override
the Veto of LB 1059 (1990)

Voting in the affirmative, 32:

Baack	Conway	Hefner	Moore	Scofield
Barrett	Coordsen	Johnson, L.	Morrissey	Smith
Bernard-	Dierks	Johnson, R.	Nelson	Warner
Stevens	Elmer	Korshoj	Rogers	Wehrbein
Beyer	Haberman	Landis	Schellpeper	Weihing
Byars	Hall	Lindsay	Schimek	Withem
Chizek	Hartnett	Lynch		

Voting in the negative, 16:

Abboud	Goodrich	Labeledz	McFarland	Robak
Ashford	Hannibal	Lamb	Peterson	Schmit
Beck	Kristensen	Langford	Pirsch	Wesely
Crosby				

⁴³² Id., 13343.

⁴³³ Id.

⁴³⁴ NEB. LEGIS. JOURNAL, 9 April 1990, 2043-44.

Table 20—*Continued*

Present and not voting, 1:
Chambers

Source: NEB. LEGIS. JOURNAL, 9 April 1990, 2043-44.

Every senator who voted in favor of the bill on Final Reading also voted to override the veto. This accounted for the minimum 30 votes required to override. Senators Rex Haberman and Dan Lynch, who were excused on the day of Final Reading, were both present and voting in the affirmative to override the veto. This accounted for the other two votes. The motion to override the veto of LB 1059A, the appropriation bill, was passed on a 31-15 vote.⁴³⁵

Table 21. Section-By-Section Description of the Tax Equity and Educational Opportunities Support Act

<i>Sec.</i>	<i>Catch Line</i>	<i>Section Description</i>
79-3801	Act, how cited	Sections 79-3801 to 79-3824 cited as the Tax Equity and Educational Opportunities Support Act
79-3802	Legislative findings and intent	<p><i>Legislature finds that:</i></p> <ul style="list-style-type: none"> • State under-supports education compared to other states; • State support has not kept pace with increased costs of operating schools; • Nebraska has higher per capita property tax burden than other states; • Over-reliance on property tax has resulted in disparities in property tax rates and created inequitable educational fiscal resources for students. <p><i>Legislative intent to create a finance system that:</i></p> <ul style="list-style-type: none"> • Provides state support for 45% of aggregate general fund operating expenditures of districts; • Reduces reliance on property tax for support of schools; • Broadens support for schools by dedicating a portion of income tax for schools; • Keeps pace with increasing costs of operating schools; • Assures each district a foundation support for operation of schools with consideration of taxable wealth and other accessible resources; • Assures greater equity of educational opportunities for students and also property tax rates for support of schools; • Assures a shift to sustainable revenue sources, other than property tax, for support of schools through spending lids; • Insures state funds are used for the purpose of reducing property taxes in the district to which they are distributed.

⁴³⁵ Id., 2044.

Table 21—Continued

<i>Sec.</i>	<i>Catch Line</i>	<i>Section Description</i>
79-3803	Terms, defined	Provides definitions for such terms as adjusted valuation, average daily membership, average daily membership tiers, categorical federal funds, formula students, general fund budget of expenditures, etc.
79-3804	Income tax receipts; use and allocation for public school system	Dedicates 20% of all income tax receipts collected by the state net of credits and refunds. Provides for direct return of 20% of identifiable individual income tax receipts to the district where such originated. Class I districts, Class VI districts and county nonresident tuition funds would receive a pro rata share of such income tax receipts. That part of individual income taxes not identifiable to any district plus 20% of corporate, nonresident, trust and other non-individual income tax receipts would be distributed through the equalization formula.
79-3805	Tiered cost per student; general fund operating expenditures; calculations	Provides that the State Department of Education will place all school districts in average daily membership tiers of comparable size in order to calculate each school district's tiered per student costs for use in the equalization formula.
79-3806	State aid; amount	Provides that each school district will receive state aid to the extent that its "formula need" exceeds "formula resources." Provides a hold harmless provision such that a district would not receive state aid for school years 1990-91, 1991-92, and 1992-93 that is less than 100% of aid received in 1989-90. Creates a minimum levy provision. No district receives state aid in an amount that would result in the district having a general fund tax levy of less than 60% of the local effort rate.
79-3807	Total formula need; computation	Total "formula need" of each district is computed by multiplying the number of students it educates in kinder-garten, grades 1-6, grades 7 and 8, and grades 9-12 times the tiered per student costs for each such grade grouping.
79-3808	District formula resources; local effort rate; determination	Each district subtracts from its "formula need" the local effort rate yield, which is the statewide local effort rate multiplied by each district's "adjusted" valuation. The local effort rate is calculated annually by the State Department of Education based on available appropriations, school district needs and school district resources.
79-3809	Adjusted valuation; adjustment factors established	The Revenue Department will use adjustment factors to adjust taxable valuation to reflect as nearly as possible actual value. Adjustment factors will be established based on best available assessment practices (sales assessment ratios, targeted appraisals etc.) Adjusted taxable values will be used in the formula for purposes of computing school district eligibility for state aid.
79-3810	District formula resources; income tax liability allocation	Provides that districts will subtract from their total "formula need" the amount of individual income tax revenues returned by the state to the district.

Table 21—Continued

<i>Sec.</i>	<i>Catch Line</i>	<i>Section Description</i>
79-3811	District formula resources; other receipts included	Districts will subtract from their total “formula need” all other actual, accessible resources. The list includes all forms of local, state and federal receipts of school districts except federal categorical receipts. Other actual receipts includes: <ul style="list-style-type: none"> • Public power district sales tax revenue; • Fines and license fees; • Nonresident high school tuition receipts; • Tuition receipts from individuals, other districts, or any other source except those derived from adult education; • Transportation receipts; • Interest on investments; • Other miscellaneous local receipts, not including receipts from private foundations, individuals, associations, or charitable organizations; • Special education receipts; • Receipts from state for wards of the court/wards of the state; • All receipts from the temporary school fund; • Receipts from the Insurance Tax Fund; • Pro rata motor vehicle license fee receipts; • Help Education Lead to Prosperity Act funds; • Other miscellaneous state receipts; • Impact aid receipts to the extent allowed by federal law; • Johnson O’Malley receipts; • All other noncategorical federal receipts; and • All receipts under Chapter 79, article 34 (option students)
79-3812	School District Income Tax Fund; Tax Equity and Educational Opportunities Fund; created; investment	Creates the School District Income Tax Fund and the Tax Equity and Educational Opportunities Fund for receipts and distribution of income tax funds and state aid funds.
79-3813	Distribution of income tax receipts and state aid; effect on budget	Provides for distribution of income tax and state aid payments to school districts.
79-3814	General fund budget of expenditures; allowable growth limitation; Legislature; duties	Limits growth in school district budgets based on allowable growth rates to be set annually by the Legislature. The basic allowable growth rate will be based on projections of available state revenues and school district costs.
79-3815	Budget statement; submitted to department; Auditor of Public Accounts; duties	Provides that each district must submit a copy of its budget statement to the State Department of Education. The State Auditor will make necessary changes in budget documents to facilitate implementation of the budget limitation provisions.
79-3816	Basic allowable growth rate; allowable growth range	The basic allowable growth rate is set at 4%. The allowable growth range will be 4% to 6.5%.

Table 21—Continued

<i>Sec.</i>	<i>Catch Line</i>	<i>Section Description</i>
79-3817	Applicable allowable growth percentage; determination	Provides for the State Department of Education to compute each district's "applicable allowable growth rate." Each district's growth rate will depend on whether it has budgeted expenditures of more or less than the average of comparable size school districts. Those districts spending below average will be able to spend above 4%, up to 6.5%.
79-3818	Budget; restrictions	Limits school districts in budgeting of cash reserves, depreciation funds and contingency funds to a range of percentage levels based on school district size.
79-3819	Applicable allowable growth rate; district may exceed; situations enumerated	Provides for exceptions to the growth limitations in the following cases: (1) New or expanded programs or services mandated by changes in state or federal law; (2) Districts' project enrollment increases for the ensuing school year, in which case the Department will compute additional allowable growth capacity; (3) Construction, expansion, or alterations of school district buildings will cause an increase in building operation and maintenance costs; (4) Additional special education students enroll in the district for the ensuing school year and will result in an increase in expenditures for special education; and (5) The extent to which the terms of a long-term collective bargaining contract exceeds the district's applicable allowable growth rate.
79-3820	Applicable allowable growth percentage; district may exceed; vote required	Provides that school districts may exceed allowable growth rates by an additional 1% upon a 75% majority vote of the school board or by any amount upon the approval of voters at a special election.
79-3821	Unused budget authority; carried forward	Provides that school districts may carry-over to future years unused budget authority if a school board does not choose to budget the maximum allowed by law.
79-3822	Department; provide data to Governor; Governor; duties	Provides that the Department of Education will provide data to enable the Governor to introduce legislation to appropriate funds to reach the goal of 45% state support for schools to appropriate 20% of income tax receipts and to set allowable budget growth rates for the upcoming year.
79-3823	School Finance Review Committee; created; members; duties	Creates a school finance review committee to monitor implementation of the new finance plan and suggest needed revisions. In particular, the committee would review the implementation and operation of the average daily membership tiers, budget growth limitations, the need for a continuing hold-harmless provision for state aid, and expenditures of districts.

Table 21—Continued

<i>Sec.</i>	<i>Catch Line</i>	<i>Section Description</i>
79-3824	State assistance; payments; reports; use; requirements; early payments	Provides for reporting of data by school districts on which state aid payments will be computed.

Sources: Legislative Bill 1059, in *Laws of Nebraska, Ninety-First Legislature, Second Session, 1990*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), §§ 1-24, pp. 1-20; Committee on Education, *Committee Statement, LB 1059 (1990)*, Nebraska Legislature, 91st Leg., 2nd Sess., 1990, 1-5.

C. Affiliation and Common Levy

The Nebraska Legislature is not in the practice of handing out most valuable player awards, or anything resembling such an award. Of course, value like beauty is in the eye of the beholder, especially when it comes to politics and politicians. But if one had to pick the most successful lawmaker of the 1990 Session, it would be difficult to ignore the achievements of Senator Ron Withem of Papillion. Serving in his eighth year as a Nebraska lawmaker, Withem had managed what few had done before, or since, in a single legislative session. He guided his colleagues through a tedious process to create an entirely new school finance system with major state funding attached, and at the same time he pushed through the first sustained effort to address school organization, specifically relating to Class I (elementary only) districts. The previous attempt had been repealed in 1986.⁴³⁶

In 1990, there were 278 K-12 school districts in Nebraska. There were also more than 600 Class I school districts.⁴³⁷ Within about two-thirds of the Class I districts, property was taxed to support the elementary school and a nonresident tuition fee was assessed to cover the cost of educating Class I students in neighboring high schools. The other one-third of Class I schools were part of Class VI (high school only) districts.⁴³⁸

⁴³⁶ The electorate voted against retention of LB 662 at the November 1986 General Election. LB 662 proposed to merge Class I districts into high school districts.

⁴³⁷ NEB. BLUE BOOK, 2004-05 ed., *Nebraska School Statistics*, 929.

⁴³⁸ Nebraska Legislative Research Division, "Summary of the 1990 Session," LRD Report 90-9, May 1990, 5.

Class I schools had been alleged as being tax havens for patrons residing in such districts due to the often lower tax levy than that found in high school districts.

Senator Withem believed something had to be done about the situation, although he recognized that the Legislature would not likely stand for another pitched battle on mandatory consolidation. “More blood has been spilled over this issue than the merits of it warrant,” Withem said in 1989, “This issue has been so destructive of education policy.”⁴³⁹ But Withem did have an alternative in mind, a compromise on the issue of school organization.

In 1989 Senator Withem was the lone sponsor of LB 259, which proposed that all property and students be contained within “school systems” that offer education in grades kindergarten through twelve.⁴⁴⁰ Class I districts could either merge with a high school district, become part of a Class VI (high school only) district, or formally “affiliate” with one or more high school districts (K-12 districts or Class VI districts).⁴⁴¹ The bill established a system to compute a combined levy for each affiliated school system to address the issue of tax equity (i.e., an elementary tax request and a high school tax request).⁴⁴² LB 259 was designed to allow Class I districts the choice to remain autonomous with locally elected school boards and control over budget matters, but all Class I districts must, one way or another, align themselves with a high school district by February 1, 1991.⁴⁴³ County reorganization committees would be authorized to make the decision for them after that date.⁴⁴⁴

The bill was designated an Education Committee priority measure and advanced from committee, but it progressed no further during the 1989 Session. LB 259 carried

⁴³⁹ Henry J. Cordes, “Withem Hopes To Defuse Issue Of Consolidation,” *Omaha World-Herald*, 25 December 1989, 35.

⁴⁴⁰ Nebraska Legislature, *Provide a method for Class I school districts to affiliate with other districts*, sponsored by Sen. Ron Withem, 91st Leg., 1st Sess., 1990, LB 259, title first read, 9 January 1989, § 1, p. 3.

⁴⁴¹ *Id.*

⁴⁴² *Id.*, § 17, pp. 17-19.

⁴⁴³ *Id.*, § 1, p. 3.

⁴⁴⁴ *Id.*, § 24, pp. 27-28.

over to the 1990 Session where it was destined to be one of the first major issues addressed by the Legislature that year.

Senator Withem was not breaking new ground under LB 259. He was merely enforcing the intent of the Legislature as proclaimed in 1988. Under LB 940 (1988), the Legislature established as its “goals for the reorganization of school districts” that:

- (1) All real property and all elementary and secondary students should be within school systems which offer education in grades kindergarten through twelve;
- (2) School districts offering education in kindergarten through grade twelve should be encouraged, when possible, to consider cooperative programs in order to enhance educational opportunities to students;
- (3) County reorganization committees should make a renewed effort to consider and plan for reorganization of schools at the local level; and
- (4) The Department of Education in conjunction with the Bureau of Educational Research and Field Studies at the University of Nebraska-Lincoln should be encouraged to offer greater technical assistance to school districts which are considering reorganization options.⁴⁴⁵

LB 940 also placed a sunset clause on the use of nonresident tuition fees to help force the issue in subsequent sessions. As of July 1, 1991, all statutes relevant to nonresident tuition would be automatically repealed.⁴⁴⁶

In essence, LB 259 was an attempt to take these objectives to the next logical step in order to address the tax equity issues plaguing public education. The affiliation bill, proponents believed, dovetailed nicely with the intent and provisions of LB 1059 to implement a new school finance system and to address tax equity, both for the good of public education and for taxpayers. Once LB 259 was passed, Withem said, “Then we’d say, ‘We’re done.’”⁴⁴⁷ He acknowledged that proponents of mandatory consolidation

⁴⁴⁵ LB 940 (1988), Session Laws, § 1, pp. 1-2.

⁴⁴⁶ Id., §§ 18-19, p. 14.

⁴⁴⁷ Henry J. Cordes, “Withem Hopes To Defuse Issue Of Consolidation,” *Omaha World-Herald*, 25 December 1989, 35.

would have to compromise. “It is a state policy not to push for mandatory reorganization,” Withem said.⁴⁴⁸

The opponent side of LB 259 was given a brief reprieve following the 1989 Session to gather their forces and hire a high profile lobbyist to influence the legislative process. The Nebraska School Improvement Association (NSIA), an organization of elementary-only districts, hired former Governor Charles Thone to protect their interests in time for the 1990 Session. Thone was a graduate of an elementary-only school in Cedar County. The opponents also had an experienced anti-consolidation advocate in Senator Howard Lamb, who may have lost the battle on LB 662 in 1985, but ultimately won the war through its popular repeal in 1986.

Lamb would also become a principle player in the fight against LB 259, a measure he believed would unfairly treat Class I school districts and ultimately result in taxation without representation. “A common levy for Class I and K-12 districts for all purposes would, in most cases, mean that the Class I would wind up subsidizing the K-12,” Lamb said.⁴⁴⁹ He believed K-12 schools would actually lose funding under LB 259. “Right now the non-resident tuition is very generous, and the K-12 wouldn’t get as much money under affiliation,” Lamb said, “But I can’t agree with the common levy.”⁴⁵⁰

Once the 1990 Session began, Speaker of the Legislature Bill Barrett of Lexington kept his word to place LB 259 on the agenda at the beginning of the session. In fact, on January 9, 1990, the fourth day of the session, LB 259 was debated and advanced to second round consideration. The vote to advance, 28-9, was perhaps less enthusiastic than Senator Withem had hoped, but it was still a victory.⁴⁵¹ The Papillion legislator repeated his mantra that LB 259 was the end of the road on school organization.

⁴⁴⁸ Id.

⁴⁴⁹ “Lamb: School Bill Provides Option,” *Omaha World-Herald*, 6 January 1990, 28.

⁴⁵⁰ Id.

⁴⁵¹ NEB. LEGIS. JOURNAL, 9 January 1990, 230-31.

“If this is accomplished, we as a Legislature declare we are done on reorganization,” Withem said, “We will not mandate reorganization.”⁴⁵²

On January 18th, the Legislature took up second-round debate and once again advanced the bill after intense debate. The vote was 30-11.⁴⁵³ All attempts by Senator Lamb and other opponents to derail or otherwise amend the legislation had failed. Lamb’s closest attempt to amend the bill came when he offered an amendment to strike the provisions relating to the common levy.⁴⁵⁴ Even Senator Scott Moore, a supporter of LB 259 and co-sponsor of LB 1059, urged his colleagues to vote in favor of Lamb’s amendment. Moore said the common levy essentially drives a stake into Class I districts. “And if you reject Lamb’s amendment, you drive it pretty darn deep,” he said.⁴⁵⁵

Senator Lamb took the gloves off in his fight for the amendment drawing upon pure emotion to make his case. “This is a mandatory consolidation bill, in effect,” Lamb said, “It’s going to be so difficult, so cumbersome, so unfair, that the (elementary) districts will just give up.”⁴⁵⁶ Withem fired back that the Lamb amendment merely maintained things as they were and prevented the state from moving forward. “Lamb’s amendment just preserves the status quo and puts a new name on it,” Withem said, “It wouldn’t accomplish a whole heck of a lot.”⁴⁵⁷ The Lamb amendment was defeated by an 18-24 vote.⁴⁵⁸

As the Legislature awaited Final Reading on LB 259, an ardent opponent of the measure requested an opinion from the Attorney General concerning its constitutionality. Senator Rex Haberman of Imperial specifically asked the question, “Is the principle of

⁴⁵² Henry J. Cordes, “Bill on Taxing School Districts Wins First OK,” *Omaha World-Herald*, 10 January 1990, 44.

⁴⁵³ NEB. LEGIS. JOURNAL, 18 January 1990, 396.

⁴⁵⁴ *Id.*, *Lamb AM2121*, 393.

⁴⁵⁵ Steve Thomas, “School Consolidation Measure Wins Second-Round Approval,” *Omaha World-Herald*, 19 January 1990, 13.

⁴⁵⁶ *Id.*

⁴⁵⁷ *Id.*

⁴⁵⁸ NEB. LEGIS. JOURNAL, 18 January 1990, 393-94.

uniformity of taxation violated by LB 259 ... and is the principle of ‘one man, one vote’ applicable to ‘an affiliated school district’ as those words are used in that legislative bill?”⁴⁵⁹ The response, provided on February 27, 1990 by Attorney General Robert Spire, provoke mixed feelings, but seemed to give the legislation a green light. “The fact that the registered voters of a Class I school district are not permitted to vote for the members of the governing board of the high school district to which it is affiliated with is troublesome,” the opinion stated, “But it is not necessarily unconstitutional.”⁴⁶⁰ The AG opinion concluded that, “[W]e can not say that LB 259 would violate the rule of uniformity or the principle of ‘one man, one vote.’”⁴⁶¹

On March 29, 1990, the Legislature took a final vote to pass LB 259 just a few days before a final vote was taken to pass LB 1059. Senator Withem would be content with the 33-13 vote in favor of his proposal, but by this time LB 259 had taken on a life of its own.⁴⁶² Opponents were threatening to place the measure before the voters in a similar fashion as occurred in 1986 relating to LB 662. Opponents would also add LB 1059 to their list of electoral targets once that piece of legislation became law notwithstanding Governor Orr’s veto.

Table 22. Record Vote: Final Reading Vote on LB 259 (1990)

Voting in the affirmative, 33:

Abboud	Byars	Hall	Lindsay	Rogers
Ashford	Chambers	Hannibal	Lynch	Schimek
Baack	Chizek	Hartnett	McFarland	Wehrbein
Barrett	Conway	Johnson, L.	Moore	Weihing
Bernard-	Crosby	Kristensen	Morrissey	Wesely
Stevens	Elmer	Labeledz	Nelson	Withem
Beyer	Goodrich	Landis	Pirsch	

⁴⁵⁹ Robert M. Spire, Nebraska Attorney General, and Harold Mosher, Senior Assistant Attorney General, AG Opinion #90016, req. by Sen. Rex Haberman, 27 February 1990.

⁴⁶⁰ Id.

⁴⁶¹ Id.

⁴⁶² NEB. LEGIS. JOURNAL, 29 March 1990, p. 1698.

Table 22—Continued

Voting in the negative, 13:

Coordsen	Hefner	Langford	Schmit	Smith
Dierks	Johnson, R.	Peterson	Scofield	Warner
Haberman	Korshoj	Schellpeper		

Present and not voting, 2:

Beck	Robak
------	-------

Excused and not voting, 1:

Lamb

Source: NEB. LEGIS. JOURNAL, 29 March 1990, 1698.

Governor Orr, similar to her immediate predecessor, Bob Kerrey, would take the entire five-day allotment of time to consider her decision to sign the legislation. On April 4, 1990, Orr signed LB 259 into law, but the decision was far from easy. In a letter to the Legislature, she explained her thought process and rationale for accepting the measure:

Because of the sincere fears expressed by a number of dedicated Nebraskans who have built strong Class I school districts, I reflected lone and hard on this legislation. My decision was not an easy one to reach, and I listened closely at various stages in the legislative process to leaders on both sides of the issue. In the end, however, it was my “bottom line” concern for assisting rural Nebraska and for preserving the chance of country schools to keep offering a vital option to their families which led me to sign.

Without this bill, we would face a crisis with the July 1, 1991 sunset on non-resident tuition. Furthermore, LB 259 creates an innovative affiliation mechanism that is not now available to Class I school patrons who are looking for tools for the future. To be sure, there are many unknowns, and the “Phase III” funding provisions pose difficult legal questions as well.

On balance, my view is that LB 259 offers a workable solution to the divisive issue of school organization. It was developed over several years through the painstaking efforts of members of each type of school district found in rural Nebraska and with the active involvement of a number of agricultural groups as well as our state’s varied education organizations.⁴⁶³

Governor Orr may not have realized that the crisis, to which she referred, concerning non-resident tuition had actually been delayed by one year under the provisions of LB

⁴⁶³ Id., 4 April 1990, 1904-05.

259. The affiliation bill effectively amended LB 940 (1988) to delay the repeal of the non-resident tuition fee statutes until July 1, 1992.⁴⁶⁴

Nevertheless, LB 259 was officially law, and would remain so, provided that the threat of a petition campaign failed to pan out. And it would indeed fail to pan out. Petition organizers managed to place the issue of retaining LB 1059 on the 1990 General Election ballot, but not LB 259. That is not to say that the final word had been uttered on the issue of affiliation and combined levies. In fact, the Legislature would wrangle with the issues a few years later in 1993.

Table 23. Provisions of LB 259 (1990)

By July 1, 1992, all real property and all elementary and high school students shall be in school systems that offer education in grades K-12.

A Class I district could either merge, become part of a Class VI district, or affiliate with one or more Class II, III, IV, V, or VI districts.

Bonded indebtedness incurred for high school facilities prior to the adoption of any affiliation plan would remain the obligation of the high school district unless otherwise specified in the petitions.

Each high school district which affiliates with one or more Class I districts or portions thereof must divide its budgeted current operational expense into an elementary portion for grades K-8 and a high school portion for grades 9-12. The division of such budgeted current operational expense shall be based on application of a percentage factor for grades 9-12 to be computed by the Department of Education for each high school district which has become affiliated with one or more Class I districts.

An affiliated school system may, but is not required to provide free transportation or pay the allowance for high school students residing in an affiliated Class I district.

On July 1, 1994, the budget of operational expenses of each high school district and Class I district in an affiliated school system must be certified to the county superintendent and county assessor for computation of an affiliated school system (combined) tax levy.

By school year 1993-94, all public schools in the state must be accredited.

The non-resident high school tuition statutes would automatically sunset on July 1, 1992.

Source: Legislative Bill 259, in *Laws of Nebraska, Ninety-First Legislature, Second Session, 1990*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), §§ 1-35, pp. 1-20.

⁴⁶⁴ LB 259 (1990), Session Laws, § 34, p. 103.

D. 1990 General Election: Referendum 406

The 1990 Session was considered historic by most state legislators. “It was the year of education, but it was the year of education from the legislative side of the coin,” said Senator Dave Landis of Lincoln, referring to the fact that the Legislature had to override Governor Orr’s veto of LB 1059.⁴⁶⁵ “I think in five to 10 years history could judge this as one of the landmark years,” said Senator Scott Moore of Seward, a co-sponsor of LB 1059.⁴⁶⁶ “I think it took a lot of guts for people to stand up and say these things needed to be done and do them,” said Senator Spencer Morrissey of Tecumseh.⁴⁶⁷

For some outside the realm of the Legislature, however, the 1990 Session was a launching ground for revolt, in a purely civil sense of the term. LB 1059, creating a new school finance system, coupled with LB 259, imposing affiliation and combined levies, represented cause for action by citizen groups concerned for the wellbeing of small schools. Some within the corporate sector of Nebraska were similarly concerned about the tax increases enacted under LB 1059 and the impact it would have on the economy. In truth, if it had not been for the organized effort of the business community, there would have been no attempt to repeal LB 1059 on the 1990 General Election ballot.

In July 1990 Nebraskans were being asked to consider and urged to sign five different petitions. Two of these measures had LB 1059 directly in the crosshairs, although the two measures took entirely different angles when it came to scope and purpose. The business community, or at least some among that community, simply wanted to repeal LB 1059 and its accompanying appropriation bill (LB 1059A). The small school supporters felt that repealing LB 1059 did not go far enough. Their petition effort would take matters into their own hands and initiate state law outlining the will of the people with regard to school organization.

⁴⁶⁵ Henry J. Cordes and Steve Thomas, “Warner: Session Was Historic,” *Omaha World-Herald*, 15 April 1990, 1A.

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.*

Table 24. 1990 Petition Measures

<i>Petition Type</i>	<i>Subject</i>	<i>Signatures Required</i>	<i>Signatures Certified*</i>
Initiative Constitutional amendment	<ul style="list-style-type: none"> Propose a 2% lid on government spending; Could be exceeded by local governments if approved by a majority of the local electorate; State spending could not exceed the lid unless approved by 40 of the 49 legislators; Backed by the Nebraska Taxpayers Survival Committee (Ed Jaksha). 	56,442	57,640
Initiative Constitutional amendment	<ul style="list-style-type: none"> Create a system to legalize, police and regulate video lotteries, with proceeds for property tax relief and veterans' relief programs; Backed by Veterans of Foreign Wars and other groups. 	56,442	57,922
Referendum Repeal state law	<ul style="list-style-type: none"> Repeal LB 1059 (1990) and LB 1059A (1990); Principle concern was the enactment of tax increases; Submitted by Nebraskans Against Higher Taxes. 	28,221	46,084
Initiative Repeal and enact state law	<ul style="list-style-type: none"> Repeal LB 1059 (1990), LB 259 (1990), and LB 940 (1988); Repeal various sections of LB 611 (1989); Re-enact and amend various statutes in order to generally restore school finance and organization laws as they existed following repeal of LB 662 in 1986; Backed by Operation Fight Back 	39,510	**
Initiative Enact state law	<ul style="list-style-type: none"> Enact state law to allow juries in criminal trials to judge both the law and the facts of the case. 	39,510	**

* Certified by Secretary of State Allen J. Beermann on August 16, 1990.

** Did not receive sufficient signatures to place on ballot.

Source: "Voters to See Lid, Lottery, School Issues," *Omaha World-Herald*, 17 August 1990, 1.

The small school advocates took a rather curious approach to addressing their concerns about school finance and affiliation legislation passed during the 1990 Session. Lead in part by the Nebraska School Improvement Association (NSIA), Class I supporters formed a petition movement called Operation Fight Back. The movement chose to utilize the initiative petition process to outright repeal LB 1059, the new school finance formula, although it did not repeal LB 1059A, the accompanying appropriation bill. The petition also proposed to repeal LB 259 (1990), the affiliation and common levy

bill, and also LB 940 (1988), which created intent language to form K-12 school systems and established a sunset provision for use of nonresident tuition fees. The petition also proposed to repeal the bulk of LB 611 (1989), which among other provisions would cause the automatic termination of the School Foundation and Equalization Act, the old school finance formula, on June 30, 1991.

That mission alone may have been a sellable concept to some prospective petition signers, particularly those who wish to see LB 1059 repealed and may or may not have any opinion about LB 259 or the other bills mentioned. But the Operation Fight Back movement opted to take the next step in its quest to right the wrongs committed by the Legislature, as they saw it. The movement decided to add to the petition the appropriate wording of relevant statutes as they wished to have them read. In essence, they desired to have state law returned to the way it was immediately after the successful 1986 referendum to repeal LB 662, a bill that would have merged all Class I school districts.

The problems with the proposed initiative petition were several. First, the proposed state law they wished to make part of the petition was so massive in length that it had to be printed in the absolute smallest font size to barely fit two pages of legal size paper. The average signer of the petition would not, in good conscience, sign such a thing without reading it, and no one in his or her right mind would have taken the time to attempt to read it. The initiative petition simply asked too much of the average voter to absorb and understand.

Another problem related to one of the less publicized war of words between Senator Ron Withem, who had obvious reasons to oppose the petition effort, and Don Stenberg, the future Nebraska Attorney General. Mr. Stenberg, a lawyer, represented Operation Fight Back and handled much of the legal work on behalf of the initiative movement. In April and May 1990, Withem and Stenberg exchanged a series of correspondence through the unfortunate intermediary, Secretary of State Allen Beermann, the chief state election official.

On April 23, 1990, Senator Withem wrote to the Secretary of State with a request that Beermann review the language of the petition. “There appear to be a number of

rather obvious and serious defects in the petition,” Withem wrote.⁴⁶⁸ The principle concern, Withem believed, was that the statement describing the objectives of the petition was vague and misleading. The object statement is the short paragraph on the petition form that prospective signers would read to understand what they are being asked to sign. The petition read:

The object of this petition is to submit to the legal voters of the State of Nebraska at the General Election to be held on November 6, 1990, an act relating to schools which would repeal the state sales tax and state income tax increases provided for in LB 1059 (Laws 1990) and would generally restore school finance and organization laws as they existed following repeal of LB 662 by the Nebraska voters in 1986.⁴⁶⁹

Withem was critical of the fact that the object statement did not mention the other legislative acts to be repealed. More importantly, Withem believed, the object statement inaccurately portrayed the result if the initiative passed. It would not necessarily restore school finance and organization law to appear as it did in 1986.

Withem provided several examples pointing to an apparent lack of understanding on the part of the petition organizers about their own petition language. Not the least of these problem areas related to one of the key provisions the petition supporters would most want to protect: non-resident tuition. Withem wrote:

The objectives statement would lead one to believe that non resident tuition would change a key component of our school finance and would revert to the formula as was in existence to 1986. The actual situation would have the petition re-instate the nonresident tuition laws as they existed in 1987 following enactment of LB 182, a bill which was passed in 1987 to avert a constitutional crisis in the funding of schools.⁴⁷⁰

Another problem was that the descriptive language did not mention anywhere that it repealed a provision requiring all public schools to be accredited. This was an important component of both LB 940 (1988) and LB 259 (1990). Yet voters would not understand

⁴⁶⁸ Senator Ron Withem to Secretary of State Allen J. Beermann, 23 April 1990, 1-2.

⁴⁶⁹ Id.

⁴⁷⁰ Id.

they were signing a petition that would impact the quality of education. “This petition was obviously thrown together with lack of care and scrutiny,” Withem concluded.⁴⁷¹

Attorney Don Stenberg responded immediately, not to Withem but to Secretary of State Beermann, that the Chair of the Education Committee was wrong on all accounts. He defended the language and form of the petition and reminded that the initiative and referendum process should grant sufficient leeway to permit the people to act as legislators. “The presumption should be in favor of the validity and legality of their act,” Stenberg wrote.⁴⁷² Stenberg provided evidence that each of the assertions made by Withem had another perspective, another way of looking at the issue.

The war of words continued back and forth for some time until the issue was handed over to Attorney General Robert Spire. In a letter from Spire to Secretary of State Beermann, the Attorney General stated that it was not within the authority of the chief election officer to “exercise discretion when petitions are filed with you for the commencement of the initiative process.”⁴⁷³ This, naturally, was what Beermann already knew but, perhaps, was glad to have authenticated by the state’s attorney.

The war of words was a moot point, as it turned out, since the initiative movement to derail the school finance and organization laws failed to gather sufficient signatures. The deadline to hand in signed initiative petitions was four months prior to the election. On July 6, 1990, Rick Baum, representing the Operation Fight Back movement, admitted to reporters that his group “did not secure enough signatures statewide” to place the initiative on the General Election ballot.⁴⁷⁴ However, where Operation Fight Back failed, another group with the same general mission would succeed.

The Nebraskans Against Higher Taxes, a coalition of business interests, was confident that it had obtained sufficient signatures to place a referendum to repeal LB 1059 and LB 1059A on the 1990 General Election ballot. The referendum petition was

⁴⁷¹ Id.

⁴⁷² Don Stenberg to Secretary of State Allen J. Beermann, 24 April 1990, 1-4.

⁴⁷³ Attorney General Robert Spire to Secretary of State Allen Beermann, 25 May 1990, 1-2.

⁴⁷⁴ Bob Reeves, “FIGHT BACK gives up fight to put school issues on ballot,” *The Lincoln Star*, 7 July 1990, 1.

much less complex than the initiative effort, and it had the advantage of needing fewer signatures to meet minimum election requirements. In 1990, an initiative proposing state law required a higher threshold of signatures (39,510), while a referendum proposing to repeal state law required fewer (28,221). On July 9, 1990, the deadline for referendum petition measures, the Nebraskans Against Higher Taxes turned in 56,807 signatures.⁴⁷⁵ Upon verification by county clerks and election commissioners, Secretary of State Beermann certified 46,084 valid signatures.⁴⁷⁶ The repeal effort was now officially dubbed Referendum 406.

The referendum petition campaign itself was not without controversy or legal challenge. Shortly after the deadline to hand in petition signatures, a movement aligned in support of LB 1059 formally asked Secretary of State Beermann to review the nature of the referendum effort. Lincoln attorney Alan Peterson, representing the Progress for Nebraska With LB 1059, wrote that the petition to repeal LB 1059, which also proposed to repeal LB 1059A, violated the constitutional provision prohibiting popular repeal of state acts appropriating funds to state agencies. The Nebraska Constitution provides that:

The second power reserved is the referendum which may be invoked, by petition, against any act or part of an act of the Legislature, except those making appropriations for the expense of the state government or a state institution existing at the time of the passage of such act.⁴⁷⁷

LB 1059A, the appropriation bill to LB 1059, did in fact make a series of appropriations to the Department of Education, a state agency, for purposes of carrying out the provisions of LB 1059.⁴⁷⁸ “I respectfully request that the purported referendum petitions not be accepted for filing nor certified for the general election,” Peterson wrote.⁴⁷⁹

⁴⁷⁵ “Voters to See Lid, Lottery, School Issues,” *Omaha World-Herald*, 17 August 1990, 1.

⁴⁷⁶ *Id.*

⁴⁷⁷ NEB. CONST. art. III, § 3.

⁴⁷⁸ Legislative Bill 1059A, in *Laws of Nebraska, Ninety-First Legislature, Second Session, 1990*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), §§ 1-6, pp. 1-9.

⁴⁷⁹ Henry J. Cordes, “LB 1059 Allies: Repeal Is Not Constitutional,” *Omaha World-Herald*, 12 July 1990, 15.

The movement against the referendum effort, comprised of various education groups and other interests, was obviously monitoring the deadline to turn in petitions. If Nebraskans Against Higher Taxes failed to hand in sufficient signatures, then the constitutional challenge would be a moot issue. Such was not the case, and it was apparent that proponents of LB 1059 had to move to a secondary plan of action. But Plan “B”, the legal action, also ran into a snag when, on July 20, 1990, Attorney General Robert Spire officially told Secretary of State Beermann to proceed with the signature verification process. Spire believed there were “legitimate questions” as to whether the object of the petition was allowable constitutionally, but he said the constitutional right to invoke the referendum process should be interpreted broadly.⁴⁸⁰

Not satisfied, the pro-LB 1059 group took the State of Nebraska to court on August 10, 1990 alleging the unconstitutionality of the referendum. Aside the original claim that the petition measure violated the appropriation clause, the lawsuit alleged the petition violated a state law and a constitutional provision that establish the Legislature’s duty to provide the “necessary revenue” for state and local governments.⁴⁸¹ The lawsuit also alleged the petition unlawfully interfered with the Legislature’s obligation to provide for free instruction in schools. Lastly, the suit alleged that a “significant portion” of the signatures were “procured unlawfully and should be deemed invalid.”⁴⁸²

Lancaster District Judge Jeffre Chevront promised an early ruling, and that he did, but not in favor of the pro-LB 1059 camp. On September 17, 1990, Judge Chevront held that the petition drive was not unconstitutional and that the issue should be allowed to appear on the ballot. The pro-1059 camp appealed the decision to the Nebraska Supreme Court, but was again disappointed. The high court essentially said it would review the constitutionality of the petition if the voters approved the referendum on

⁴⁸⁰ “Repeal Petition Gets Spire Nod,” *Omaha World-Herald*, 21 July 1990, 30.

⁴⁸¹ Henry J. Cordes, “Law Supporters File Suit Against Repeal Effort,” *Omaha World-Herald*, 11 August 1990, 1.

⁴⁸² *Id.*

November 6, 1990.⁴⁸³ If the voters retained LB 1059 and LB 1059A, then the lawsuit would be a moot issue.

With all legal challenges set aside, the only issue remaining was the will of the people. And there was plenty of assistance available from both sides of the issue to help influence the voters. Some within the business community urged voters to repeal LB 1059 on the basis that it would raise income and sales tax rates with no guarantee that it would provide property tax relief. Some within the farming community believed LB 1059 was the best opportunity yet for legitimate property tax relief. The education community generally supported LB 1059 because it would bring about equity of educational opportunities and bring about needed funding for public education. Both sides accused the other of misrepresenting the truth about the legislation and both sides had ample statistical evidence to back up their own side of the story.

On November 6, 1990 the voters made their choice in favor of LB 1059, in favor of the Legislature, and in favor of public education. Over 56% of the voters voting on the referendum supported retention of the school finance law and of raising their taxes to support K-12 education. Many of the rural counties supported the measure by 2-1 or 3-1 margins. Voters upheld the school finance legislation in 76 of the 93 Nebraska counties. Douglas County proved to be the true bastion of opposition to LB 1059. Voters in Omaha and surrounding areas voted 53% against retention while 47% were in favor. Lancaster County voters approved retention by 54% while 46% were in opposition. Twenty counties retained the law by a margin of 66% or more.⁴⁸⁴

Table 25. Election Results:
Referendum 406 (1990)

County	For	%	Against	%	County	For	%	Against	%
Adams.....	5,663	56.64%	4,335	43.36%	Jefferson.....	2,387	59.48%	1,626	40.52%
Antelope.....	1,919	60.10%	1,274	39.90%	Johnson.....	1,273	61.83%	786	38.17%
Arthur.....	81	44.26%	102	55.74%	Kearney.....	1,217	43.45%	1,584	56.55%
Banner.....	122	27.92%	315	72.08%	Keith.....	1,946	61.56%	1,215	38.44%

⁴⁸³ Henry J. Cordes, "High Court Lets School Issue Stay on Ballot," *Omaha World-Herald*, 1 October 1990, 1.

⁴⁸⁴ Secretary of State Allen J. Beermann, comp., *Official Report of the State Board of State Canvassers of the State of Nebraska, General Election, November 6, 1990* (Lincoln, Nebr.: Office of Sec'y of State).

Table 25—Continued

County	For	%	Against	%	County	For	%	Against	%
Blaine.....	202	49.15%	209	50.85%	Keya Paha.....	255	48.11%	275	51.89%
Boone.....	1,514	57.70%	1,110	42.30%	Kimball.....	963	62.70%	573	37.30%
Box Butte.....	3,043	62.76%	1,806	37.24%	Knox.....	2,457	68.44%	1,133	31.56%
Boyd.....	882	58.14%	635	41.86%	Lancaster.....	41,961	54.23%	35,422	45.77%
Brown.....	892	57.40%	662	42.60%	Lincoln.....	8,698	71.20%	3,519	28.80%
Buffalo.....	9,521	72.13%	3,678	27.87%	Logan.....	237	53.50%	206	46.50%
Burt.....	2,314	68.73%	1,053	31.27%	Loup.....	186	62.00%	114	38.00%
Butler.....	1,600	49.61%	1,625	50.39%	Madison.....	4,974	52.21%	4,553	47.79%
Cass.....	4,062	57.10%	3,052	42.90%	McPherson.....	110	42.31%	150	57.69%
Cedar.....	2,420	63.23%	1,407	36.77%	Merrick.....	1,722	61.02%	1,100	38.98%
Chase.....	1,144	62.51%	686	37.49%	Morrill.....	1,300	58.80%	911	41.20%
Cherry.....	1,347	57.74%	986	42.26%	Nance.....	922	60.38%	605	39.62%
Cheyenne.....	1,600	47.63%	1,759	52.37%	Nemaha.....	2,392	65.25%	1,274	34.75%
Clay.....	1,829	56.78%	1,392	43.22%	Nuckolls.....	1,611	62.68%	959	37.32%
Colfax.....	1,826	52.93%	1,624	47.07%	Otoe.....	3,556	62.24%	2,157	37.76%
Cuming.....	1,883	51.49%	1,774	48.51%	Pawnee.....	980	59.11%	678	40.89%
Custer.....	2,515	60.46%	1,645	39.54%	Perkins.....	881	63.89%	498	36.11%
Dakota.....	3,185	72.44%	1,212	27.56%	Phelps.....	2,161	55.74%	1,716	44.26%
Dawes.....	2,560	74.94%	856	25.06%	Pierce.....	1,787	61.49%	1,119	38.51%
Dawson.....	4,743	69.88%	2,044	30.12%	Platte.....	4,786	46.17%	5,579	53.83%
Deuel.....	520	56.89%	394	43.11%	Polk.....	1,555	61.66%	967	38.34%
Dixon.....	1,931	74.90%	647	25.10%	Red Willow.....	2,888	64.52%	1,588	35.48%
Dodge.....	7,412	58.45%	5,268	41.55%	Richardson.....	2,263	54.89%	1,860	45.11%
Douglas.....	66,899	46.95%	75,584	53.05%	Rock.....	422	52.95%	375	47.05%
Dundy.....	530	48.45%	564	51.55%	Salina.....	2,742	59.62%	1,857	40.38%
Fillmore.....	1,672	55.22%	1,356	44.78%	Sarpy.....	13,586	51.70%	12,690	48.30%
Franklin.....	868	48.79%	911	51.21%	Saunders.....	4,276	59.27%	2,938	40.73%
Frontier.....	895	67.80%	425	32.20%	Scotts Bluff.....	8,086	71.12%	3,284	28.88%
Furnas.....	1,606	68.11%	752	31.89%	Seward.....	3,361	60.88%	2,160	39.12%
Gage.....	5,298	64.87%	2,869	35.13%	Sheridan.....	1,843	72.05%	715	27.95%
Garden.....	785	62.01%	481	37.99%	Sherman.....	1,043	66.77%	519	33.23%
Garfield.....	613	72.54%	232	27.46%	Sioux.....	362	54.85%	298	45.15%
Gosper.....	523	61.03%	334	38.97%	Stanton.....	1,419	67.77%	675	32.23%
Grant.....	208	58.92%	145	41.08%	Thayer.....	1,988	66.16%	1,017	33.84%
Greeley.....	723	68.34%	335	31.66%	Thomas.....	174	45.31%	210	54.69%
Hall.....	9,498	62.48%	5,703	37.52%	Thurston.....	1,246	66.28%	634	33.72%
Hamilton.....	2,164	57.43%	1,604	42.57%	Valley.....	1,303	64.22%	726	35.78%
Harlan.....	1,121	54.31%	943	45.69%	Washington.....	3,833	62.09%	2,340	37.91%
Hayes.....	236	45.21%	286	54.79%	Wayne.....	2,292	69.96%	984	30.04%
Hitchcock.....	960	67.65%	459	32.35%	Webster.....	1,114	57.22%	833	42.78%
Holt.....	2,865	62.12%	1,747	37.88%	Wheeler.....	175	43.32%	229	56.68%
Hooker.....	212	52.09%	195	47.91%	York.....	2,508	46.72%	2,860	53.28%
Howard.....	1,568	67.50%	755	32.50%	TOTAL.....	313,215	56.14%	244,741	43.86%

Source: Secretary of State Allen J. Beermann, comp., *Official Report of the State Board of State Canvassers of the State of Nebraska, General Election, November 6, 1990* (Lincoln, Nebr.: Office of Sec'y of State).

For pro-education interests, one of the best summations of the General Election results came from an outsider. “There would appear to be no big taxpayer revolt as some

people had expected,” said Chris Pipho, Director of State Relations for the Education Commission of the States (ECS) based in Denver, Colorado.⁴⁸⁵ Pipho added:

LB 1059 has special significance. Nebraska made some of the largest changes this year in school-finance formulas. It rolled back property taxes and moved significantly to state funding of education. ... People like Withem took a bold step. I never thought you’d get it through the Legislature. But he put his head in the guillotine and made it.⁴⁸⁶

Senator Withem pulled off, with the help of some friends, what no one else had been able to accomplish. Nebraska voters had repealed previous school finance laws passed by the Legislature in 1974, 1978 and 1985.⁴⁸⁷ Withem also won another endorsement in the form of re-election to the Legislature from the 14th Legislative District.

Table 26. Results of Other Ballot Issues:
1990 General Election

<i>Measure</i>	<i>For</i>	<i>%</i>	<i>Against</i>	<i>%</i>
Initiative 404: Permit video lottery system with proceeds to veterans and property tax relief	202,814	35.30%	371,711 *****	64.70%
Initiative 405: Implement 2% lid on state and local governments	178,749	30.84%	400,872 *****	69.16%
Amendment 1: Authorize the Legislature to provide that agricultural land constitutes a separate/distinct class of property for purposes of taxation	317,534 *****	61.27%	200,744	38.73%
Amendment 2: Provide a right of direct appeal to the Supreme Court in capital cases	337,667 *****	67.02%	166,185	32.98%
Amendment 3: Empower the Legislature to allow municipalities to use local revenue for economic development with voter approval	302,981 *****	59.98%	202,155	40.02%
Amendment 4: Establish the Coordinating Commission for Post-secondary Education	268,037 *****	56.00%	210,599	44.00%

Source: Secretary of State Allen J. Beermann, comp., *Official Report of the State Board of State Canvassers of the State of Nebraska, General Election, November 6, 1990* (Lincoln, Nebr.: Office of Sec’y of State).

⁴⁸⁵ James Allen Flanery, “Taxpayer Revolt Fizzles as Lid, School Aid Repeal Are Dashed,” *Omaha World-Herald*, 7 November 1990, 1.

⁴⁸⁶ Id.

⁴⁸⁷ NEB. BLUE BOOK, *Vote on Initiated and Referred Measures, 1914-2002*, 270.

E. Review

In the history of the Nebraska Legislature, there are very few bill numbers that have the fame or infamy of Legislative Bill 1059. There were bills under the same number designation before 1990 and since, but anyone remotely interested in politics and education in the 1990s, and even today, would conjure the same legislative topic upon hearing the number “1059.”

LB 1059 (1990) was the embodiment of the final report from the School Financing Review Commission, which was established two years earlier. LB 1059 arguably represents one of the most remarkable feats of political achievement in the modern era of Nebraska history. The bill would be passed by the Legislature during a 60-day (short) session, perhaps the most unlikely scenario for a measure proposing wide-sweeping education and revenue reform. The bill would accomplish a major shift in the source of funding for Nebraska’s public schools with the promise of property tax relief in exchange for income and sales tax increases. Finally, LB 1059 would not only survive a gubernatorial veto, but also a popular referendum seeking its repeal. In the final analysis, the people would have the final say on this legislative proposal.

LB 1059 created the Tax Equity and Educational Opportunities Support Act. The measure provided legislative intent to create a finance system that (i) provides state support for 45% of aggregate general fund operating expenditures of districts, (ii) reduces reliance on property tax for support of schools, and (iii) assures greater equity of educational opportunities for students and also property tax rates for support of schools.

LB 1059 dedicated 20% of all income tax receipts collected by the state net of credits and refunds and directed the return of 20% of identifiable individual income tax receipts to the school district where such originated. The measure required the Department of Education to place all school districts in average daily membership tiers of comparable size in order to calculate each school district’s tiered per student costs for use in the equalization formula. The legislation provided for a hold harmless provision such that a district would not receive state aid for the first three years of implementation that is less than 100% of aid received in 1989-90.

LB 1059 created a minimum levy provision so that no district would receive state aid in an amount that would result in the district having a general fund tax levy of less than 60% of the local effort rate. The legislation proposed the use of adjusted valuation for purposes of calculating state aid, although this provision would take a few years for final implementation. The measure limited growth in school district budgets based on allowable growth rates to be set annually by the Legislature. The basic allowable growth rate was set at 4% and the allowable growth range was set at 4% to 6.5%. Specific exceptions to the lid were provided for (1) new or expanded programs or services mandated by changes in state or federal law, (2) a districts' project enrollment increases for the ensuing school year, (3) construction, expansion, or alterations of school buildings, and (4) additional special education students who enroll in the district.

LB 1059 created a school finance review committee to monitor implementation of the new finance plan and suggest needed revisions. The committee would review the implementation and operation of the average daily membership tiers, budget growth limitations, the need for a continuing hold-harmless provision for state aid, and expenditures of districts.

The 1990 Session would also mark the year for resolution of the long-standing issue of Class I district affiliation and the common levy. In 1990, there were 278 K-12 school districts in Nebraska. There were also more than 600 Class I school districts. Within about two-thirds of the Class I districts, property was taxed to support the elementary school and a nonresident tuition fee was assessed to cover the cost of educating Class I students in neighboring high schools. The other one-third of Class I schools were part of Class VI (high school only) districts. Class I schools had been alleged as being tax havens for patrons residing in such districts due to the often lower tax levy than that found in high school districts.

LB 259 (1990), the affiliation bill dovetailed nicely with the intent and provisions of LB 1059 to implement a new school finance system and to address tax equity, both for the good of public education and for taxpayers. Under the provisions of LB 259 all real property and all elementary and high school students shall be in school systems that offer

education in grades K-12 by July 1, 1992. A Class I district could either merge, become part of a Class VI district, or affiliate with one or more Class II, III, IV, V, or VI districts. Bonded indebtedness incurred for high school facilities prior to the adoption of any affiliation plan would remain the obligation of the high school district unless otherwise specified in the petitions. The measure provided that, on July 1, 1994, the budget of operational expenses of each high school district and Class I district in an affiliated school system must be certified to the county superintendent and county assessor for computation of an affiliated school system (combined) tax levy.

Following the 1990 Session, small school advocates and Class I supporters formed a petition movement called Operation Fight Back. The movement chose to utilize the initiative petition process to outright repeal LB 1059, the new school finance formula, although it did not repeal LB 1059A, the accompanying appropriation bill. The petition also proposed to repeal LB 259 (1990), the affiliation and common levy bill, and also LB 940 (1988), which created intent language to form K-12 school systems and established a sunset provision for use of nonresident tuition fees. The petition also proposed to repeal the bulk of LB 611 (1989), which among other provisions would cause the automatic termination of the School Foundation and Equalization Act, the old school finance formula. However, on July 6, 1990, the petition movement admitted that it had not secure enough signatures to place the initiative on the General Election ballot.

The Nebraskans Against Higher Taxes, a coalition of business interests, did obtain sufficient signatures to place a referendum to repeal LB 1059 and LB 1059A on the 1990 General Election ballot. On November 6, 1990 the voters made their choice in favor of LB 1059, in favor of the Legislature, and in favor of public education. Over 56% of the voters voting on the referendum supported retention of the school finance law and of raising their taxes to support K-12 education. Many of the rural counties supported the measure by 2-1 or 3-1 margins. Voters upheld the school finance legislation in 76 of the 93 Nebraska counties.