

Modifications to TEEOSA, 1991-1994

A. Introduction

Those who supported LB 1059 had won tremendous victories in 1990 with a successful veto override and final confirmation from the people of Nebraska. But now it was time to prove the system worked the way they sold it. However, anyone familiar with school finance knows it takes patience and careful monitoring to make a state policy function as intended. No school finance policy is perfect. Adjustments become necessary on an annual basis, some minor and some major. A state policy is only as good as those who create it, administer it, and most importantly, care for it.

Between 1991 and 1994, the Legislature grappled with many of the details of school finance that tend to lull policymakers to sleep. This was a period of fine-tuning for the TEEOSA, but there were also some major issues sprinkled in the mix. Among the major topics was the final piece to the common levy issue and the implementation of adjusted valuation under the school finance formula. In addition, the formula had to evolve to a certain degree with the ongoing and tedious constitutional problems with Nebraska's personal property tax system. In fact, the personal property tax issue would dominate much of the Legislature's time in the early 1990s. Lawmakers found themselves reacting to several key court cases on this subject.

On the whole, the first three years of the TEEOSA's existence was what most would expect, a growing experience. The intricacy of the school finance issues explored and addressed in the early 1990s lends itself to the adage, "The Devil is in the Details."

B. The 1991 Legislative Session

LB 511 (1991) - Technical, Substantive Changes

Legislative Bill 511 (1991) was the first comprehensive technical cleanup bill after the passage of LB 1059 (1990) a year earlier. The legislation had an interesting history due largely to its original purpose. LB 511 was originally introduced, by Senator

Howard Lamb of Anselmo, as a bill to provide for the designation of protected streams.⁴⁸⁸ The bill became known as the scenic river bill because it allowed a county government to set aside certain portions of a river corridor for purposes of preservation and protection. Senator Lamb designated the bill as his 1991 priority bill and it moved steadily through the legislative process until it reached Select File.⁴⁸⁹ It was then that Senator Ron Withem and Senator Lamb agreed to an unusual legislative maneuver to switch the contents of two entirely separate bills in order to achieve final passage of some important education-related changes in law.

The other bill at issue was LB 719, introduced by Senator Withem, which served as a technical cleanup bill for LB 259 (1990), the affiliation bill that was passed the previous year.⁴⁹⁰ The legislation contained some rather time sensitive changes, particularly concerning the affiliation process, and it was imperative this legislation pass in the 1991 Session. LB 719 was designated as a Speaker priority bill, which did not give the bill sufficient status over senator and committee priority bills, and the 1991 Session was quickly coming to an end.⁴⁹¹

Accordingly, Withem and Lamb agreed to seek a suspension of the rules to permit the introduction and adoption of a non-germane amendment to LB 511, essentially containing the contents of LB 719. Senator Lamb would then seek an amendment to place the scenic river provisions into the “guttled” LB 719 and hope for final passage of the bill in 1992, since time would not permit both bills to pass in 1991. The proposed motion, which was debated on June 3, 1991, left some in the body slightly confused, and a few outright opposed to the idea based on the precedent it would set for future sessions. Senator Moore, for instance, thought the “cleaner” way to achieve the objective was to

⁴⁸⁸ Senator Howard Lamb, *Introducer's Statement of Intent, LB 511 (1991)*, Nebraska Legislature, 92nd Leg., 1st Sess., 7 February 1991, 1.

⁴⁸⁹ NEB. LEGIS. JOURNAL, 13 March 1991, 1049.

⁴⁹⁰ Legislative Bill 719, *Change provisions relating to education*, sponsored by Sen. Ron Withem, Nebraska Legislature, 92nd Leg., 1st Sess., 1991, title first read 23 January 1991, §§ 1-3, pp. 1-5.

⁴⁹¹ NEB. LEGIS. JOURNAL, 19 March 1991, 1150.

overrule the Speaker's agenda and move LB 719 to the front of the agenda.⁴⁹² The Withem motion would require 30 affirmative votes and 30 votes would be the exact number it received.⁴⁹³ The adoption of the motion permitted Withem to introduce his amendment to merge the contents of LB 719 into LB 511.

The passage of the motion also permitted other lawmakers to use LB 511 as a vehicle for education-related amendments. And several did just that, making a complicated situation that much more complicated. Senator Withem warned that he did not want to create an opportunity for a "Christmas tree" bill by his motion and subsequent amendment, but this did happen to some degree.⁴⁹⁴ For instance, Senator Bob Wickersham introduced an amendment to reverse a previous vote of the Legislature on LB 719 relevant to limitations on the number of school administrators in certain districts with a student population of under 200.⁴⁹⁵ The Wickersham amendment was adopted on a 25-2 vote.⁴⁹⁶ Senators Ed Schrock and Chris Beutler also filed amendments to LB 511 and both amendments were adopted.⁴⁹⁷

The body did not rehash or otherwise address any other portion of the Withem amendment, which contained LB 719, and the amendment was adopted as amended on a 25-1 vote.⁴⁹⁸ As amended, LB 511 did contain some important modifications to both the affiliation process and the new school finance formula. In fact, all but six of the 24 sections that comprised the school finance formula were modified by LB 511, which ultimately passed on June 5, 1991, the last day of the session, by a 47-0 vote.⁴⁹⁹

⁴⁹² Legislative Records Historian, *Floor Transcripts, LB 511 (1991)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 92nd Leg., 1st Sess., 3 June 1991, 7045.

⁴⁹³ NEB. LEGIS. JOURNAL, 3 June 1991, 2799. The vote was 30-3 on the motion to suspend the rules.

⁴⁹⁴ *Floor Transcripts, LB 511 (1991)*, 3 June 1991, 7047.

⁴⁹⁵ NEB. LEGIS. JOURNAL, *Wickersham AM2283*, 3 June 1991, 2799.

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.*, *Schrock AM2287 and Beutler AM2292*, 2800-02.

⁴⁹⁸ *Id.*, 2802.

⁴⁹⁹ *Id.*, 5 June 1991, 2892.

Governor Nelson signed the bill into law on June 10th and, since the bill contained the E-clause, it became operative on June 11, 1991.⁵⁰⁰

LB 511, as passed, consisted of 97 sections within 77 pages, a fairly substantial piece of legislation.⁵⁰¹ The bill contained both technical and substantive changes to a wide array of education-related, and some non-education-related statutes. The major change with regard to affiliation concerned the extension of the deadline for Class I districts to affiliate from February 1, 1992 to February 1, 1993.⁵⁰² This change was meant to give Class I districts more time to complete the affiliation process set out in LB 259 (1990). This provision was, in fact, the principal reason for Senator Lamb's interest in using his priority bill as a vehicle for LB 719 in the first place. Senator Lamb was a long-time supporter and defender of Class I districts and had fought against the affiliation issue in past sessions.

LB 511 also changed the method of financing for the enrollment option program. Beginning in the 1992-93 school year, the program would be funded through the state aid formula, as opposed to a separate fund and distribution system.⁵⁰³ The payment amounts to school districts would be phased-in during the 1992-93 and 1993-94 school years. In the 1994-95 school year, districts would receive tiered cost per student for option students served in the 1992-93 school year since state aid was calculated based on data two years in arrears. LB 511 marked the first direct connection between option students and the new formula, although the original formula did include option payments as other actual receipts. Option payments to districts would continue to be an issue as the formula evolved in later years.

LB 511 changed the definition of "average daily membership" in the definitions section of TEEOSA to provide that part-time students who are enrolled in a public school

⁵⁰⁰ Id., 11 June 1991, 2947.

⁵⁰¹ Legislative Bill 511, in *Laws of Nebraska, Ninety-Second Legislature, First Session, 1991*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State).

⁵⁰² Id., § 24, p. 17.

⁵⁰³ Id., § 73, p. 63.

instructional program on less than a full-time basis would be counted on a proportionate basis for purposes of distributing state aid.⁵⁰⁴ This would include, for instance, home school or private school students who attend a public school for certain instructional programs. Counting these students was actually easier said than done since it would become necessary for the Department of Education to collect data on the number of students affected by the legislation and use the information to compute state aid payments beginning in school year 1991-92. As a result of this change, a school district may experience an increase or decrease in state aid depending upon whether the district could count additional students for purposes of state aid and if the district was eligible to receive equalization aid. The new calculation of average daily membership would commence for the 1993-94 school year.

Table 27. Summary of Modifications to TEEOSA
as per LB 511 (1991)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
71	79-3803	Terms, defined	Changes definition of “average daily membership” to include the proportionate share of students enrolled in a public school instructional program on less than a full-time basis. Adds definitions for “allocated income tax funds” and “equalization aid.”
72	79-3804	Income tax receipts; use and allocation for public school system	Change the date by which the Tax Commissioner will certify to NDE the income tax liability of resident individuals for each district from January 1 st to November 15 th of each year. Eliminate the requirement for NDE to notify each district of the amount of individual income tax funds it will receive within 15 working days following the adjournment sine die of each regular session of the Legislature.
73	79-3806	Equalization aid; amount	Eliminate the requirement for NDE to annually compute state aid entitlements and notify districts of entitlements within 15 days following the adjournment of each regular legislative session. Changes the minimum levy provision to also take into consideration the amounts of nonresident high school tuition certified by NDE for the current school year and for the school year in which state aid was to be paid. Creates a process to calculate equalization aid for affiliated school systems (between the Class I district(s) and the high school district) beginning in school year 1992-93.

⁵⁰⁴ Id., § 71(3), p. 58.

Table 27—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
73	79-3806	Equalization aid; amount <i>Continued</i>	Changes the method of financing for the enrollment option program. Beginning in the 1992-93 school year, the program would be funded through the state aid formula, as opposed to a separate fund and distribution system. The payment amounts to districts would be phased in during the 1992-93 and 1993-94 school years. In the 1994-95 school year, districts would receive tiered cost per student for option students served in the 1992-93 school year since state aid was calculated based on data two years in arrears.
74	79-3807	Total formula need; computation	Beginning in school year 1993-94, total formula need for each county's nonresident high school tuition fund would equal the total nonresident high school tuition charge for the count for each school year as certified by NDE.
75	79-3808	District formula resources; local effort rate; determination	Establishes process to determine the local effort rate yield for school districts and the nonresident high school tuition fund of each county.
76	79-3809	Adjusted valuation; adjustment factors established	Clarifies that the Department of Revenue must compute and certify to NDE the adjusted valuation, by county, of each district for the second preceding tax year by March 1st of each year.
77	79-3810	District formula resources; income tax funds allocation	Editorial modification – no substantive change.
78	79-3811	District formula resources; other receipts included	Amends the “other receipts” section related to nonresident high school tuition receipts. The change states that other receipts will include the district's total nonresident high school tuition charge for each school year as certified by NDE, except for school years 1991-92 through 1994-95. Adds a new accountable receipt subdivision for amounts provided by the state on behalf of the district as reimbursement for repayment of personal property taxes by centrally assessed pipeline companies. Clarifies that impact aid entitlements would be counted for the school fiscal year in which it was actually received by the district. Eliminates Johnson O'Malley receipts from the list of accountable receipts.
79	79-3813	Distribution of income tax receipts and state aid; effect on budget	Requires NDE to certify income tax receipt amounts not only to the Director of Administrative Services, but also to the Auditor of Public Accounts, and each district.

Table 27—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
80	79-3815	Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect	States that the Commissioner of Education may require each district to submit to it a duplicate copy of each district's budget statement as the directs. Provides a penalty to any district that fails to submit to NDE or the auditor the required budget documents by the date established in §13-508 or fails to make any corrections of errors in the documents. Failure to comply may result in the withholding of state aid.
81	79-3816	Basic allowable growth rate; allowable growth range	Changes the growth rate for special education costs to specify that such rate may not be computed as being less than the district's allowable growth rate for general fund expenditures nor more than two times the statewide average growth in actual expenditures for special education for the same two-year period.
82	79-3817	Applicable allowable growth percentage; determination	Requires NDE to determine and certify to each district an applicable allowable <i>growth</i> percentage on or before July 1 st of each year rather than requiring NDE to do so within 15 days of adjournment of each regular legislative session.
83	79-3818	Budget; restrictions	Requires NDE to determine and certify to each district an applicable allowable <i>reserve</i> percentage on or before July 1 st of each year rather than requiring NDE to do so within 15 days of adjournment of each regular legislative session.
84	79-3819	Applicable allowable growth rate; district may exceed; situations enumerated	Provides clarification and harmonization consistent with other changes made by LB 511.
85	79-3820	Applicable allowable growth percentage; district may exceed; vote required	Provides clarification and harmonization consistent with other changes made by LB 511.
86	79-3822	Department; provide data to Governor; Governor; duties	Specifies that NDE must, by December 1 st of each year, provide data to the Governor to enable him or her to prepare the necessary legislation to appropriate an amount for state aid and establish a basic allowable growth rate and an allowable growth range for the ensuing school year.
87	79-3823	School Finance Review Committee; created; members; duties	Requires the committee to make its annual report to the Governor, Legislature, and State Board of Education by March 1 st each year.

Table 27—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
88	79-3824	State aid; payments; reports; use; requirements; failure to submit reports; effect; early payments	Requires districts to submit to NDE the required annual financial reports by November 1 st of each year. Failure to do so may result in the withholding of state aid to the district.

Source: Legislative Bill 511, in *Laws of Nebraska, Ninety-Second Legislature, First Session, 1991*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), §§ 71-88, pp. 57-76.

LB 829 (1991) - Personal Property Taxes

Legislative Bill 829 (1991) also had an interesting legislative history. The measure was the subject of two separate public hearings in the same session and would become one of the major pieces of legislation addressed in 1991. It would also serve as the first salvo fired by the Legislature in response to a Nebraska Supreme Court opinion relevant to personal property taxes and taxable property. LB 829 would serve as the Legislature's attempt to respond to the court's opinion but the response would only lead to a succession of other bills in future sessions.

The original purpose of LB 829, introduced by Senator Eric Will, was to eliminate several exemptions from personal property tax, including agricultural machinery and equipment, business inventory, feed, fertilizer, farm inventory, grain, seed, livestock and other farm animals, and railroad rolling stock.⁵⁰⁵ The bill would retain its original purpose, but ultimately expand to all personal property except for motor vehicles. LB 829 did not mark the beginning of a personal property tax crisis, nor did it mark the end. LB 829 was considered a temporary stopgap to a very large and complicated series of legal battles concerning personal property taxes in the State of Nebraska.

On March 1, 1991, a few days before the first public hearing for LB 829, the Nebraska Supreme Court issued a decision in *Natural Gas Pipeline Co. of America v.*

⁵⁰⁵ Senator Eric Will, *Introducer's Statement of Intent, LB 829 (1991)*, Nebraska Legislature, 92nd Leg., 1st Sess., 6 March 1991, 1.

State Board of Equalization.⁵⁰⁶ The court held that previous legislative attempts to resolve the personal property tax issue (legislation passed in the 1989 special session) were unconstitutional.⁵⁰⁷ The decision left many confused about what move the Legislature should take next, and also whether the next move would be struck down as unconstitutional. With typical humor, Senator Scott Moore predicted the “mother of all tax battles” for the 1991 Session.⁵⁰⁸

The first hearing for LB 829 was held on March 6, 1991 followed by an unusual second public hearing on March 20th. The second hearing had a decidedly more anxious tone and atmosphere due to the court ruling. The Revenue Committee, having jurisdiction over the legislation, wanted more time and input from the public and from knowledgeable tax and legal experts. During the second hearing, Tax Commissioner Berri Balka said “the safest and most reasoned approach is to put the business income-producing property back on the tax rolls.”⁵⁰⁹ Balka was referring to farm machinery, farm inventory and business inventory that currently had exemptions from personal property taxation. By repealing existing exemptions, it was believed, the state would avoid any further court entanglements until some other solution could be found. Balka said he would recommend such action to Governor Ben Nelson.

But Nelson had other concerns, principally to protect homeowners and wage earners who he believed would be most impacted by repealing personal property tax exemptions. Repealing existing exemptions would be his choice of last resort.⁵¹⁰ As it turned out, there was another choice available to the Legislature and to the

⁵⁰⁶ *Natural Gas Pipeline Co. of America v. State Bd. of Equalization*, 237 Neb. 357, 466 N.W.2d 461 (1991).

⁵⁰⁷ *Id.*

⁵⁰⁸ Henry J. Cordes, Jason Gertzen, “Senators Expect ‘Mother of All Tax Battles,’” *Omaha World-Herald*, 1 March 1991, 1.

⁵⁰⁹ Committee on Revenue, *Hearing Transcripts, LB 829 (1991)*, Nebraska Legislature, 92nd Leg., 1st Sess., 1991, 20 March 1991, 9.

⁵¹⁰ “Personal Tax On Property Called Likely Nelson Would Prefer ‘Any Other Solution,’” *Omaha World-Herald*, 22 March 1991, 1.

administration, but it would be costly. And it would ultimately be the chosen course of action.

Through lengthy debate and review of various options, the Legislature chose to use LB 829 to exempt all personal property with the exception of motor vehicles for the 1991 tax year only. This amounted to a complete reversal of the recommendation forwarded by the Tax Commissioner, but it became a much more politically palatable, short-term solution for the politicians. One of the consequences of such a mass exemption, of course, was the loss of revenue to local governments that count upon all property tax receipts. School districts would certainly be among the losers. It was decided, therefore, that the Legislature would “reimburse” local governments by a variety of revenue generating measures designed to offset the lost revenue.⁵¹¹

It was estimated that the total loss of revenue to local governments by the one-time, one-year personal property tax exemption would be \$97 million.⁵¹² To provide reimbursement to these political subdivisions, the Legislature agreed upon temporary revenue measures, including a 2% tax on depreciation expenses claimed on federal income tax returns by businesses and individuals, a corporate income tax surcharge, increases in all occupation tax rates, and the institution of sales tax on electrical and fuel purchases by manufacturers, electrical producers and hospitals.⁵¹³ The additional revenue would nearly match the amount of projected lost revenue to local governments. It was estimated that all the revenue schemes combined would produce \$93.2 million, which was still shy of the projected loss of local revenue.⁵¹⁴

Reimbursement of funds to local governments for lost property tax revenue had the potential for another problem, at least as perceived by certain politicians. Governor Nelson argued that local governments, including school districts, might accept the

⁵¹¹ George Kilpatrick, “Personal Property Tax Post Mortem: What Lies Ahead For Nebraska?” *Creighton Law Review*, Vol. 27, No. 1, December 1993, 39.

⁵¹² *Id.*

⁵¹³ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 829 (1991)*, prepared by Eric Byrd, 92nd Leg., 1st Sess., 4 June 1991, 1.

⁵¹⁴ Kilpatrick, 39.

reimbursement funds and at the same time increase their property tax levies.⁵¹⁵ The result would be a windfall profit to local governments, or at least the potential for such a windfall profit. In any event, the Governor would take no chances and proposed a zero percent lid for all political subdivisions for 1991-92 only. Such a move would “take away many of the worries about taxes,” Nelson said.⁵¹⁶

In truth, the Governor’s lid proposal actually imposed a two-part process for any political subdivision, including school districts, to increase its resources/expenditures from the previous year. The first vote would permit a local governing body to *consider* a second vote to exceed the zero percent lid. The first vote would require a three-fourths, super-majority vote of the governing body. If the first vote passed, the governing body may then consider a separate motion to increase its growth rate from the previous year. The zero percent lid applied to 1991-92 only.

The problem encountered with a zero percent freeze, as some legislators eventually realized and others knew immediately, was that school districts had to be treated differently from other political subdivisions. For all political subdivisions other than school districts, the “lid” imposed by LB 1059 (1990) applied to property tax revenue, but was meant to also limit spending. For school districts, under the new state aid formula, the lid applied to expenditures, but was also meant to limit property tax rate increases. This meant that even if a district could collect “X” amount of property tax revenue, it could only spend an amount equal to the previous year’s level of expenditures plus a specified growth rate, which was individualized to each district (not accounting for lid exclusions and/or spending authority approved by the local school board or voters within the district).

Notwithstanding the overall debate on what to do about the personal property tax crisis, the temporary zero percent lid proposed by the Governor was politically acceptable to just about every lawmaker during the debate on LB 829. Even Senators Withem and

⁵¹⁵ Henry J. Cordes, “Nelson’s New Tax Plan Includes Lid on Local Budget Increases,” *Omaha World-Herald*, 24 April 1991, 1.

⁵¹⁶ *Id.*

Moore, the champions of LB 1059 (1990), accepted the proposal as part of the short-term solution to the personal property tax crisis. Said Withem:

Normally, I don't like lids but I think in these cases where the state government infuses large sums of money back to subdivisions there needs to be some sort of a mechanism to assure us that that money will be used for the purpose of replacement of property tax dollars and not for instituting new programs.⁵¹⁷

Accordingly, Withem and Moore took it upon themselves to co-introduce an amendment during Select File debate in order to clarify the intent concerning the zero percent lid.

Under the Withem-Moore amendment a similar two-part process would continue to apply to school districts, except that the school lid provision would apply to expenditures rather than resources.⁵¹⁸ The first vote would permit a local school board to consider a vote to increase its budget of expenditures from the previous year. The first vote would require a three-fourths, super-majority vote of the board. If the first vote passed, the board may then consider a separate motion to increase its spending from the previous year. The amendment was adopted by a 26-2 vote.⁵¹⁹

In all, LB 829 amended TEEOSA in only two areas. The first, as discussed above, was the inclusion of a zero percent lid for the 1991-92 school year in order to ensure fiscal responsibility in relation to the reimbursement of funds due to the one-year exemption of personal property. The second area of change to TEEOSA under LB 829 really had nothing to do with the personal property tax crisis. Instead, the change had to do with one of the original goals of LB 1059 (1990) concerning the implementation of an adjustment factor for each class of property within each school district.

LB 1059 required the Department of Revenue to annually certify to the Department of Education the adjusted valuation of each district for the second preceding tax year by application of an adjustment factor for each class of property in each district so that the valuation of property for each district, for purposes of determining state aid,

⁵¹⁷ Legislative Records Historian, *Floor Transcripts, LB 829 (1991)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 92nd Leg., 1st Sess., 29 May 1991, 6426.

⁵¹⁸ NEB. LEGIS. JOURNAL, *Moore-Withem AM2115*, 29 May 1991, 2607-08.

⁵¹⁹ NEB. LEGIS. JOURNAL, 29 May 1991, 2608.

would closely reflect actual value.⁵²⁰ The purpose of the adjustment, as Withem explained, was to “provide an adjustment in locally certified valuations of property so that they would be equalized to a point where no county would be rewarded for unfairly undervaluing the property in their district.”⁵²¹ Essentially, the provision would create a statewide equalization system for purposes of determining state aid. The concept, Withem explained, would require more time and more review before implementation. Accordingly, Withem offered an amendment to delay the implementation date of the adjustment factor to 1994. The Withem amendment was adopted by a 25-0 vote.⁵²²

Table 28. Summary of Modifications to TEEOSA
as per LB 829 (1991)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
32	79-3809	Adjusted valuation; adjustment factors established.	Delays statewide equalization of valuation for purposes of determining state aid to schools until 1994.
33	79-3814	General fund budget of expenditures; limitations; Legislature; duties.	Requires initial 3/4s vote by school board to exceed the zero percent temporary lid in order to access normal spending limitations and procedures to exceed.

Source: Legislative Bill 829, in *Laws of Nebraska, Ninety-Second Legislature, First Session, 1991*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), §§ 32-33, pp. 41-42.

LB 849 (1991) - The Nebraska Lottery Act

LB 849 (1991), the “lottery bill,” was introduced at the request of Governor Ben Nelson.⁵²³ Sponsored by Senators Dennis Baack, Eric Will, and Ron Withem, LB 849 would become one, if not *the*, major highlight of the 1991 Session and would consume a large portion of the Legislature’s time and effort. LB 849 was prioritized by Senator

⁵²⁰ NEB. REV. STAT. § 79-3809 (Cum. Supp. 1990).

⁵²¹ *Floor Transcripts, LB 829 (1991)*, 3 June 1991, 6945.

⁵²² NEB. LEGIS. JOURNAL, 3 June 1991, 2781. The Withem amendment (AM2260) actually occurred on Final Reading, which required a separate motion to return LB 829 to Select File for specific amendment.

⁵²³ Legislative Bill 849, *Adopt the State Lottery Act*, sponsored by Sen. Dennis Baack, Nebraska Legislature, 92nd Leg., 1st Sess., 1991, title first read 1 February 1991, 1.

Will⁵²⁴ and referred to the General Affairs Committee for disposition.⁵²⁵ And it was in this committee that the first major hurdle would be won, but not without the personal lobbying effort of the Governor himself.

The creation and implementation of a state lottery in Nebraska was actually a two-step process. Two separate measures would need legislative approval first, and one would require a second vote by the people. The first measure, LB 849, would establish the actual lottery laws, the second measure, LR 24CA (1991), would seek voter approval and ultimate implementation of the lottery laws.⁵²⁶ Both measures were referred to the same committee, the General Affairs Committee, which, at the time was chaired by Senator Jacklyn Smith of Hastings.

The public hearings for both measures, held on March 11, 1991, were hotly contested events with both sides bringing credible arguments to the forefront of the debate. But the ultimate decision, at least the first major decision, rested with the eight members of the General Affairs Committee. And the committee was far from united on the issue of a state lottery. Some were in favor of the entire concept and both measures, some felt it was more appropriate to let the voters first approve a constitutional mandate to create a lottery before enacting legislation, and some opposed the entire concept of a state lottery. On April 2, 1991, the committee narrowly advanced LR 24CA, the constitutional amendment to permit the enactment of a lottery, by a 5-2 vote. Senator Jim Cudaback of Riverdale abstained from voting on the measure.⁵²⁷ A day later, on April 3rd, the committee would meet again to vote on LB 849, the bill to create the lottery system. Ironically, Senator Cudaback would prove to be the swing vote to advance.

⁵²⁴ NEB. LEGIS. JOURNAL, 18 March 1991, 1102.

⁵²⁵ *Id.*, 4 February 1991, 522.

⁵²⁶ Legislative Resolution 24CA, *Authorize the Legislature to establish a state regulated lottery*, sponsored by Sen. Dennis Baack, Nebraska Legislature, 92nd Leg., 1st Sess., 1991, title first read 1 February 1991.

⁵²⁷ Jason Gertzen and Henry J. Cordes, "Governor's Call Helps Lottery Bill Advance Bill to Allow Pickle Cards In Stores Advances," *Omaha World-Herald*, 4 April 1991, 13.

Senator Cudaback did not support lotteries. “Actually, I am against all lotteries down deep,” he said.⁵²⁸ But after an early morning call from the Governor on April 3rd, Cudaback agreed to at least allow the full Legislature to debate the issue. Cudaback voted in favor of advancement of LB 849 and the bill moved to the first round of consideration by a close 5-3 vote.⁵²⁹

As LB 849 moved through the legislative process, it slowly evolved but failed to ever gain a full momentum. The bill was amended, debated, and amended again until finally it arrived at Final Reading. After passionate speeches on all sides of the issue, LB 849 passed by a very close 26-18 vote and later signed into law by Governor Nelson.⁵³⁰ The Legislature also passed LR 24CA by a 34-10 vote to permit the issue to be brought before the voters.⁵³¹

As passed by the Legislature, LB 849 would permit a lotto ticket and scratch ticket system in Nebraska pending voter approval of the constitutional amendment in November 1992. Education would be one of the two major beneficiaries of the lottery program. The bill created the Education Innovation Fund to permit the Governor to award incentive grants to school districts.⁵³² The grants would be used to encourage development of:

[S]trategic plans by school districts for accomplishing high performance learning and to encourage schools to establish innovations in programs or practices that result in restructuring of school organization, school management, and instructional programs which bring about improvement in the quality of education.⁵³³

⁵²⁸ Id.

⁵²⁹ Id.

⁵³⁰ NEB. LEGIS. JOURNAL, 5 June 1991, 2910. Signed into law on June 7, 1991. NEB. LEGIS. JOURNAL, 7 June 1991, 2946.

⁵³¹ Id., 5 June 1991, 2887.

⁵³² Legislative Bill 849, in *Laws of Nebraska, Ninety-Second Legislature, First Session, 1991*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), passim.

⁵³³ Id., § 12, p. 6 (2556).

The grants were intended to provide selected school districts, teachers, educational foundations, educational service units, or cooperatives funding for implementing pilot projects and model programs.

The program would allow the Governor to provide “minigrants” to school districts to support the development of local strategic plans that include specific statements of improvement or strategic initiatives designed to improve quality learning for students.⁵³⁴ It would also permit the Governor to award “major competitive grants” to support innovative programs that are directly related to the local strategic plans.⁵³⁵ The legislation provided fourteen purposes for which incentives would be offered:

- (a) The development of local strategic plans by school districts;
- (b) Educational technology assistance to public schools for the purchase and operation of computers, telecommunications equipment and services, and other forms of technological innovation which may enhance classroom teaching, instructional management, and districtwide administration;
- (c) Professional staff development programs to provide funds for teacher and administrator training and continuing education to upgrade teaching and administrative skills;
- (d) An educational accountability program to develop an educational indicators system to measure the performance and outcomes of public schools and to ensure efficiency in operations;
- (e) Alternative programs for students, including underrepresented groups, at-risk students, and dropouts;
- (f) Programs that demonstrate improvement of student performance against valid national and international achievement standards;
- (g) Early childhood education and parent education which emphasize child development;
- (h) Programs using decisionmaking models that increase involvement of parents, teachers, and students in school management;
- (i) Increased involvement of the community in order to achieve increased confidence in and satisfaction with its schools;
- (j) Development of magnet or model programs designed to facilitate desegregation;
- (k) Programs that address family and social issues impairing the learning productivity of students;
- (l) Programs enhancing critical and higher-order thinking capabilities;

⁵³⁴ Id.

⁵³⁵ Id.

- (m) Programs which produce the quality of education necessary to guarantee a competitive work force; and
- (n) Programs designed to increase productivity of staff and students through innovative use of time.⁵³⁶

The legislation also would establish the Excellence in Education Council to develop criteria for the awarding of grants, provide recommendations to the Governor regarding the selection of projects to be funded, and establish standards, formats, procedures, and timelines for the successful implementation of approved programs.⁵³⁷

The distribution of funds under the Excellence in Education Program would become a very political matter in later years. After all, almost half the proceeds of the lottery (49.5%), after administration expenses and prize payouts, would be credited to this fund. This pot of money would become a very attractive funding source for various initiatives and budgetary needs in subsequent years. But for the time being, this major allotment of money would be given to the Governor for distribution to districts based upon need and purpose. The other two beneficiary funds would be the Legislative Assistance Fund (49.5% of proceeds) and the Gamblers Assistance Fund (1% of proceeds). The Legislative Assistance Fund was designed to give the Legislature authority to award one-time grants for programs and causes, as it deemed appropriate.⁵³⁸

LR 24CA became Amendment 1a on the 1992 Nebraska General Election ballot. The electorate overwhelmingly approved the amendment by a 62.21% to 37.79% margin, which thereby enabled the State Lottery Act to become operative.⁵³⁹

C. Nebraska Tax Research Council Report, 1992

In February 1992, the Nebraska Tax Research Council (NTRC) issued a report on the effectiveness of LB 1059 in meeting its stated goals. The NTRC is a nonprofit association based in Lincoln and founded in 1951. The mission of the NTRC is to act as

⁵³⁶ *Id.*, pp. 6-7 (2556-57).

⁵³⁷ *Id.*, pp. 7-8 (2557-58).

⁵³⁸ *Id.*, p. 8 (2558).

⁵³⁹ NEB. BLUE BOOK, Vote on Constitutional Amendments, 1882-2004, 265.

a nonbiased library and clearinghouse for state and local tax and spending information. At the state level, the NTRC has had an active role in providing information not only to its members but also to members of the Legislature and other government officials.

The report issued by the NTRC in 1992 represented the first formal effort to evaluate the new state aid formula and how, or if, it was meeting the goals established by the Legislature, particularly as they relate to taxation. The report discussed four goals established under LB 1059 as follows:

1. To provide a broadened and expandable tax base for schools,
2. To provide property tax relief by increasing state funding of schools to 45 percent of general fund operating expenditures of schools,
3. To equalize education opportunities among students statewide, and
4. To equalize the school tax burden among property taxpayers.⁵⁴⁰

The NRTC provided descriptions along with status updates of the three goals related specifically to taxation, but admitted a deficiency in information to report on the goal related to equalization of educational opportunity.

On the whole, the report provided relatively good news for supporters of LB 1059. It reported that the tax base had in fact been broadened. The introduction of income tax revenue as a source of school funding “clearly expanded the tax base.”⁵⁴¹ Due to the income tax rate increases, both individual and corporate income tax collections increased from FY1989-90 to FY1990-91, the years before and after the enactment of LB 1059. The NTRC reported that, of the \$118 million increase in net income tax collections from FY1989-90 to FY1990-91, \$71 million was attributed to the implementation of LB 1059.⁵⁴²

The report indicated that statewide property tax relief had, in fact, been achieved. The average aggregate property tax levy decreased 10.6% in the first year after

⁵⁴⁰ Nebraska Tax Research Council, “Analysis of the Effectiveness of LB 1059 -- The Tax Equity and Educational Opportunities Support Act,” February 1992, ii.

⁵⁴¹ Id.

⁵⁴² Id., 6.

implementation of LB 1059 and 9.9% in the second year.⁵⁴³ The new formula was also credited for a 12.7% decrease in aggregate property tax collections in the first year and a 15.1% decrease in the second year.⁵⁴⁴ Nevertheless, the report noted the state's failure to meet the 45% target level of funding for schools. Instead, the state was only able to achieve funding of 40.35% of general fund operating expenditures for schools in 1990-91.⁵⁴⁵ This was due, according to the report, to increased spending by school districts. The initial, projected spending growth was 5%, but the actual growth was closer to 6.6%.⁵⁴⁶

The report also stated that the property tax burden had become more equitable. The report noted, as evidence, the decrease in the statewide general fund levy and the decrease in the number of school districts with "larger-than-average" general fund levies from 1989-90 to 1990-91, which demonstrated a "more equal school tax burden" among property taxpayers.⁵⁴⁷ The NTRC applied several tests to make its determination including a comparison of the "derived general fund levy" for all districts in the year prior and the year after the passage of LB 1059. The derived general fund levy was computed by:

[C]alculating the tax dollars to be generated for each school district based on each district's general fund levy. The total statewide tax dollars to be generated are then divided by the state's total valuation in dollars per hundred to determine the derived statewide levy which would have had to be applied against all valuation to generate the same tax dollars.⁵⁴⁸

⁵⁴³ Id., ii.

⁵⁴⁴ Id.

⁵⁴⁵ Id., 8.

⁵⁴⁶ Id.

⁵⁴⁷ Id., ii.

⁵⁴⁸ Id., 15.

The NTRC reported that, for 1989-90, the derived general fund levy for all school districts was \$1.5138 per \$100 of valuation.⁵⁴⁹ In the first year of LB 1059, FY1990-91, the derived general fund levy for all districts was reduced to \$1.2539 and reduced again in 1991-92 to \$1.2294.⁵⁵⁰ “The decrease in levies indicates that the disparities in general fund levies throughout the state decreased, or became more equal,” the report stated.⁵⁵¹

The conclusion of the NTRC report perhaps gave the best indication of the success of LB 1059 since its inception. The report stated that if LB 1059 had not passed:

[T]axpayers would have seen a significant increase in property taxes to keep up with increases in school expenditures, absent any other increase in state funding. Clearly, LB 1059 did provide property tax relief – if the bill had not passed, taxpayers would have faced a property tax increase of \$179 million.⁵⁵²

The report noted that property tax relief varied from school district to school district, depending upon variables such as enrollment, changes in valuations, and special education costs. In the aggregate, however, “Nebraska received property tax relief in the form of lower property taxes than would have been levied without LB 1059.”⁵⁵³

D. The 1992 Legislative Session

LB 245 (1992) - Accountability Commission

Legislative Bill 245 was introduced in 1991 and carried over to the 1992 Session. The bill ultimately had a dual purpose. The first, and original purpose was the creation of the Nebraska Schools Accountability Commission, which consisted of eleven members.⁵⁵⁴ The Commission was required to identify standards for learner outcomes

⁵⁴⁹ Id., 10.

⁵⁵⁰ Id., 11.

⁵⁵¹ Id.

⁵⁵² Id., 13.

⁵⁵³ Id.

⁵⁵⁴ Legislative Bill 245, in *Laws of Nebraska, Ninety-Second Legislature, Second Session, 1992*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 2, p. 2.

and develop a method of assessing student progress towards achieving the standards.⁵⁵⁵ The idea was to establish a reliable system of accountability for student performance in the public school system. The commission would conclude its work on July 1, 1996 at which time the commission would automatically dissolve.⁵⁵⁶

The second purpose of LB 245 arose during Select File debate of the bill. Senator Bob Wickersham, a lawyer from Harrison, was concerned about a Nebraska Supreme Court case, *Zyburo v. Board of Education*, and the admonishment to the Legislature contained within that decision.⁵⁵⁷ In the court's ruling, Justice D. Nick Caporale noted the unusual method by which LB 511 (1991) had evolved during the 1991. LB 511 (1991) was essentially "shelled" or gutted late in the 1991 Session and the contents of LB 719 were amended into it. In *Zyburo*, Justice Caporale alluded to a defect in LB 511 since, in his judgment, the bill, as substantially revised and amended, had not been before the Legislature for the requisite minimum of five legislative days. Article III, Section 14 of the Nebraska Constitution states in part, "No vote upon the final passage of any bill shall be taken until five legislative days after its introduction nor until it has been on file for final reading and passage for at least one legislative day."⁵⁵⁸ Any legislation passing without compliance with this provision could be deemed unconstitutional.

In the case of LB 511, the adoption of the amendment that essentially shelled the bill and merged the contents of another bill occurred on June 3, 1991. The bill was passed and the session adjourned sine die on June 5th. Justice Caporale, therefore, felt the measure had not appeared before the body for the required minimum number of days. For his part, Senator Wickersham said he did not necessarily agree with Justice Caporale's opinion since LB 719, on its own merit, had been before the body well beyond the required five days. The contents of LB 511, after it was shelled on June 3rd, did not constitute new legislative material. However, Wickersham said:

⁵⁵⁵ Id., § 1(2), p. 2.

⁵⁵⁶ Id., § 5, p. 3.

⁵⁵⁷ *Zyburo v. Board of Education*, 239 Neb. 162, 474 N.W.2d 671 (1991).

⁵⁵⁸ NEB. CONST. art. III, § 14.

[LB] 511 was a very complex, very important piece of legislation. And I simply do not wish to take any chances that it was adopted in a constitutionally unpermitted fashion. The risk that we would run, if it was adopted in an unconstitutional fashion, is that none of the provisions in the bill could be used.⁵⁵⁹

Senator Wickersham suggested that the entire contents of LB 511 (1991) be re-passed under LB 245 in order to ensure proper handling of the legislation. He introduced an amendment to carryout this suggestion, which was adopted on a 26-0 vote.⁵⁶⁰

Under the Wickersham amendment, sections 7 through 104 of the bill would contain all the provisions and amendments under LB 511 (1991). LB 245 would also contain a “savings clause” to ensure that any actions taken in furtherance of LB 511 since its passage in 1991 would be considered “legalized, and validated if in compliance” with the law as passed.⁵⁶¹ Senator Wickersham was particularly concerned, as were others, about the provisions in LB 511 relating to Class I districts and the extension of the date for affiliation. If LB 511 had been ruled unconstitutional, it would have placed some Class I districts in a difficult situation.

LB 245 contained the E-clause and therefore required 33 affirmative votes to pass. On the first vote on Final Reading, LB 245 failed to garner the necessary vote (30-13).⁵⁶² After further discussion, a second vote was taken with a more positive result. The bill passed with the emergency clause attached on a 33-10 vote.⁵⁶³

LB 1063 and LR 219CA - Personal Property Taxes

The continuing saga concerning the personal property tax crisis had not dissipated with the passage of LB 829 during the 1991 Session. LB 829 was intended to exempt all personal property from taxation for 1991 as a short-term solution. The legislation was meant to buy time in order to resolve the matter once and for all at a later date. However,

⁵⁵⁹ Legislative Records Historian, *Floor Transcripts, LB 245 (1992)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 92nd Leg., 2nd Sess., 30 January 1992, 8389.

⁵⁶⁰ NEB. LEGIS. JOURNAL, *Wickersham AM2410*, 30 January 1992, 569.

⁵⁶¹ LB 245, Session Laws, 1992, § 96, p. 68.

⁵⁶² NEB. LEGIS. JOURNAL, 9 April 1992, 2186.

⁵⁶³ *Id.*, 2187.

on September 20, 1991, anti-tax activist Ed Jaksha of Omaha filed a lawsuit alleging the unconstitutionality of LB 829 based on the uniformity clause of the Nebraska Constitution. Jaksha claimed the exemptions under LB 829 violated the constitutional provision that requires all tangible property in the state to be taxed uniformly and proportionately.⁵⁶⁴ The uniformity clause, as alleged in the suit, applied not only among classes of personal property, but also between personal property and real property.

The situation was further compounded in June 1991 when Melvin Bahensky, a Grand Island businessman, filed a separate lawsuit. Bahensky argued that the revenue to be generated from LB 829 to reimburse local governments for lost personal property tax revenue was also unconstitutional.⁵⁶⁵ LB 829 was designed to collect new tax revenue in order to replace the revenue lost by local governments due to the one-year personal property tax exemption. One of the key components of the replacement revenue package was a state depreciation surcharge on personal property for purposes of the federal income tax. It was this provision, in particular, that Bahensky challenged on the basis that it amounted to another personal property tax, which was supposed to be under the protection of the exemption established under LB 829.

These lawsuits were very much on the minds of policymakers and other state officials as the Legislature convened on January 8, 1992. The Legislature had fully intended to once again address the personal property tax crisis in 1992, but, if LB 829 were to be struck down as unconstitutional, their problems would be multiplied dramatically. Not the least of these problems was the possibility that certain citizens would owe back taxes and/or local governments would suffer a loss of revenue if LB 829 were ruled unconstitutional.

Something had to be done to correct the problem even if it consumed the entire 1992 Session to make it happen. In his State of the State address on January 10, 1992, Governor Ben Nelson warned legislators, “Nebraska is darkened by a cloud of an

⁵⁶⁴ Henry J. Cordes, “Lawsuit Seeks Property Tax Refund for All,” *Omaha World-Herald*, 20 September 1991, 15.

⁵⁶⁵ “DeCamp Files Supreme Court Suit to Stop Surtax,” *Omaha World-Herald*, 26 June 1991, 20.

unprecedented property tax crisis.”⁵⁶⁶ He requested two separate measures to put the issue to rest and asked Senator Jerome Warner to introduce the legislation on his behalf. At least that was the official story. “I always looked upon it as the Governor joining me,” he would later recall to his biographer.⁵⁶⁷ Warner, at the time, was a member of the Revenue Committee and Chairman of the Legislature’s Executive Board. Warner was highly respected among legislators as both a statesman and tax policy strategist.

Senator Warner was also a member of the Revenue, Restructuring, and Revitalization (“3-R”) Committee, a special panel created and appointed by Governor Nelson to tackle the personal property tax crisis and other revenue issues. As the leader of the 3-R Committee, Warner was instrumental in shaping the legislative measures Nelson would later embrace as the solution to the personal property tax issue. Naturally, there was not unanimity among the members of the 3-R Committee, nor would there be unanimity among members of the Revenue Committee, which would have jurisdiction over the legislation. And there certainly would not be unanimity among members of the Legislature when the proposals eventually arrived for floor debate.

The first of the two measures was LB 1063 (1992).⁵⁶⁸ This legislation contained two alternative approaches to the personal property tax issue, but only one would be implemented depending upon the outcome of the second piece of legislation. The second measure amounted to the “trigger” that would either be used or not, depending upon the whim of the electorate. The second measure was LR 219CA (1992), a constitutional amendment that would, if passed by the Legislature, appear before the voters in the 1992 Primary Election.⁵⁶⁹ The two measures would require extraordinary votes to pass the Legislature. LB 1063, with the E-clause attached, would require 33 affirmative votes.

⁵⁶⁶ Jason Gertzen, “Nelson: Brake Spending Just in Case,” *Omaha World-Herald*, 11 January 1992, 1.

⁵⁶⁷ Berens, 231.

⁵⁶⁸ Legislative Bill 1063, *Change provisions relating to revenue and taxation*, sponsored by Sen. Jerome Warner, Nebraska Legislature, 92nd Leg., 2nd Sess., 1992, title first read 13 January 1992.

⁵⁶⁹ Legislative Resolution 219CA, *Constitutional amendment to allow Legislature to provide for taxation of tangible property*, sponsored by Sen. Jerome Warner, Nebraska Legislature, 92nd Leg., 2nd Sess., 1992, title first read 13 January 1992.

LR 219CA, designed to appear on the Primary Election ballot, would require 40 affirmative votes.⁵⁷⁰ At the outset of the 1992 Session, considering the wide range and very vocal opinions on how to resolve the tax crisis, the odds of both measures passing were slim at best.

As introduced, LB 1063 proposed to create a tax on depreciated tangible personal property at its cost minus depreciation expenses claimed for federal income tax purposes (net book).⁵⁷¹ This was, in fact, the first choice of both the 3-R Committee and of the Governor. But this alternative would also require voter approval of the companion piece, the constitutional amendment proposed under LR 219CA. The constitutional amendment would eliminate the application of the Uniformity Clause to personal property, allow a net book value approach to assessing personal property, and create a special class for federally protected property.⁵⁷² The passage of the constitutional amendment, it was believed, would legitimize and legalize the existing personal property tax policies that tax some classes of personal property while exempting others. If the voters did not approve the constitutional amendment, LB 1063 would automatically institute language and procedures to tax all personal property with the exception of certain types of industrial and agricultural equipment. This would serve as the fall back system if voters did not approve LR 219CA.

The outcome of LB 1063 and LR 219CA would have a far-reaching impact on local governments, including school districts. For instance, the original version of LB 1063 would have applied the same resource lid, based upon restricted funds, for school districts as was, and still is, applied to all other political subdivisions.⁵⁷³ The bill would have lowered the allowable reserve percentages for school districts, changed the rapid student growth provision, and eliminated several lid exclusions (pertaining to special

⁵⁷⁰ RULES OF THE NEB. LEG., Rule 6, § 15.

⁵⁷¹ Senator Jerome Warner, *Introducer's Statement of Intent, LB 1063 (1992)*, Nebraska Legislature, 92nd Leg., 2nd Sess., 31 January 1992, 1.

⁵⁷² Nebraska Legislative Research Division, "A Review: Ninety-Second Legislature, Second Session and Second Special Session, 1992," October 1992, 52.

⁵⁷³ LB 1063 (1992), §§ 175-180, 182-194, pp. 188-209.

education student growth and CIR orders).⁵⁷⁴ All such provisions would normally cause an up-roar from school representatives and education groups across the state. Therefore, the fact that no major education group testified at the public hearing for LB 1063 should come as a surprise, unless such groups had already made their positions clear before the hearing. And this was likely the case as evidenced during Select File debate when Senator Withem alluded to meetings between the “school community” and the Governor’s office.⁵⁷⁵

The first of the two bills to emerge from committee was LR 219CA. The Revenue Committee advanced the constitutional amendment on February 12, 1992.⁵⁷⁶ The advancement of LB 1063 would be an entirely different matter. The Revenue Committee became deadlocked on LB 1063 and instead advanced LB 1120 (1992), a measure addressing the same issue but in a different way.⁵⁷⁷ LB 1120 was introduced by Senator Tim Hall, Chairman of the Revenue Committee, and took the approach of exempting nearly all personal property and imposed new and expanded taxes to make up lost revenue to local governments.⁵⁷⁸

The majority of the Legislature still preferred the proposal contained in LB 1063 as suggested by Senator Warner, the Governor, and at least a few members of the 3-R Committee. On February 26, 1992, the Legislature entertained Senator Dennis Baack’s floor motion to advance LB 1063 from the deadlocked Revenue Committee. Baack said

⁵⁷⁴ Id.

⁵⁷⁵ Legislative Records Historian, *Floor Transcripts, LB 1063 (1992)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 92nd Leg., 2nd Sess., 9 March 1992, 10054-56. Senator Withem spoke against an amendment to re-establish some of the lid provisions on which he believed the school community had “negotiated” with the Governor’s office. It was his belief that some school representatives were trying to back away from previously made agreements. The trade-off between the Governor and local government officials was likely the Governor’s willingness not to pursue a zero percent spending/resource lid in exchange for cooperation of local governments to concede other lid provisions, such as lid exclusions.

⁵⁷⁶ NEB. LEGIS. JOURNAL, 12 February 1992, 815.

⁵⁷⁷ Legislative Bill 1120, *Change and eliminate property tax exemptions*, sponsored by Sen. Tim Hall, Nebraska Legislature, 92nd Leg., 2nd Sess., 1992, title first read 15 January 1992. NEB. LEGIS. JOURNAL, 19 February 1992, 891.

⁵⁷⁸ Henry J. Cordes, “Tax Puzzle On the Floor For Debate Rural-Urban Split Dominates Issue,” *Omaha World-Herald*, 20 February 1992, 1.

his intention was not to prevent discussion on LB 1120 but rather to give the Legislature all available alternatives to address the personal property tax issue. After a lengthy, sometimes contentious debate, the body voted 33-13 to “pull” the bill from committee and place it on General File as originally introduced.⁵⁷⁹

LB 1120 would be debated by the Legislature, but ultimately bracketed.⁵⁸⁰ LB 1063 would become the bill of choice for the Legislature, but would also sustain considerable debate and modification before it arrived on Final Reading. LB 1063 would become the single most debated bill of the 1992 Session and would create bitter feelings among various members of the Legislature. As amended, LB 1063 would still provide a dual approach to the personal property tax situation. If voters approved the constitutional amendment (LR 219CA), LB 1063 would implement a system to tax depreciated tangible personal property at its cost less a 150% declining balance depreciation schedule (net book).⁵⁸¹ If voters did not approve the constitutional amendment, LB 1063 would institute language and procedures to tax all personal property except “LB 775 personal property.”⁵⁸²

In relation to the school finance formula, LB 1063 amended the system to extend the duration of the zero percent growth in spending without a three-fourths vote of the local school board (in order to access the normal spending limitations).⁵⁸³ The zero percent restriction was imposed under LB 829 (1991) and essentially created an initial hurdle over which a school board must leap before it may access the spending limitations

⁵⁷⁹ NEB. LEGIS. JOURNAL, 26 February 1992, 1005-06.

⁵⁸⁰ *Id.*, 5 March 1992, 1166.

⁵⁸¹ LB 1063 (1992), § 197, p. 211.

⁵⁸² Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 1063 (1992)*, prepared by Eric Byrd, 92nd Leg., 2nd Sess., 1992. 11 March 1992, 1.

⁵⁸³ Legislative Bill 1063, in *Laws of Nebraska, Ninety-Second Legislature, Second Session, 1992*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 202, p. 123 (1408).

originally imposed by LB 1059. Under LB 1063, the zero growth provision would be extended through the 1994-95 school year.⁵⁸⁴

LB 1063 eliminated two of the five existing spending lid exceptions. Both the lid exception relating to special education enrollment growth and the lid exception relating to collective bargaining agreements were eliminated by the legislation.⁵⁸⁵ LB 1063 also changed the lid exception relating to student growth. LB 1063 imposed a threshold of student growth before the lid exception would be applicable.⁵⁸⁶ The effect of the change would permit fewer districts to access the student growth lid exception.

LB 1063 eliminated the separate spending limitation for special education costs to school districts. LB 1059 (1990) had originally created one spending limit for general fund expenditures and one for special education expenditures. LB 1063 established that the budget authority for special education would be “the actual anticipated expenditures for special education subject to the approval of the state board.”⁵⁸⁷ In essence, this provision gave the State Board of Education the authority to regulate special education expenditures by school districts.

The legislation also produced a 5% across-the-board reduction in the schedule for allowable reserves of general fund budget of expenditures.⁵⁸⁸ The reserve funds include contingency funds, depreciation funds, and general fund cash reserves. The effect of the change would be to reduce the potential amount districts could set aside in reserve status.

Table 29. Summary of Modifications to TEEOSA
as per LB 1063 (1992)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
202	79-3814	General fund budget of expenditures; limitations; Legislature; duties	Extended the zero percent growth in spending without a three-fourths vote of the local school board in order to access the normal spending limitations.

⁵⁸⁴ Id., § 202, p. 123 (1408).

⁵⁸⁵ Id., § 205, pp. 125-126 (1410-11).

⁵⁸⁶ Id.

⁵⁸⁷ Id., § 203, pp. 123-124 (1408-09).

⁵⁸⁸ Id., § 204, pp. 124-125 (1409-10).

Table 29—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
203	79-3816	Basic allowable growth rate; allowable growth range	Eliminated the separate spending limitation for special education costs to school districts. Established that the budget authority for special education would be “the actual anticipated expenditures for special education subject to the approval of the state board.”
204	79-3818	Budget; restrictions	Produced a 5% across-the-board reduction in the schedule for allowable reserves of general fund budget of expenditures.
205	79-3819	Applicable allowable growth rate; district may exceed; situations enumerated	Eliminated both the lid exception relating to special education enrollment growth and the lid exception relating to collective bargaining agreements. The legislation also changed the lid exception relating to student growth by imposing a threshold of student growth before the lid exception would be applicable.

Source: Legislative Bill 1063, in *Laws of Nebraska, Ninety-Second Legislature, Second Session, 1992*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), §§ 202-205, pp. 123-126 (1408-11).

LB 719 - Formula Modifications

Legislative Bill 719 (1992) was the source of controversy late in the 1991 Session. The bill was originally introduced as a technical and substantive cleanup bill, but it carried only a committee priority designation, which left it without much hope for passage in the year it was introduced. Senators Withem and Lamb agreed to an unusual move by which the contents of LB 719 were switched via amendment to LB 511, which was Senator Lamb’s priority bill. LB 511 was passed by the Legislature in 1991 leaving LB 719 as an available, empty vehicle on Select File, although the idea behind the deal was that the bill would belong to Senator Lamb and the original contents of LB 511. The original version of LB 511 concerned the designation of protected streams and rivers.

In the 1992 Session, Senator Lamb would find another vehicle for his scenic river legislation, which meant that LB 719 was once again left without a purpose yet still available on Select File. The purpose would eventually be found, and the purpose would revert the bill back to its original classification as an education-related bill. On April 2, 1992, LB 719 came to life as Senator Lamb’s proposed vehicle to: (1) extend the hold

harmless clause of the state aid formula; (2) change provisions related to land transfers between districts; and (3) provide for rapid growth of students in the formula.⁵⁸⁹ Senator Lamb had filed a motion, requiring 30 votes, to suspend the rules and permit the attachment of his multi-purpose amendment to LB 719. However, the amendment would not be without controversy or debate.

The first part of the amendment related to the hold harmless clause, which was set to terminate at the end of the 1992-93 school year. Senator Lamb proposed to merge the contents of LB 1238 (1992), which was originally introduced to extend the hold harmless provision for another two years (through school year 1994-95).⁵⁹⁰ The bill was referred to the Education Committee and later advanced to General File on March 3, 1992.⁵⁹¹ The bill was introduced and prioritized by Senator Lamb, who, with the 1992 Session quickly nearing an end, needed a way to advance his priority bill. LB 1238 had been advanced to General File by a unanimous vote of the Education Committee, but a jam-packed legislative agenda precluded a chance for the bill to advance further. LB 719, already on Select File, would present Senator Lamb a “leg up” on the legislative process.

For Senator Lamb the hold harmless provision was one of two truly important provisions of his amendment. The other important provision, at least to Senator Lamb, was the part of the amendment related to land transfers between districts. The Lamb amendment essentially evened the playing field among all classes of school districts relevant to the process of land transfers by simply requiring the transfer to be approved by 65% of the school board of each school district involved. This provision also was the subject of a separately introduced bill, LB 1194 (1992), which had been advanced by the Education Committee on a unanimous vote.⁵⁹² Lamb admitted that the intent behind this

⁵⁸⁹ NEB. LEGIS. JOURNAL, *Lamb AM3762*, 1 April 1992, 1788-94.

⁵⁹⁰ Legislative Bill 1238, *Change a provision for a limit on changes in state aid to schools*, sponsored by Sen. Howard Lamb, Nebraska Legislature, 92nd Leg., 2nd Sess., 1992, title first read 22 January 1992.

⁵⁹¹ NEB. LEGIS. JOURNAL, 3 March 1992, 1087.

⁵⁹² *Id.*, 4 February 1992, 643.

particular provision was to assist a Class I district within his legislative district to change boundaries with a Class VI district (involving the city of Valentine, Nebraska).⁵⁹³

The third part of the Lamb amendment, relating to rapid growth of student population, was much less important to him personally or perhaps to his own legislative district, but it was important to other school districts across the state. The third part of the Lamb amendment was likely the “throw in” provision to gain the support of such key legislators as Senator Withem and a few other urban senators.

In truth, members of the body, such as Senator Withem, had nothing to gain politically by supporting a continuation of the hold harmless clause, for instance, without some form of trade-off. In this case, the trade-off between Lamb and various urban-based senators was a provision in the Lamb amendment to account for rapid growth of student populations within school districts. As Lamb explained:

And then the third part of the amendment has to do with school districts which are experiencing much growth. And this really is not for any of the school districts in my legislative district. I think a couple of districts that are primarily affected are Lexington and Lincoln, and there may be others. But currently a school district must wait two years before it receives state aid in response to rapid student growth.⁵⁹⁴

Specifically, the Lamb amendment permitted districts having a growth in enrollment of more than 25 student and of more than 1% of the district’s average daily membership to have state aid computed on the basis of students from the current year rather than the most recently available complete data year (i.e., current year data versus data two years in arrears).⁵⁹⁵ The change in the formula would increase state aid received by the majority of school districts experiencing accelerated student growth. The additional state aid would assist such districts in hiring teachers, purchasing textbooks, and other costs associated with expanded student population.

⁵⁹³ Legislative Records Historian, *Floor Transcripts, LB 719 (1992)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 92nd Leg., 2nd Sess., 2 April 1992, 12004-05.

⁵⁹⁴ *Id.*, 12005.

⁵⁹⁵ NEB. LEGIS. JOURNAL, *Lamb AM3762*, 1 April 1992, 1788-94.

In his opening remarks, Senator Lamb referred to his amendment as “a very simple amendment,” which, for any veteran lawmaker, usually meant the opposite case.⁵⁹⁶ Senator Lamb suspected his amendment would have opposition and, perhaps to his disappointment, his suspicion was correct. The real focus of the opposition concerned the extension of the hold harmless provision for another two years, and, to a lesser extent, the provision related to rapid growth of students.

The extension of the hold harmless clause was not expected to have a fiscal impact, nor would the inclusion of a rapid student growth provision. It really amounted to a slight redistribution of existing state aid funds, in the case of the student growth provision, and a continued withholding of equalization aid in the case of the hold harmless clause. Without the two-year extension of the hold harmless provision, an additional \$3.66 million of state aid funds per year would be available for distribution among qualifying school districts through the equalization portion of the state aid formula.⁵⁹⁷ With the extension of the hold harmless provision, it was anticipated that 225 K-12 districts would continue to be deprived of some of the equalization aid they would otherwise receive without the provision.⁵⁹⁸ Similarly, the rapid student growth provision also would cause a slight redistribution of state aid. It was anticipated that the change would increase state aid received by the majority of school districts experiencing accelerated student growth, with a corresponding decrease in state aid for those districts not experiencing rapid growth.⁵⁹⁹

Following a successful motion to suspend the rules and permit consideration of the amendment, Senator Lamb found himself defending the two-year extension of the hold harmless clause. The complaints expressed by various members of the body focused on essentially two policy concerns. The first argument was that an extension of the

⁵⁹⁶ *Floor Transcripts, LB 719 (1992)*, 2 April 1992, 12004.

⁵⁹⁷ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 719 (1992)*, prepared by Sandy Sostad, 92nd Leg., 2nd Sess., 1992, 10 April 1992, 1.

⁵⁹⁸ Jason Gertzen, “Legislators Vote to Give Schools 2-Year Reprieve on Aid Changes,” *Omaha World-Herald*, 3 April 1992, 13sf.

⁵⁹⁹ *Fiscal Impact Statement, LB 719 (1992)*, 10 April 1992, 1-2.

clause was tantamount to a continued suspension of the new state aid formula as it was designed to operate. As stated by Senator Dave Landis, a vocal critic of the two-year extension:

The difficulty of hold harmless is that it makes you maintain both systems at the same time. It expands the amount of money necessary to do the deal. Unfortunately, what it means is, look, we had an old system that we decided we needed to change because we felt we could do better, and we felt we could do it more fairly, but to get to the new system, which we believe is more fair, there will be some people that will have some kind of alteration. ... It is how the federal government gets its budget expanded, by never injuring anyone, never taking a dollar away, never reallocating even though you have a new system that you think is fairer, more sensible, and, in this case, voted on by the people of the State of Nebraska.⁶⁰⁰

Joining Senator Landis were other urban-based legislators, including Omaha Senators Lynch and Hall. Their combined argument was that the hold harmless provision was never meant to be an entitlement, and the continuation of the provision prevented the full and complete implementation of the new formula. State aid was being used to perpetuate the old, repealed state aid formula and thereby depriving other school districts of sorely needed equalization aid. They asserted that the extension of the hold harmless clause represented bad public policy.

Senator Withem agreed that hold harmless clauses were, in general, contrary to good policy. Nevertheless, he offered his support for the Lamb amendment based on two arguments. First, the extension was for two years only, not a permanent entitlement. Second, there was still a “state of chaos” with regard to the system of property valuation under which state aid was supposed to be computed.⁶⁰¹ LB 1059 (1990) established a system whereby state aid would be based upon adjusted valuation. The Department of Revenue was to establish adjustment factors for use in the computation of state aid, but, for a variety of reasons, this had not yet occurred. In fact, a provision in LB 829 (1991)

⁶⁰⁰ *Floor Transcripts, LB 719 (1992)*, 2 April 1992, 12016.

⁶⁰¹ *Id.*, 12021.

delayed the use of adjusted valuation until 1994.⁶⁰² “Once that is straightened out somewhat, I will be returned to my proper role, and that being an opponent of hold harmless,” Withem said.⁶⁰³

A likely third reason for Withem’s support of the hold harmless extension, and that of other members of the body, was the attachment of the student growth provision in the Lamb amendment. Withem, among other legislators, strongly supported the revised state aid calculation for growing districts. However, in order for the student growth provision to move forward, so must the hold harmless extension. LB 719 was, after all, on Select File, and time was of the essence at that stage of the legislative session (just seven session days from the end of the session). But the student growth provision was by no means an easy sell to the Legislature.

One of the main arguments used against the student growth provision was what some perceived as arbitrary factors used to determine student growth. The Lamb amendment required an increase of 25 students and 1% of the district’s average daily membership from the most recent available complete data year.⁶⁰⁴ Withem defended the factors used in the amendment, saying:

Twenty-five students is basically a classroom unit, and if you get...and you can argue, if you get one, or two, or three additional students, you can find places for them in your existing school. If you get 25 students additional, that basically constitutes a classroom unit, you are probably going to have to hire another teacher. You are probably are going to have to have a room to put that student in.⁶⁰⁵

Withem argued that textbooks and other supplies would also have to be purchased to account for the increased student population of a school district.

The second argument used against the student growth provision was more procedural in nature. While both the hold harmless provision and the land transfer

⁶⁰² LB 829, Session Laws, 1991, § 32, pp. 41-42 (2269-70).

⁶⁰³ *Floor Transcripts, LB 719 (1992)*, 2 April 1992, 12021.

⁶⁰⁴ NEB. LEGIS. JOURNAL, *Lamb AM3762*, 1 April 1992, 1793.

⁶⁰⁵ *Floor Transcripts, LB 719 (1992)*, 2 April 1992, 12021.

provision were based upon previously introduced bills, the student growth concept had not been introduced as a bill at the beginning of the session. And this, according to Senator Tim Hall, was not proper procedure:

[T]his is totally new subject matter. It's something that hasn't been before the body. It hasn't had a public hearing. It hasn't...it's a total shift in policy with regard to the issue of calculating state aid to be paid, when it's paid, what triggers it and how it's to be handled.⁶⁰⁶

Hall further complained that the concept came late in the session, with just seven session days remaining, and as a "Select File amendment," meaning that the body was not even given the opportunity to have three full stages of debate on the matter.⁶⁰⁷

Senator Withem admitted the concept did not have the benefit of a public hearing, nor was there any official notification to the public that such a concept was being contemplated. However, he argued that the idea was indeed incorporated into the Education Committee's technical cleanup bill, LB 1125, before the bill was advanced from committee.⁶⁰⁸ LB 1125 was designated a committee priority, but had moved no further than General File.⁶⁰⁹ In any event, Withem said, the rapid growth provision made good sense and would make the formula more sensitive to current enrollment trends in various districts. A prime example, he said, involved Lexington Public Schools, which had experienced incredible student growth due to the IBP plant located within the city. No matter how the concept arrived before the body, Withem argued, the student growth provision represented sound public policy.

The third argument used against the student growth provision would become a common practice in later school finance debates. What may be called "printout politics," policymakers request printouts or models from the Department of Education concerning a

⁶⁰⁶ Id., 12046.

⁶⁰⁷ Id.

⁶⁰⁸ Legislative Bill 1125, *Change provisions relating to schools*, sponsored by Sen. Ron Withem, Nebraska Legislature, 92nd Leg., 2nd Sess., 1992, title first read 16 January 1992. NEB. LEGIS. JOURNAL, 4 March 1992, 1125.

⁶⁰⁹ NEB. LEGIS. JOURNAL, 20 February 1992, 916.

bill or an amendment to a bill along with the impact it would have on each school district. Legislators may then scan the printout to determine how schools within their own legislative districts might be affected by the legislative proposal. LB 719 was one of the first instances, since the inception of LB 1059 (1990), where such data was made available to legislators as they debated the merits of a proposal.

Along with printout politics arose the inevitable discussion of winners and losers, referring to districts that are advantaged or disadvantaged by a given proposal. Throughout the debate on the student growth provision, various senators would refer to the printouts and to districts that either win or lose by virtue of the student growth provision. The basic concern was that, without growth in total state aid funding, some districts would have to lose state aid in order for others to receive more state aid due to increased growth in students.

The debate over the student growth provision would span two separate legislative days, and, before it was over, some legislators may have had a better understanding of the formula than they did prior to the debate. But it was Senator Jerome Warner, helping Senator Lamb during the closing comments, who perhaps sealed the victory. Warner noticed that his colleagues were “looking at the sheets that were handed out, whether you gain or lose.”⁶¹⁰ He said, however, the real issue is not whether districts win or lose, but whether the goals of LB 1059 (1990) were being served by the student growth provision. “LB 1059 was based on need,” Warner said.⁶¹¹ Therefore, in order to accurately calculate need, as it relates to accelerated growth, the most recent enrollment data would work better than two-year-old data (as stipulated in the amendment).

The “simple amendment,” as Senator Lamb originally suggested, had resulted in a late session rehash of old arguments for and against the new formula. In the final analysis, all three components of the Lamb amendment were adopted by separate votes over a two-day period (the amendment had been divided into three component parts for

⁶¹⁰ *Floor Transcripts, LB 719 (1992)*, 8 April 1992, 12821.

⁶¹¹ *Id.*

purposes of debate).⁶¹² The least controversial section, relating to land transfers, was adopted by a 26-0 vote without debate or discussion.⁶¹³ The extension of the hold harmless provision, one of the two controversial sections, was adopted by a 25-6 vote.⁶¹⁴ The student growth provision, the second and perhaps most controversial section, was adopted by a 28-13 vote.⁶¹⁵ But the Legislature was not yet finished with LB 719, as additional amendments would be offered and debated.

Besides one technical amendment by Senator Lindsay, the only amendment of substance to be added to LB 719 was offered by Senator Dan Lynch of Omaha.⁶¹⁶ The Lynch amendment would provide for two scenarios in which a district may exceed its applicable allowable growth rate. In the first scenario a school district would be permitted to exceed its allowable growth rate, if necessary, in cases involving an order by the Commission of Industrial Relations (CIR) on a settled contract dispute. The second scenario involved an exemption to the spending lid for districts demonstrating that payment of a judgment from a contested, but settled, contract dispute, claim, uninsured risk or final judgment of a court would require the district to exceed its growth rate.

The Lynch amendment was based upon a bill originally introduced by Senator Doug Kristensen of Minden (LB 551), which had been advanced to General File earlier in the session.⁶¹⁷ Perhaps owing to a tired and debate-weary body, the Legislature adopted the Lynch amendment with very little discussion on a 26-1 vote.⁶¹⁸ LB 719 would ultimately advance to Final Reading where it was passed by the Legislature by a 40-9 vote on April 14th, the last day of the 1992 Session.⁶¹⁹

⁶¹² NEB. LEGIS. JOURNAL, 2, 7-8 April 1992, passim.

⁶¹³ Id., 2 April 1992, 1866.

⁶¹⁴ Id., 1863.

⁶¹⁵ Id., 8 April 1992, 2078.

⁶¹⁶ Id., *Lynch AM3712*, 8 April 1992, 2018-20.

⁶¹⁷ Legislative Bill 551, *Change provisions for orders of the Commission of Industrial Relations*, sponsored by Sen. Doug Kristensen, Nebraska Legislature, 92nd Leg., 1st Sess., 1991, title first read 22 January 1991.

⁶¹⁸ NEB. LEGIS. JOURNAL, 8 April 1992, 2096.

⁶¹⁹ Id., 14 April 1992, 2249-50.

Table 30. Summary of Modifications to TEEOSA
as per LB 719 (1992)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
2	79-3806	Equalization aid; amount	Extends the hold harmless provision for state aid for an additional two years through 1994-95.
3	79-3807	Total formula need; computation	Provides that schools which have a growth in enrollment of more than 25 student, and of more than 1% of the district's average daily membership may have their state aid computed on the basis of students from the current year rather than the most recently available complete data year.
4	79-3819	Applicable allowable growth rate; district may exceed; situations enumerated	Provides an exemption to the spending lid for school districts that can demonstrate an order by the Commission of Industrial Relations on a settled contract dispute will cause the district to exceed its allowable growth rate. Provides an exemption to the spending lid for school districts demonstrating that a contested, but settled, contract dispute, claim, or breach or uninsured risk or as a result of any final judgment of a court, requiring the district to pay such judgment will cause the district to exceed its allowable growth rate.

Source: Legislative Bill 719, in *Laws of Nebraska, Ninety-Second Legislature, Second Session, 1992*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), §§ 2-4, pp. 2-7.

LB 1001 - Retirement Legislation

Legislative Bill 1001 (1992) represents a good example of a last minute “pile-on” bill during a legislative session. The bill was introduced by Senator Tom Horgan of Omaha, and originally related solely to changes in the retirement system for the Omaha Public School District (OPS).⁶²⁰ The bill would eventually become the personal priority bill for Senator Carol McBride Pirsch of Omaha.⁶²¹

As introduced, LB 1001 would provide several benefit enhancements to the OPS retirement system, including a limited cost-of-living increase for certain plan members, an annuity factor increase, and an automatic pre-retirement joint and survivor annuity for

⁶²⁰ Legislative Bill 1001, *Change provisions for Class V school district retirement systems*, sponsored by Sen. Tom Horgan, Nebraska Legislature, 92nd Leg., 2nd Sess., 1992, title first read 9 January 1992.

⁶²¹ NEB. LEGIS. JOURNAL, 19 February 1992, 908.

qualified plan members.⁶²² The bill would be advanced from committee relatively early in the session, but due to a busy legislative agenda, primarily consumed by debate on personal property tax issues, the bill would not be heard on General File until early April. In fact, the bill was taken up for first-round debate just a few days before final adjournment of the Legislature. Perhaps the only reason it *did* have a chance, in the final analysis, was the priority designation afforded by Senator Pirsch earlier in the session.

On April 6, 1992, the Legislature was attempting to finish as much business as possible before the session ended. In such circumstances, the body is often much more forgiving about issues such as whether a given amendment is germane to the original subject of a given bill. Under typical circumstances, for example, an amendment relating to the option enrollment program is not germane to a bill relating to a public employees retirement system. Unless, of course, no one challenges the matter, which was exactly what happened on April 6, 1992 concerning LB 1001.

In the span of approximately one hour, the Legislature unanimously adopted eight separate amendments, mostly unrelated amendments, at least unrelated to the original topic of the bill. One of these amendments, offered by Senator Cap Dierks, would merge the bulk of the annual technical cleanup bill offered on behalf of the Department of Education.⁶²³ The technical cleanup bill, LB 1125 (1992), had been advanced by the Education Committee early in the session, but was simply one of those bills that lacked the priority status to be addressed during the busy session. Senator Dierks offered the lengthy amendment in his capacity as vice chair of the Education Committee.

The Dierks amendment to LB 1001 contained four modifications to the school finance formula. One of the changes related to the Indian Land factor, which was a part of the original LB 1059 (1990). Prior to LB 1001, the Indian Land factor provided that districts where more than 75% of the students enrolled were residents on Indian land, the tiered cost per student for each grade level would be increased by a factor of 25%. The provision in LB 1001 harmonized state law with federal regulations to require that the

⁶²² Senator Tom Horgan, *Introducer's Statement of Intent, LB 1001 (1992)*, Nebraska Legislature, 92nd Leg., 2nd Sess., 28 January 1992, 1.

⁶²³ NEB. LEGIS. JOURNAL, *Dierks AM4066*, 6 April 1992, 1974.

tiered cost per student, for each grade level would be increased by a factor “equal to the result of multiplying the ratio of average daily attendance of students who reside on Indian land to the total average daily attendance of the district” multiplied by 25%.⁶²⁴ The change in law was intended to increase, slightly, the spending authority and the state aid received by qualified districts.

Another provision of the Dierks amendment to LB 1001 changed several items under the other actual receipts section of the state aid formula. These receipts were to be considered a part of a district’s formula resources for purposes of calculating state aid. The Dierks amendment changed the “miscellaneous receipts” subsection to exclude revenues from what is commonly called the textbook loan program.⁶²⁵ Under this program, public schools were obliged, if possible, to loan textbooks to children enrolled in private schools upon individual request.⁶²⁶ The amendment also added a new accountable receipt for pre-school “Part H” special education funds from the Medicare Catastrophic Coverage Act of 1988 but only to the extent of the amount the district would have otherwise received under the Nebraska Special Education Act.⁶²⁷

The third modification to the school finance formula concerned the annual requirement for school districts to submit budget documents to the State Auditor or make corrections of errors in such documents in a timely fashion. The existing law required the Commissioner of Education to withhold state aid to such districts failing to comply with this provision.⁶²⁸ The existing law also required the commissioner to notify the county superintendent who must then direct the county treasurer to withhold all school money belonging to the school district until the matter is resolved.⁶²⁹ The Dierks amendment clarified perhaps what was taken for granted, and that was for the county treasurer to

⁶²⁴ Id.

⁶²⁵ Id.

⁶²⁶ NEB. REV. STAT. § 79-4,118 (current version at § 79-734).

⁶²⁷ NEB. LEGIS. JOURNAL, *Dierks AM4066*, 6 April 1992, 1974.

⁶²⁸ NEB. REV. STAT. § 79-3815 (Cum. Supp. 1991).

⁶²⁹ Id.

actually obey the request and withhold the money. The amendment required the county treasurer to obey the request of the county superintendent and withhold the funds until otherwise instructed.⁶³⁰

The fourth change to the school finance formula concerned the dates by which Class I districts and all other classes of districts must submit annual financial reports to their respective county superintendent and the Commissioner of Education. Class I districts were to submit such reports by October 15th of each year (changed from the previous October 1st date) and all other districts were to submit reports by November 1st of each year.⁶³¹ The financial reports include the amount of money received from all sources during the year and the amount of money expended by the school district during the year, among other statistics. The Dierks amendment was adopted by a 26-0 vote.⁶³²

As amended, LB 1001 also expanded the usage of an authorized tax levy by school districts. The legislation authorized school districts to levy up to 5.2¢ per \$100 valuation for purposes of accessibility barrier elimination projects and environmental hazard abatement projects.⁶³³ This provision would allow school districts to increase tax levies to fund the cost of accessibility barrier elimination projects if their levies were not currently at the maximum to fund environmental hazard abatement projects.⁶³⁴ The bill enabled school districts to accept state interest-free or low interest loans and allows schools to borrow money in any fund.⁶³⁵ The bill also allowed parents under the option enrollment program to appeal rejections of students made by resident school districts.⁶³⁶

⁶³⁰ NEB. LEGIS. JOURNAL, *Dierks AM4066*, 6 April 1992, 1974.

⁶³¹ *Id.*

⁶³² *Id.*

⁶³³ Legislative Bill 1001, in *Laws of Nebraska, Ninety-Second Legislature, Second Session, 1992*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), §§ 3-9, pp. 2-11 (942-51).

⁶³⁴ *Id.*, §§ 7-9, pp. 9-11 (949-51).

⁶³⁵ *Id.*, § 31, pp. 36-37 (976-77).

⁶³⁶ *Id.*, § 38, p. 46 (986).

Having assumed the fast track on General File, LB 1001 sustained no further amendments on Select File and passed easily on Final Reading by a 44-0 vote.⁶³⁷

Table 31. Summary of Modifications to TEEOSA
as per LB 1001 (1992)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
41	79-3805	Tiered cost per student; general fund operating expenditures; calculations	Harmonize state law with federal regulations concerning the Indian Land factor. Requires the tiered cost per student, for each grade level would be increased by a factor equal to the result of multiplying the ratio of average daily attendance of students who reside on Indian land to the total average daily attendance of the district multiplied by 25%.
42	79-3811	District formula resources; other receipts included	Changed "miscellaneous receipts" subsection to exclude revenues from the textbook loan program. Added a new accountable receipt for pre-school "Part H" special education funds from the Medicare Catastrophic Coverage Act of 1988 only to the extent of the amount the district would have otherwise received under the Nebraska Special Education Act.
43	79-3815	Budget statement; submitted to department; Auditor of Public Accounts; duties	Provides a technical revision to require the county treasurer to withhold funds from a school district as directed by the county superintendent if the commissioner finds a district in default of submitted or correcting required budget documents.
44	79-3824	State assistance; payments; reports; use; requirements; early payments	Harmonize technical change concerning the dates by which Class I districts and all other classes of districts must submit annual financial reports to the respective county superintendent and the Commissioner of Education. Class I districts were to submit such reports by October 15 th of each year (changed from previous October 1 st date) and all other districts were to submit reports by November 1 st of each year.

Source: Legislative Bill 1001, in *Laws of Nebraska, Ninety-Second Legislature, Second Session, 1992*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), §§ 41-44, pp. 48-54.

LB 719A - Revisions to LB 1063

An appropriation ("A") bill is typically considered to be a funding mechanism for the legislative bill of the same sequential number (e.g., LB 100A for LB 100). There are very few exceptions to this rule. In fact, the Rules of the Legislature prohibit an "A" bill

⁶³⁷ NEB. LEGIS. JOURNAL, 14 April 1992, 2256-57.

from non-germane, substantive provisions.⁶³⁸ Accordingly, the rules would first need to be suspended in order to consider non-germane amendments.

LB 719A (1992) was first introduced in 1991 as a funding bill to LB 719.⁶³⁹ However, much of the contents of LB 719 were amended into LB 511 during the 1991 Session. LB 511, as amended, made several technical and substantive changes to the school finance formula. This left LB 719 available as a *shell bill* during the 1992 Session, and was, in fact, used as a vehicle to incorporate other education-related provisions. However, none of the provisions of LB 719, as passed, required an appropriation. This left LB 719A on Select File with absolutely no purpose, which made it destined to be automatically killed (indefinitely postponed) at the conclusion of the 1992 Session. But there would be a purpose, as events unfolded late in the 1992 Session.

The 1992 Session will be remembered for the long and drawn out debate concerning the personal property tax crisis. LB 1063 (1992) and LR 219CA (1992) were passed with the intention to make headway in fixing the adjudged unconstitutional language within state statute. In 1991, the Nebraska Supreme Court held that state law providing exemptions for certain classes of personal property (e.g., agricultural equipment, business inventory, farm inventory, livestock, and railroad rolling stock) violated Article VIII, section 1, of the Nebraska Constitution (i.e., the “Uniformity Clause”).⁶⁴⁰ At the time, this clause provided that “taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises.”⁶⁴¹

The problem encountered during the 1992 Session was that LB 1063 had already been passed by the Legislature on March 12, 1992 (the 42nd day of the 60-day session).⁶⁴² Within a few weeks it became necessary to further amend LB 1063 during the same

⁶³⁸ RULES OF THE NEB. LEG., Rule 7, § 3(d).

⁶³⁹ Legislative Bill 719A, *Appropriation Bill*, sponsored by Sen. Ron Withem, Nebraska Legislature, 92nd Leg., 1st Sess., 1991, title first read 14 May 1991.

⁶⁴⁰ *Natural Gas Pipeline Co. of America v. State Bd. of Equalization*, 237 Neb. 357, 466 N.W.2d 461 (1991).

⁶⁴¹ NEB. CONST. art. VIII, § 1.

⁶⁴² NEB. LEGIS. JOURNAL, 12 March 1992, 1310.

legislative session. LB 719A became the chosen vehicle to handle these late session amendments.

In essence, LB 719A became a last minute Christmas tree bill with most of the ornaments in relation to technical and substantive changes to LB 1063. The rules were suspended and a number of amendments were adopted to incorporate various provisions. As passed, LB 719A spanned 160 pages with several modifications to education-related statutes, but only one change to the school finance formula itself.

The change to the school finance formula under LB 719A related to the existing section of law concerning the use of adjusted valuation for purposes of calculating state aid. One of the principles behind LB 1059 (1990) was to bring about a more equitable property tax assessment system so that school districts would not be unfairly treated under the school finance formula. It was determined that adjusted rather than assessed valuation would be used for purposes of calculating state aid. The problem faced by the Legislature in 1990 was that a system to implement adjusted valuation required additional time to implement. In fact, it was not until 1994 that a system was put into place to begin utilizing adjusted valuation of property. In the meantime, use of adjusted valuation was simply a goal of the Legislature as outlined in the Nebraska Tax Equity and Educational Opportunities Support Act.

In 1992, the section of the formula concerning adjusted valuation merely stated that the Department of Revenue would compute and certify adjusted valuation for each school district beginning in 1994.⁶⁴³ LB 719A clarified that the valuation of property for each district must reflect, as nearly as possible, “taxable value” as required by law and the Constitution of Nebraska.⁶⁴⁴ Taxable value essentially means assessed value for real property and net book value for tangible personal property, other than motor vehicles. Prior to LB 719A, the applicable section of the formula used the term “actual value,” which carries a different meaning than taxable value.

⁶⁴³ NEB. REV. STAT. § 79-3809 (Cum. Supp. 1991).

⁶⁴⁴ Legislative Bill 719A, in *Laws of Nebraska, Ninety-Second Legislature, Second Session, 1992*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 198, p. 148.

Table 32. Summary of Modifications to TEEOSA
as per LB 719A (1992)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
198	79-3809	Adjusted valuation; adjustment factors established	Clarified that the valuation of property for each district must reflect, as nearly as possible, "taxable value" as required by law and the Constitution of Nebraska.

Source: Legislative Bill 719A, in *Laws of Nebraska, Ninety-Second Legislature, Second Session, 1992*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 198, p. 148.

E. The 1993 Legislative Session

LB 310 - Budget Act

Legislative Bill 310 (1993) was introduced by Senator Jerome Warner and referred to the Natural Resources Committee for public hearing and disposition.⁶⁴⁵ The original purpose of LB 310 was to clarify that public power districts, public power and irrigation districts, and rural public power districts would not be subject to the Nebraska Budget Act.⁶⁴⁶ The need for clarification was due in part to several Attorney General opinions interpreting whether specific governing bodies were subject to the Budget Act.⁶⁴⁷ LB 310 was intended to put the matter to rest by changing applicable laws to expressly exclude such entities from compliance.

LB 310 was advanced from committee, designated a speaker priority bill, and steadily moved through the legislative process without much debate or discussion. On May 20, 1993, the bill arrived on Final Reading. It was at that time Senator Eric Will of Omaha, with the cooperation of Senator Warner, filed an amendment to return the bill to Select File for specific amendment.⁶⁴⁸ The amendment at issue was essentially the

⁶⁴⁵ NEB. LEGIS. JOURNAL, 14 January 1993, 201.

⁶⁴⁶ Senator Jerome Warner, *Introducer's Statement of Intent, LB 310 (1993)*, Nebraska Legislature, 93rd Leg., 1st Sess., 18 March 1993, 1.

⁶⁴⁷ *Id.*

⁶⁴⁸ NEB. LEGIS. JOURNAL, 19 May 1993, *Will-Warner AM2250*, printed separate, 2298.

contents of another bill, LB 763 (1993), relating to reimbursement of property taxes to taxpayers in certain situations.

LB 763 was introduced by Senator Will and referred to the Revenue Committee for disposition.⁶⁴⁹ The legislation was another cleanup measure for the personal property tax debacle in which previous legislative efforts had been ruled unconstitutional. As the bill emerged from committee, the intent was to provide a procedure for school districts and other political subdivisions to levy a (real) property tax for purposes of reimbursing personal property taxes to taxpayers as required by a final order of a court or the State Board of Equalization from which no appeal was taken. Such payments were already exempt from school districts' spending lid, but the levy authority was less clear at the time. The taxes collected were to be deposited into a property tax reimbursement fund. This revenue authority was to extend from fiscal years 1993-94 through 1999-2000.⁶⁵⁰

The Will-Warner motion to return LB 310 was successful as was the adoption of the amendment itself.⁶⁵¹ LB 310 was re-advanced to Final Reading where it was passed on June 7, 1993 by a 43-1 vote.⁶⁵²

Table 33. Summary of Modifications to TEEOSA
as per LB 310 (1993)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
14	79-3819	Applicable allowable growth rate; district may exceed; situations enumerated	Provided a procedure for schools to levy a property tax for purposes of reimbursing personal property taxes to taxpayers as required by a final order of a court or the Board of Equalization from which no appeal was taken.

Source: Legislative Bill 310, in *Laws of Nebraska, Ninety-Third Legislature, First Session, 1993*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 14, pp. 7-9 (1337-39).

⁶⁴⁹ Legislative Bill 763, *Authorize a special levy to cover reimbursement for certain property taxes*, sponsored by Eric Will, Nebraska Legislature, 93rd Leg., 1st Sess., 1993, title first read 21 January 1993.

⁶⁵⁰ Committee on Revenue, *Committee Statement, LB 763 (1993)*, Nebraska Legislature, 93rd Leg., 1st Sess., 1993, 1-2.

⁶⁵¹ NEB. LEGIS. JOURNAL, 20 May 1993, 2375.

⁶⁵² *Id.*, 7 June 1993, 2796.

LB 348 - Technical Cleanup

Legislative Bill 348 (1993) represented the omnibus technical cleanup bill for the Nebraska Department of Education for the 1993 Session. The bill provided mostly technical and a few minor substantive changes in the areas of special education, enrollment option, early childhood education, student services, and the school finance formula itself. Unlike the fate of many such cleanup bills, LB 348 would manage to pass in the same session it was introduced. Too often, these bills simply do not carry the priority status as the more substantive headline issues of the day. In this case, however, LB 348 was given an early date for its public hearing, was advanced from committee early in the session, and was passed on the very last day of the 1993 Session.

Some of the provisions contained in the bill that did not directly amend the school finance formula, yet had a collateral impact, included several issues related to Class I districts. LB 348 clarified voting rights in certain affiliated school districts by categorizing the voters of a high school district and an affiliated Class I district as a “combined voting unit” for purposes of voting on the approval of capital additions to, or the replacement or construction of, high school facilities.⁶⁵³ The bill also applied a “common levy” in affiliated school districts to finance the estimated costs of removal of environmental hazards and physical barriers at any of the high school facilities within the affiliated districts under the Americans with Disabilities Act (ADA). Under this provision, each local school board within an affiliated district would estimate the amount of money it would need to bring its school into compliance with federal mandates.⁶⁵⁴

The bill amended three separate sections of the school finance formula. The first of these modifications involved an unanticipated outcome of the affiliation process in relation to the minimum levy provision within the formula. The minimum levy provision stated that no district would receive equalization aid in an amount such that total state aid received would result in a district having a general fund tax levy of less than 60% of the

⁶⁵³ Nebraska Legislative Research Division, “A Review: Ninety-Third Legislature, First Session, 1993,” August 1993, 28.

⁶⁵⁴ Id.

local effort rate.⁶⁵⁵ The idea was that districts should not be rewarded with state financial support if they were not willing to make a minimum financial contribution at the local level through property taxes. However, a byproduct of the affiliation process was that some Class I districts essentially had multiple general fund levies, and this made calculation of the minimum levy provision difficult for the Department of Education. “When 1059 was written, there was not the opportunity for school districts to have more than one general fund levy,” said Tim Kemper, representing the department.⁶⁵⁶

The answer, as proposed by the department, was to provide a separate minimum effort formula for the calculation of state aid in Class I districts that have multiple general fund levies. Accordingly, LB 348 provided that, for Class I districts having more than one general fund levy, the minimum effort calculation would be based on a “derived general fund levy” for the district.⁶⁵⁷ The derived general fund levy was to be calculated by adding the general fund property tax yield for all portions of the district and dividing the result by the total assessed valuation of the district.⁶⁵⁸

The second modification to TEEOSA also related to unanticipated circumstances. For lack of statutory authority, any state aid payments distributed to school districts in error and subsequently refunded to the state were credited to the State General Fund rather than the fund dedicated to K-12 state aid (the Tax Equity and Educational Opportunities Fund). The problem could be corrected, as per LB 348, by inserting language to add this amount to the Governor’s budget request in appropriations for state aid in the following year.

As modified by LB 348, the laws relevant to the school finance formula would require the department to provide data to the Governor by December 1st of each year in

⁶⁵⁵ NEB. REV. STAT. § 79-3806 (Cum. Supp. 1992).

⁶⁵⁶ Committee on Education, *Hearing Transcripts, LB 348 (1993)*, Nebraska Legislature, 93rd Leg., 1st Sess., 1993, 8 February 1993, 10.

⁶⁵⁷ Legislative Bill 348, in *Laws of Nebraska, Ninety-Third Legislature, First Session, 1993*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 71, p. 38 (1635).

⁶⁵⁸ *Id.*

order for the Governor to prepare necessary legislation for the upcoming session. The annual legislation would include provisions to:

- (1) Appropriate an amount which will provide financial support from all state sources to districts equal to forty-five percent of the estimated general fund operating expenditures of districts for the ensuing school year;
- (2) Appropriate an amount of income tax revenue received to insure that twenty percent of all income tax receipts are dedicated to the support of districts throughout the state;
- (3) Appropriate an amount equal to any state aid funds which have been returned to the General Fund from an earlier appropriation due to the repayment of funds by districts; and
- (4) Establish and implement a basic allowable growth rate and an allowable growth range for district budgets for the ensuing school year.⁶⁵⁹

The legislation was required to be submitted by the Governor as part of his/her annual budget request to the Legislature.

The third and final modification to the school finance system under LB 348 was a matter of providing an expeditious procedure in addressing a district's need for early payment of state aid in cases of hardship. Prior to 1993, existing law provided a process for districts to apply for early payment of state aid if the district received federal funds in excess of its general fund budget of expenditures, and those federal funds were not received in a timely manner. The law permitted the State Board of Education to grant up to 50% of the amount of state aid entitled to the district following a public hearing on the matter. Under LB 348, the department proposed to eliminate the hearing requirement due to its cost and due to the administrative nature of the request.⁶⁶⁰ Only a few districts were ever in such circumstances and the department's staff could just as easily determine the merits of the request on behalf of the State Board.

LB 348 passed on Final Reading by a 47-0 vote on June 8, 1993.⁶⁶¹

⁶⁵⁹ Id., § 72, p. 39 (1636).

⁶⁶⁰ Id., § 73, pp. 39-40 (1636-37).

⁶⁶¹ NEB. LEGIS. JOURNAL, 8 June 1993, 2829-30.

Table 34. Summary of Modifications to TEEOSA as per LB 348 (1993)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
71	79-3806	State aid; amount	Provided a separate minimum effort formula for the calculation of state aid in Class I districts that had multiple general fund levies. In such cases, the minimum effort calculation would be based on a derived general fund levy.
72	79-3822	Department; provide data to Governor; Governor; duties	Required Governor to annually submit legislation that includes appropriations for the amount equal to any state aid funds returned to the General Fund from an earlier appropriation due to clerical errors in state aid payments.
73	79-3824	State assistance; payments; reports; use; requirements; early payments	Eliminated hearing requirement for requests to grant a district up to 50% of entitled state aid if the district received federal funds in excess of its general fund budget of expenditures, and those federal funds were not received in a timely manner.

Source: Legislative Bill 348, in *Laws of Nebraska, Ninety-Third Legislature, First Session, 1993*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), §§ 71-73, pp. 38-40 (1635-37).

LB 839 - Common Levy Revisited

The 1993 Session witnessed the introduction of three separate measures related to Class VI (high school only) school districts. They varied in scope and purpose. LB 556, introduced by Senator David Bernard-Stevens of North Platte, required each Class VI district and the Class I districts that were part of the Class VI to merge and form a new Class III (K-12) district by June 1, 1995.⁶⁶² LB 454, introduced by Senator Ron Withem of Papillion, dissolved all Class VI school districts effective June 1, 1994. The bill also required Class I districts that were formerly a part of a Class VI to reorganize and become a K-12 school district.⁶⁶³ Finally, LB 71, introduced by Speaker Dennis Baack of Kimball, required that all Class I districts or portions thereof that are part of a Class VI district would have a common levy beginning with the 1993-94 school year.⁶⁶⁴

⁶⁶² Legislative Bill 556, *Require the merger of Class I and Class VI school districts*, sponsored by Sen. David Bernard-Stevens, Nebraska Legislature, 93rd Leg., 1st Sess., 1993, title first read 20 January 1993.

⁶⁶³ Legislative Bill 454, *Require the merger, affiliation or dissolution of Class VI school districts*, sponsored by Sen. Ron Withem, Nebraska Legislature, 93rd Leg., 1st Sess. 1993, title first read 19 January 1993.

⁶⁶⁴ Legislative Bill 71, *Provide a general fund property tax requirement for certain school districts*, sponsored by Sen. Dennis Baack, Nebraska Legislature, 93rd Leg., 1st Sess., 1993, title first read 7 January 1993.

In 1992 there were 21 Class VI districts and 174 Class I districts were a part of those Class VI districts.⁶⁶⁵ All other Class I districts in Nebraska were affiliated or set to be affiliated with K-12 districts as per LB 259 (1990) and LB 511 (1991).⁶⁶⁶ LB 259 (1990) required a common levy for Class I districts affiliated with a K-12 district, such that all property taxpayers residing within the system would be subject to the same property tax levy.

However, the missing piece to the common levy objective, as some believed it to be, was the Class VI districts along with the Class I districts that were a part of such high school only districts. This was a deliberate omission in 1990 due to the political sensitivity of the subject and the nature of the relationships between and among Class I districts and Class VI districts. In fact, Senator Bob Wickersham of Harrison described this relationship best when he said:

[T]he Class I Class VI system is distinctly different than the Class III, II, IV, or V systems in that it has multiple school districts, multiple school boards, multiple decisions about spending needs and how they affect the education of students in those schools.⁶⁶⁷

Senator Wickersham was certainly correct in his description, but, in the minds of some, it did not justify the property tax inequities that existed among Class I districts that were a part of Class VI districts in comparison to Class I districts that were affiliated with K-12 districts. This was the crux of the problem.

While there were three “Class VI” bills introduced in the 1993 Session, by three different sponsors, one has to wonder if there were really three different objectives, or just one. Did Senators Withem and Bernard-Stevens truly believe their forced consolidation bills had even a remote chance, or were they intended to make another measure, Speaker Baack’s common levy bill, appear as the less ominous of the three

⁶⁶⁵ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 556 (1993)*, prepared by Sandy Sostad, Nebraska Legislature, 93rd Leg., 1st Sess., 1993, 12 February 1993, 1.

⁶⁶⁶ The deadline was July 1, 1992 under LB 259 (1990) and extended to July 1, 1993 under LB 511 (1991).

⁶⁶⁷ Legislative Records Historian, *Floor Transcripts, LB 839 (1993)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 93rd Leg., 1st Sess., 2 June 1993, 7087.

proposals? In truth, both Senator Withem's bill and Senator Bernard-Stevens' bill would have also produced a common levy, but by different means than that proposed by Speaker Baack. In fact, Speaker Baack was not seeking to force school consolidation. He was seeking tax equity, just as he had sought for the previous two consecutive sessions. Speaker Baack had introduced nearly identical common levy bills for three straight sessions (LB 487 in 1991, LB 1198 in 1992, and LB 71 in 1993).

Naturally, the introduction of the three Class VI bills gained the undivided attention and concern of Class VI officials along with other rural school interests. The troops were mobilized to converge on the Capitol and defend their schools. Whether or not the forced consolidation bills had a hope of advancement, advocates of Class VI schools were taking no chances.

On February 16, 1993, the public hearing for LB 556 was held before the Education Committee.⁶⁶⁸ Senator Bernard-Stevens opened on the bill by reminding everyone present that his bill was one of three measures pending before the Legislature concerning Class VI schools. "Legislative Bill 556 simply is a piece of legislation to expedite the efficient administration of the state school system by mandating that all Class I school districts, contained within Class VI school districts, merge with the Class VI school districts to become a Class III district," said Bernard-Stevens.⁶⁶⁹ It seemed that the political "hammer" strategy was in full swing.

Both the Department of Education and the Nebraska State Education Association (NSEA) appeared in support of Bernard-Stevens' legislation. Craig Christiansen, representing the NSEA, took the measure as a serious attempt to reduce administrative costs. Said Christiansen:

We support the concepts presented in this bill for several reasons. Number one, we believe that K-12 districts better serve the education needs of students and teachers. Number two, a uniform administrative unit better serves taxpayers by equalizing tax responsibilities. Number three, the reduction of administrative

⁶⁶⁸ NEB. LEGIS. JOURNAL, 3 February 1993, 479.

⁶⁶⁹ Committee on Education, *Hearing Transcripts, LB 556 (1993)*, Nebraska Legislature, 93rd Leg., 1st Sess., 1993, 16 February 1993, 49.

units frees monies that potentially could be used for students and for educational programs. And, number four, we believe that this bill is consistent with the entire direction of equalization concepts in this state.⁶⁷⁰

Tim Kemper, representing the Department of Education, provided data to the committee concerning the wide variances among Class VI districts and the Class I districts that were a part of those high school districts. He reminded members of the Education Committee that LB 556 was as much about equity in state aid as it was about equity in property taxes. His data demonstrated that some Class I/Class VI arrangements were receiving fairly substantial sums of state aid even though the districts had relatively low property tax levies. It begged the question as to whether there were equalized school districts in Nebraska more in need of those state funds.

Those wishing to protect the status quo included such notable organizations as the Nebraska Farmers Union, the Nebraska Farm Bureau Federation, and the Nebraska Cattlemen. Future state senator, Deb Fischer, was also present at the hearing to represent her home area and Valentine High School for which she served as a board member. Fischer outlined the history of Class VI districts in Nebraska and the value of such schools in a rural-oriented state. Said Fischer:

The Nebraska Legislature allowed for the creation of regional high schools with the first being formed, according to law, by McPherson County in 1917. The Legislature recognized the need for regional high schools, because of the special needs faced by rural Nebraska. Those basic needs still exist today. Valentine Rural High School was formed in 1971. We are the largest school district in the state, with an area larger than the States of Rhode Island and Delaware combined.⁶⁷¹

Bryce Neidig, President of the Nebraska Farm Bureau Federation further elaborated on the rationale for development of regional high schools. “I’d like to point out one of the primary reasons Class VI systems were created, was that neighboring K-12 districts, at that time, would not accept rural students under nonresident tuition,” Neidig said.⁶⁷²

⁶⁷⁰ Id., 62.

⁶⁷¹ Id., 70.

⁶⁷² Id., 74.

“Therefore, many of these Class I districts were left with little choice, other than to form a Class VI system, and this relates back directly to local control the people felt very strongly about,” he added.⁶⁷³

The hearing for LB 454, Senator Withem’s consolidation bill for Class I/Class VI systems, was held on February 22, 1993, also before the Education Committee.⁶⁷⁴ Proponents included Neal Krause, Board of Education Secretary for the Omaha Public School District. Krause said the effect of LB 454 and legislation like it would be to move closer to the equalization objective of the new state aid formula. Said Krause:

Legislative Bill 1059 was based on the premise that local school districts’ ability to fund their own programs should be broadened by adding an income tax rebate component. And that state funding should be used to equalize per pupil expenditures between districts. The bill is working, and there is today a much greater correlation between districts’ spending level and their levies. There are still some disequalizing factors within the formula, however.⁶⁷⁵

The lack of a true common levy for all school districts was one of the disequalizing factors to which Krause alluded. The effect of a statewide common levy would potentially mean less state aid for some districts and more for others. And the potential shift in aid was certainly a top concern to Class VI supporters.

Dick Kamm, Superintendent at Lakeview High School near Columbus, appeared in opposition to LB 454 on behalf of his own Class VI district. Kamm testified:

I have my figures correct, I think that we’re talking at least over \$15 million that would shift in state aid from districts that are now hold harmless school districts to those that are on equalization. ... I guess I see this bill as another way that we would shift more money to the urban areas, while the rural areas that, supposedly, are property rich would take another double or triple whammy.⁶⁷⁶

⁶⁷³ Id., 74.

⁶⁷⁴ NEB. LEGIS. JOURNAL, 3 February 1993, 479.

⁶⁷⁵ Committee on Education, *Hearing Transcripts, LB 454 (1993)*, Nebraska Legislature, 93rd Leg., 1st Sess., 1993, 22 February 1993, 78.

⁶⁷⁶ Id., 84-85.

Kamm would be an active lobbyist on behalf of other Class VI schools during and after the 1993 Session, eventually his services would be rendered on behalf of the Class VI Association.

In general, the opponents of LB 556 and LB 454 made a reasonable demonstration for their cause, but may still have missed the mark concerning the underlying objective of the three Class VI bills. The objective was not consolidation; it was a common levy for Class I/Class VI systems. Senator Bernard-Stevens hinted at this during his opening remarks on LB 556. In addition, Senator Withem had been very vocal in 1990 when he said LB 259, the affiliation bill, represented the end of the road with regard to school organization legislation, at least as far as he was concerned. He knew very well that any real, genuine pursuit of a Class I/Class VI consolidation bill in 1993 would have tarnished his reputation, at a minimum. But all three lawmakers, Withem, Baack, and Bernard-Stevens, were deadly serious about property tax equity and fair treatment within the relatively new equalization-based formula. These were, in fact, some of the original objectives under LB 1059 (1990).

The public hearing for the third and final “Class VI” bill was held on March 5, 1993.⁶⁷⁷ The more revenue-related nature of LB 71 caused the bill to be referred to the Revenue Committee rather than the Education Committee. Speaker Baack’s LB 71 embodied the common levy provisions that would eventually be offered to the Legislature for consideration under LB 839. But there would first need to be some political wrangling before it got that far.

As introduced, LB 71 proposed to bring the Class I/ VI partnerships up to speed with the common levy provisions already in existence for Class I districts affiliated with a K-12 district. The bill required that all Class I districts or portions thereof that were part of a Class VI district would have a common levy for the operation of the K-12 school system beginning with the 1993-94 school year.⁶⁷⁸ LB 71 specified that the amount of state aid allocated to these districts through the equalization component of the formula

⁶⁷⁷ NEB. LEGIS. JOURNAL, 5 February 1993, 539.

⁶⁷⁸ LB 71 (1993), §§ 2-3, pp. 4-6.

would be determined based upon the formula need of the entire Class VI system.⁶⁷⁹ This particular provision would directly amend the school finance formula itself.

The legislation also provided a mechanism for the calculation of in-lieu-of school land taxes for Class VI school systems, essentially mirroring the calculation for the affiliated school systems. LB 71 proposed to reduce the rate used to calculate the in-lieu-of school land tax reimbursement from 143% to 100% of the appraised value. In 1991, the Department of Education began making payments of in-lieu-of school land taxes at 100% of appraised value. This action shifted an estimated \$1.8 million from the in-lieu-of-tax payment to state apportionment. LB 71 essentially harmonized the interaction of the Class VI system levy with the in-lieu-of-tax payments to school districts. It provided that a specified percentage of the in-lieu-of payment based upon the new common levy would be provided to the Class VI district and the remainder would be distributed to the Class I district.⁶⁸⁰

At the hearing for LB 71, Speaker Baack reiterated the same rationale for bringing the bill forward that he had used in his previous two, unsuccessful attempts (in 1991 and 1992). It was a matter of tax equity and fair treatment of all school districts under the school finance formula. Said Baack:

I don't think there's any good justification for having one system out there that is totally different than the other kinds of systems that we have in education, that operates with varying levies throughout the...throughout the system, and that has one common levy for high school.⁶⁸¹

Virgil Horne, representing Lincoln Public Schools, also testified in favor of the bill. “[T]here are a variety of bills before the Legislature this year that would provide stability and quality to 1059 funding,” Horne said, “It is our opinion that this bill would do the same thing.”⁶⁸²

⁶⁷⁹ Id., § 5, pp. 8-12.

⁶⁸⁰ Id., § 4, pp. 6-8.

⁶⁸¹ Committee on Revenue, *Hearing Transcripts, LB 71 (1993)*, Nebraska Legislature, 93rd Leg., 1st Sess., 1993, 5 March 1993, 7.

⁶⁸² Id., 8.

Deb Fischer once again appeared on behalf of Valentine Rural High School and the Committee for Regional High School Systems. She testified against LB 71 on the basis that it would unfairly harm school districts that had been in existence for many years. “They have a system now that is working well for them, and providing good educational opportunities for their students,” she said, “I don’t think this system should be changed.”⁶⁸³ Fischer noted that at least one Class I school in the Valentine area would no longer receive state aid under a common levy scheme.

Gayle Mueller, representing the Class VI Association of Schools, presented a map to members of the Revenue Committee demonstrating that 25% of the land mass of Nebraska was included within the existing Class VI districts. He noted that the estimated impact on equalization aid to those Class VI districts would be approximately \$3.5 million, less than 1% of the total state aid appropriation. “I wonder why we would want to disrupt the K-12 systems that the Class I and Class VI represents for this small portion of the total amount of money,” Mueller said.⁶⁸⁴

The Revenue Committee took quick action on LB 71. On March 16, 1993, the committee officially reported that it had voted 6-2 to indefinitely postpone the common levy bill.⁶⁸⁵ The Education Committee subsequently killed both LB 454 and LB 556, the remaining two Class VI bills.⁶⁸⁶ It might have appeared, on the 48th day of the 90-day session, that the Class VI advocates had won the battle. But such was not the case.

Senator Withem would file an amendment to LB 348, the 1993 omnibus technical cleanup bill, which essentially embodied the contents of LB 71.⁶⁸⁷ The Class VI issue could have been taken up on June 3, 1993 when LB 348 appeared on the Select File agenda. Senator Withem chose instead to withdraw the amendment rather than weigh

⁶⁸³ Id., 13.

⁶⁸⁴ Id., 27.

⁶⁸⁵ NEB. LEGIS. JOURNAL, 16 March 1993, 991.

⁶⁸⁶ Id., 24 March 1993, 1157.

⁶⁸⁷ Id., *Withem AM1869 to LB 348 (1993)*, 4 May 1993, 1947.

down a technical cleanup bill.⁶⁸⁸ But the amendment did serve to put Class VI advocates on notice that the issue was not quite dead yet.

By June 1, 1993, Senator Withem found a new vehicle for the Class VI issue. LB 839, sponsored by the Appropriations Committee, was actually a part, albeit a small part, of the overall budget package for the 1993-95 biennium. As introduced and advanced, LB 839 proposed to eliminate the reimbursement of tuition by the state for children of parents employed by the federal government who reside on national parks or national monuments within the state. The bill also eliminated the reimbursement of tuition by the Department of Aeronautics for children of parents who reside on tax-exempt state owned airfields and the reimbursement of tuition by cities for children of parents residing on city-owned tax-exempt airfields. All told the bill proposed to save the state \$34,160 for each 1993-94 and 1994-95.⁶⁸⁹

LB 839 was not exactly what one might call the cornerstone of the budget package. It was, however, an education-related bill with a destiny for bigger things. The problem was that the bill had already been placed on Final Reading. Nevertheless, it did not prevent Senator Withem from filing the LB 71-look-alike amendment and the accompanying motion to return LB 839 to Select File for specific amendment.

On June 2, 1993, the Legislature was set to take a final vote on this otherwise nondescript bill. What would happen next is enough to cause heartburn to any committee chair, especially the chair of the Appropriations Committee whose charge it is to produce a complete, balanced budget package. In this case, the budget committee chair was none other than Senator Scott Moore, the one-time co-sponsor of LB 1059 (1990). “[F]oolish consistency is the hobgoblin of small minds,” Senator Moore said, rationalizing to himself as much as to his colleagues whether LB 839 could be used as the vehicle for such heavy subjects as in-lieu-of-tax and common levy.⁶⁹⁰

⁶⁸⁸ Id., 3 June 1993, 2721.

⁶⁸⁹ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 839 (1993)*, prepared by Sandy Sostad, Nebraska Legislature, 93rd Leg., 1st Sess., 1993, 5 May 1993, 1.

⁶⁹⁰ *Floor Transcripts, LB 839 (1993)*, 2 June 1993, 7083.

Naturally, the head of the Appropriations Committee will jealously guard his or her budget plan due to the continuous political tug and pull that goes along with establishing a biennium budget. Moore eventually relented, stating:

Now if LB 839 doesn't pass, it's not the end of the world. It's only worth \$34,000. But I think if the in lieu of tax thing is something that absolutely has to be done and there's unanimous agreement in the body, if LB 839 is the only vehicle to do it, I'm not going to stand in the way.⁶⁹¹

Senator Moore focused on the in-lieu-of-tax “thing” rather than the common levy provision of the Withem amendment for good reason. It was Senator Withem, in his opening remarks on the motion to return LB 839 to Select File, who placed a time-sensitive nature to the in-lieu of tax issue.

In fact, Senator Withem was reacting to several recent legal opinions that seemed to necessitate action by the Legislature in order for the Department of Education to disperse in-lieu of tax funds. Attorney General Don Stenberg wrote in an April 1993 opinion that it would be prudent for the Legislature to change the law concerning in-lieu-of-taxes. The opinion, requested by Commissioner of Education Joe Lutjeharms, stated in pertinent part:

Can you, as Commissioner of Education, apportion the school funds of the state pursuant to Neb. Rev. Stat. § 79-1303 (Cum. Supp. 1992)? We think not. Since the state's status as a trustee is established by the Constitution, a violation of its duty as trustee is a violation of the Constitution itself. ... We simply cannot, and will not, knowingly advise you or any other officer of the State of Nebraska to violate the Constitution of our state. We therefore suggest that you seek a proper amendment to Neb. Rev. Stat. § 79-1303 (Cum. Supp. 1992).⁶⁹²

There was some doubt later in the 1993 Session about whether the statute had to be amended that particular year or if it could have waited until 1994.

To understand the in-lieu-of-tax issue, one must look back to the early days of Nebraska's history. In 1864, Nebraska officially became a state, and as part of the

⁶⁹¹ Id.

⁶⁹² Attorney General Don Stenberg, and Harold Mosher, Senior Asst. Attorney General, *Attorney General Opinion 93035*, requested by Joe Lutjeharms, Commissioner of Education, 29 April 1993.

federal act to enable statehood, Congress granted certain lands to Nebraska for the support of the common schools of the state.⁶⁹³ Well before 1993, many of the school lands had already been sold. School districts in which the land had been sold were able to receive tax revenue from the land that was formerly school land but was no longer exempt from taxation. Conversely, school districts containing school land that had not been sold were unable to levy taxes against such land.

In order to equalize the distribution of income from the rental of school lands and income earned from the investment of the proceeds from school land that had been sold, the Legislature provided that in-lieu-of-tax payments would be made to school districts containing school land that had not been sold. After in-lieu-of-tax payments had been made, the balance of the income available for distribution was dispersed to all districts on a pro rata basis according to the number of children between the ages of 5 and 18 years residing in each district. So what caused the Attorney General to arrive at the conclusion that the law had to be changed before further payments could be made?

On January 4, 1991 the Nebraska Supreme Court held that because the use of 143% of the valuation yields an amount equal to the total tax that would be imposed on the school land if it were taxable, school districts with school lands received more under the in-lieu-of-tax scheme than they would receive if the lands were taxable. In *Bartels v. Lutjeharms*, the high court held:

The use of 143 percent of the valuation factor thus confers a benefit or bonus upon the school districts with school lands to the detriment of the school districts without trust lands. ... The statutory provision requiring use of 143 percent of the valuation in calculating in-lieu-of-tax payments to school districts is a violation of the duty of the state as trustee to treat all beneficiaries of the trust fairly and impartially and is, therefore, invalid.⁶⁹⁴

Robert Bartels, a resident and taxpayer in Millard School District, alleged the state law was unconstitutional. He filed suit to prevent the defendant, Commissioner of Education

⁶⁹³ Id.

⁶⁹⁴ *Bartels v. Lutjeharms*, 236 Neb. 862 (1991), 868-69.

Joe Lutjeharms, from making in-lieu-of-tax distributions under the existing law. In essence, the high court agreed with Bartels that the law was indeed unconstitutional.

Speaker Baack, through LB 71 (1993), and Senator Withem, through the late amendment to LB 839 (1993) were attempting to change the law in accordance with the *Bartels* decision as clarified by the April 1993 Attorney General opinion. While Baack's legislation failed to advance from committee, Withem believed LB 839 might be suited as a vehicle to amend the in-lieu-of-tax law and piggyback the Class I/VI common levy at the same time. Although he had to have known that he was attempting a risky maneuver.

When the Legislature took up Final Reading of LB 839 on June 2, 1993, Withem, amply backed by Speaker Baack, brought the two issues forward within one amendment. "I would like to consider two issues that I think the Legislature needs to give an answer to this session," Withem explained to his colleagues, "And I'm using LB 839 as the instrument to do that."⁶⁹⁵ In his opening remarks, Withem first made mention of the in-lieu-of-tax provisions of the amendment, emphasizing the need to enact the proposed changes in accordance with the Supreme Court ruling. "It will mean that the money will be distributed on the basis of its taxation value and not on 100 percent," he said.⁶⁹⁶

Senator Withem saved the more controversial matter, the common levy issue, for last. Said Withem:

I think it's time the full Legislature took a stand on this issue. What you have before you is the second part of the amendment to LB 839 is what is simply called the common levy for Class VIs. Class VI school districts are in effect an amalgamation of Class I school districts that don't operate a high school, that have banded together to form an umbrella district that creates a high school district. People that live in those pay two different levies. They pay a levy to support the high school, a levy to support the elementary school.⁶⁹⁷

The Papillion lawmaker gave several examples of the wide variance in the levies of Class I districts that were a part of Class VI districts to emphasize the tax inequities inherent in the existing system. "I have not heard anyone give a defense of the wide variance in

⁶⁹⁵ *Floor Transcripts, LB 839 (1993)*, 2 June 1993, 7076.

⁶⁹⁶ *Id.*, 7078.

⁶⁹⁷ *Id.*

levies that makes sense within a Class VI school district,” Withem said.⁶⁹⁸ He also spoke of the affiliation bill (LB 259) passed in 1990 and the need to finish the process of establishing a common levy for all school districts.

The principle critic of Senator Withem’s amendment, as it related to the common levy and to the legislative tactic used by Withem to broach the topic, was Senator Bob Wickersham of Harrison. Senator Wickersham reminded the body of Withem’s pledge in 1990 that LB 259 represented the last Class I reorganization effort. Wickersham said:

One of the things I find a little bit ironic is that in the affiliation bill which was passed in 1990 there is a provision, you’ll find it in the bill books at 79-426.28(2). It simply says effective July 1, 1993, with the full implementation of Section 79-438.12 the Legislature will have attained its school reorganization goals for Class I districts as described in 79-426.27; 79-438.12 is affiliation. Affiliation is done.⁶⁹⁹

Senator Wickersham also reminded his colleagues that all three Class VI bills had been killed by the assigned standing committees. In essence, the Legislature, through its committee process, had already spoken on the issue.

Besides the procedural issue, Wickersham simply did not endorse the concept of a common levy for Class I/VI systems. He emphasized the distinct nature of Class VI districts in comparison to other high school districts. “I don’t think that we need to have the common levy because it will in part defeat what I think is a very good system where people make their own spending decisions for their own school and pay for them,” he said, “The common levy in effect causes other people to pay for spending decisions that are made in a Class I.”⁷⁰⁰ Joining Wickersham in opposition to the amendment were other members of the body, including Senator Cap Dierks of Ewing. “I think that what actually happens here with the passage of this amendment you have eliminated the Class VI district and it becomes nothing more than an affiliated Class II or III district, does the

⁶⁹⁸ Id., 7079.

⁶⁹⁹ Id., 7081.

⁷⁰⁰ Id., 7087.

same type thing we've already done with the affiliation process," Dierks said.⁷⁰¹ "I don't think that was part of the bargain when affiliation was sold," he added.⁷⁰²

Speaker Baack provided support to Senator Withem's amendment and stated there was no justification for permitting a unique system that essentially provides for tax havens. Said Baack:

There is no justification for doing that. We have in the affiliation process we went through that as we did affiliation in here we talked about whether or not we needed a common levy. And we came to the conclusion, yes, we did. We had to provide for a common levy with the affiliated districts to make sure that we spread out that tax burden within that district. The Class VIs and their association with the Class Is should be no different.⁷⁰³

The Speaker agreed with Wickersham that the Class I/VI system was distinctly different. "Yes, they are distinctly different than anything else we have in the state," he said, "And the distinction is they allow for tax havens."⁷⁰⁴ Senator Eric Will, who cast one of the two affirmative votes to advance LB 71 from the Revenue Committee, also supported the Withem amendment to LB 839. "[T]he fact is that this is a policy decision that is a no 'brainer,'" the Omaha legislator said, "It's something that we ought to be doing now, that we ought to have done a long time ago frankly."⁷⁰⁵

Senator David Bernard-Stevens also rose to support his friend's amendment. He reminded everyone that the common levy provisions under LB 71 were the "kindest" of the three Class VI bills offered in the 1993 Session.⁷⁰⁶ "They merge to have a common levy," he said, "They have the common levy, but they keep their districts, they keep their school boards, they keep their local control."⁷⁰⁷ Bernard-Stevens insisted, "There is no

⁷⁰¹ Id., 7108.

⁷⁰² Id.

⁷⁰³ Id., 7087-88.

⁷⁰⁴ Id., 7088.

⁷⁰⁵ Id., 7097. Senators Will and Withem cast the only two affirmative votes in favor of advancing LB 71 from committee. The motion to advance LB 71 failed on a 6-2 vote.

⁷⁰⁶ Id., 7098.

⁷⁰⁷ Id.

better compromise out there.”⁷⁰⁸ Speaker Baack was obviously in agreement, but to him the issue represented one of the highest callings of government. “Education is a responsibility of everyone in society,” Baack said, “I think this is one of those cases where we need to make a policy decision, we need to move forward on this issue.”⁷⁰⁹

The criticism for the tactic used to promote the common levy provisions, to a bill currently on Final Reading, was often voiced during the June 2nd debate. “Final Reading is not the place for this kind of a proposal,” Senator Wickersham said.⁷¹⁰ Naturally, Senator Withem took notice of the criticism. “Somehow I get this sense that I’m being accused of trying to slip something by people at the last minute,” Withem said.⁷¹¹ But it was not as though Senator Withem sprang a complete surprise. A similar amendment, after all, had been filed and was pending on LB 348, the NDE technical cleanup bill. In truth, no matter what vehicle was chosen, the same battle would have ensued.

The debate on the Withem amendment began in the morning of June 2nd and continued after the noon recess. The lunch break gave time for more reflection, and lobbying in both directions. A part from Senator Withem’s opening remarks, the in-lieu-of-tax portion of the amendment was barely mentioned during the long debate. This was, on the whole, a major policy debate on the issue of the common levy. And it was, as far as Senator Withem was concerned, the final school organizational element to the affiliation/common levy objective. “[I]f this amendment is adopted, ... then that will settle the Class VI structural issue as far as I’m concerned,” Withem said.⁷¹²

The first vote on the Withem proposal was on the procedural motion to return the bill to Select File, only at that stage could a vote be taken to adopt the amendment at issue. As it turned out, Withem’s motion to return passed with the absolute bare

⁷⁰⁸ Id.

⁷⁰⁹ Id., 7102.

⁷¹⁰ Id., 7099.

⁷¹¹ Id., 7100.

⁷¹² Id., 7110.

minimum affirmative votes (25-20).⁷¹³ This was, in reality, the most important vote since it enabled the Legislature to actually consider and vote on the merits of the amendment itself. If the motion to return is passed, in most cases, the amendment is also adopted.

Table 35. Record Vote: Withem Motion to Return LB 839
to Select File for Specific Amendment (AM2496)

Voting in the affirmative, 25:

Abboud	Chambers	Hartnett	Lynch	Robinson
Ashford	Crosby	Hillman	Pedersen	Schimek
Baack	Cudaback	Hohenstein	Pirsch	Wesely
Bernard- Stevens	Day Hall	Horgan Lindsay	Preister Rasmussen	Will Withem
Beutler				

Voting in the negative, 20:

Bohlke	Elmer	Jones	Moore	Vrtiska
Bromm	Haberman	Kristensen	Robak	Wehrbein
Coordsen	Hudkins	Landis	Schellpeper	Wickersham
Dierks	Janssen	McKenzie	Schmitt	Witek

Present and not voting, 2:

Byars	Fisher
-------	--------

Excused and not voting, 2:

Avery	Warner
-------	--------

Source: NEB. LEGIS. JOURNAL, 2 June 1993, 2640.

Interestingly, more members of the Education Committee voted against the motion to return than in favor. Three members of the committee voted affirmatively (Beutler, Rasmussen, and Withem), while four members voted against (Bohlke, Janssen, McKenzie, and Wickersham). Senator Jerome Warner, the eighth member of the committee, was absent from the proceedings at the time of the vote.

The vote to adopt the Withem amendment proved just as close as the motion to return. The Legislature adopted the historic amendment by a 25-21 vote.⁷¹⁴ Senator

⁷¹³ NEB. LEGIS. JOURNAL, 2 June 1993, 2640.

⁷¹⁴ *Id.*, 2644.

Withem had managed what few would have dared to attempt, and succeeded. As an interesting side note, the Legislature would in later years change the procedural rules so that the subject of the motion to return (the amendment itself), which is substantially the same as any bill indefinitely postponed, would require 30 affirmative votes.⁷¹⁵ Under the modern rules, Senator Withem may have had difficulty obtaining sufficient votes to adopt his amendment.

Nevertheless, there was one final obstacle to the success of Withem's efforts, something Senator Wickersham pointed out during the June 2nd debate. "The bill had the emergency clause on it but, as you know, that takes 30 votes," Wickersham said, referring to the fact that Withem would need more than just 25 votes to ultimately achieve his objective.⁷¹⁶ A piece of legislation with the emergency clause attached does, in fact, require a two-thirds vote (33 affirmative votes) to pass on Final Reading.⁷¹⁷

In true dramatic fashion, LB 839 would be taken up for final-round consideration in the afternoon of June 8, 1993 (the 90th and last day of the 90-day session). Some sessions go out with a whimper, others with a bang. The last day of the 1993 Session would be remembered by a political display of fireworks.

To open the June 8th debate, Senator Wickersham, the principle opponent of the Class I/VI common levy, moved to strike the enacting clause.⁷¹⁸ Wickersham said at the outset that he did not intend to take his motion to a vote. He wanted the floor time to make a final plea to his colleagues concerning the legislation on which they were about to take a final vote. Wickersham said:

I intend to vote against 839, primarily because it contains the provisions for the common levy, with which I'm sure you're all very well agree...or very well understand that I disagree with and feel strongly that that is not something we should do. I do agree that we need to do something with the in lieu of tax

⁷¹⁵ RULES OF THE NEB. LEG., Rule 6, § 6(a). Interestingly, the rule change was successfully offered by Senator Bob Wickersham.

⁷¹⁶ *Floor Transcripts, LB 839 (1993)*, 2 June 1993, 7111.

⁷¹⁷ RULES OF THE NEB. LEG., Rule 6, § 10.

⁷¹⁸ NEB. LEGIS. JOURNAL, *Wickersham FA309*, 8 June 1993, 2843.

distributions, but feel that the provisions of 348, which we've already enacted, are adequate to solve the problem for this year.⁷¹⁹

The "348" to which Senator Wickersham referred, was of course LB 348, the NDE technical cleanup bill that had been passed by the Legislature earlier in the day on June 8th. Five days earlier, on June 3rd, Wickersham attempted to amend LB 348 ostensibly to harmonize the in-lieu-of-tax provisions of LB 348 with those amended into LB 839.⁷²⁰ The amendment was rejected by a 20-17 vote after another spirited exchange between Senators Wickersham and Withem.⁷²¹

Of course, Senator Wickersham was attempting to cripple the common levy provisions of LB 839. His idea was to undercut the necessity of passing LB 839 so long as LB 348 contained the necessary, constitutionally accepted language in order to fix the in-lieu-of-tax issue. This was, after all, what many lawmakers wanted to accomplish. However, under LB 839, as amended, some legislators had to go along with the common levy provisions in order to fix the in-lieu-of-tax statutory language. Senator Curt Bromm of Wahoo, for instance, said, "It is difficult for me to deal with this issue to some extent because I have districts in my area, 23rd District, that most definitely could use the distribution of these funds."⁷²² But he also had Class VI schools within his district that would be, in his mind, adversely impacted by the common levy provisions. Senator Bromm would ultimately take the side against the common levy and against LB 839.

Even without adoption of the Wickersham amendment to LB 348, the Legislature would later learn that the provisions of LB 348, as passed and signed into law, may have been sufficient to permit the Commissioner of Education to disperse funds under the in-lieu-of-tax law. On June 10, 1993, two days after the Legislature adjourned sine die, the Attorney General responded to Governor Nelson's inquiry about the status of LB 348 as being compliant with the *Bartels* decision. Attorney General Stenberg responded:

⁷¹⁹ *Floor Transcripts, LB 839 (1993)*, 8 June 1993, 7528.

⁷²⁰ NEB. LEGIS. JOURNAL, *Wickersham AM2579*, 3 June 1993, 2721.

⁷²¹ *Id.*, 2722-23.

⁷²² *Floor Transcripts, LB 839 (1993)*, 8 June 1993, 7533.

Section 43 of LB 348 amends Neb. Rev. Stat. S 79-1303 by deleting the previous requirement that school or saline land be given an appraised value of “one hundred forty three percent of the appraised value.” The use of the 143 percent of valuation factor was held unconstitutional by the Nebraska Supreme Court in 1991. ... We see no facial constitutional infirmity or legal impediment to the Commissioner distributing in lieu of tax funds in the manner prescribed in section 43 of LB 348.⁷²³

Stenberg’s opinion was requested too late to do any good for Senator Wickersham and other opponents of the common levy.

Senator Wickersham honored his word and withdrew the motion to strike the enacting clause to LB 839. Senator Withem’s efforts were nearly complete, but he did need the requisite number of affirmative votes (33) to pass LB 839 with the emergency clause attached. The E-clause was necessary, he believed, to implement the changes to the in-lieu-of-tax law in time to allow the Commissioner to release the funds to schools. The first vote to pass LB 839 with the clause attached failed on a 27-17 vote.⁷²⁴ In keeping with the Rules of the Legislature, a second vote is immediately taken on the same bill without the clause attached. This time the bill passed on a 29-17 vote.⁷²⁵

Senator Withem deliberately voted “present, not voting” on the initial vote to pass the bill with the E-clause attached so that he could be in position to file a motion to reconsider the vote taken.⁷²⁶ The motion to reconsider required a two-thirds vote (33 affirmative votes). “The distribution of the in lieu of taxation, if the bill does not have the emergency clause, it will be three months down the road before that money is distributed,” Senator Withem implored.⁷²⁷ His motion passed on a 35-3 vote.⁷²⁸ And, finally, a second vote to pass LB 839 with the emergency clause attached was taken. This time Senator Withem had more than enough support to succeed.

⁷²³ Attorney General Don Stenberg, and Steve Grasz, Deputy Attorney General, *Attorney General Opinion 93046*, requested by Governor E. Benjamin Nelson, 10 June 1993.

⁷²⁴ NEB. LEGIS. JOURNAL, 8 June 1993, 2844-45.

⁷²⁵ *Id.*, 2845.

⁷²⁶ RULES OF THE NEB. LEG., Rule 7, § 7(a).

⁷²⁷ *Floor Transcripts, LB 839 (1993)*, 8 June 1993, 7541.

⁷²⁸ NEB. LEGIS. JOURNAL, 8 June 1993, 2846.

Table 36. Record Vote: 2nd Vote to Pass LB 839 (1993)
with E-Clause Attached

Voting in the affirmative, 40:

Abboud	Chambers	Hillman	Lynch	Schimek
Ashford	Crosby	Hohenstein	McKenzie	Vrtiska
Avery	Cudaback	Horgan	Moore	Warner
Baack	Day	Hudkins	Pedersen	Wehrbein
Bernard- Stevens	Elmer	Janssen	Pirsch	Wesely
	Fisher	Kristensen	Preister	Will
Beutler	Hall	Landis	Rasmussen	Witek
Bohlke	Hartnett	Lindsay	Robinson	Withem
Byars				

Voting in the negative, 7:

Bromm	Dierks	Robak	Schmitt	Wickersham
Coordsen	Jones			

Present and not voting, 1:

Schellpeper

Excused and not voting, 1:

Haberman

Source: NEB. LEGIS. JOURNAL, 8 June 1993, 2846.

Both LB 348 and LB 839 landed on Governor Ben Nelson's desk on the same day, June 8, 1993. The Governor waited long enough to receive a response from the Attorney General concerning the in-lieu-of-tax issue. Theoretically, he could have vetoed LB 839, signed LB 348, and relied upon the Attorney General's opinion to permit the in-lieu-of-tax funds to be dispersed. LB 348 also contained an emergency clause to enact various provisions in an expedited manner. In the end, however, he chose to sign both bills into law on June 10, 1993. In a communication to the Legislature, although the body had already adjourned sine die, Governor Nelson wrote:

LB 839 provides for a "common levy" for Class I - Class VI school systems, effective for the 1995-96 school year. It also provides a mechanism for releasing apportionment and in-lieu-of-tax funds from state school lands, based on an appraisal rate of 80% for apportionment. Finally -- and this was the original purpose of the bill -- it deletes obsolete tuition provisions for certain students residing on federal and state lands.

I am sensitive to the outrage caused by the process that was used to advance the common levy. Nevertheless, in the final analysis, issues must be decided on their merit, and Governors, like batten, do not get to select how the pitch comes across the plate.

The needs of rural Nebraska, particularly our more sparsely populated regions, are truly unique. They must not be addressed in a vacuum through the were operation of mechanical formulas and inflexible principles. The Rural Development Commission, for instance, has exemplified the search for new solutions to previously intractable problems, and the creation of new opportunities where none were thought to exist.

As the result of a school reorganization compromise first enacted in 1990 with LB 259, the common levy will be the established policy for all other elementary education systems in Nebraska as of next month. Thus, the two-year study period preceding implementation of the common levy for Class VI systems provides the opportunity to study the likely effects based on reliable fiscal data that are not available at this time. More importantly, the intervening period will allow serious study of innovative rural assistance ideas such as a “population sparsity” factor and the recognition of necessary transportation expenses in the state aid formula, to cite but two. I urge the Legislature to study these issues thoroughly, and I pledge my support in the critical examination of the Class VI common levy and the search for more equitable ways of addressing the educational needs of Nebraska’s rural students.⁷²⁹

The Governor did a nice job of encapsulating the entire episode, the mechanics of the legislation, along with some editorial comments, within one letter.

Several days after the Governor’s action to sign the legislation, it was reported that Governor Nelson supported the institution of the common levy for all school districts, and that he did not necessarily buy into the Attorney General opinion of June 10, 1993. “He did not want to run the risk of not disbursing those funds,” said Andy Cunningham, an education adviser to Governor Nelson.⁷³⁰ Senator Withem was more vocal in his criticism of the June Attorney General opinion, which could have derailed his efforts concerning LB 839. “I think the Attorney General’s Office needs to decide

⁷²⁹ NEB. LEGIS. JOURNAL, received after sine die, 2866-67.

⁷³⁰ Henry J. Cordes, “School Districts Say Signed Bill Means Rural Areas Get Less,” *Omaha World-Herald*, 12 June 1993, 15sf.

whether it is going to be political or professional,” he said.⁷³¹ Naturally, if the Governor had vetoed LB 839, the Legislature would not have had an opportunity to consider a motion to override the veto since it was already adjourned for the year.

As passed and signed into law, LB 839 required all Class I districts or portions thereof that were part of a Class VI school district to have a common levy for the operation of the K-12 school system beginning with the 1995-96 school year.⁷³² The bill provided that the amount of state aid allocated to these districts through the equalization component of the state aid formula would be determined based upon the formula need of the entire Class VI system.⁷³³ The common levy provision would affect the computation of equalization aid on a system-wide basis rather than by school district and would result in a shift of equalization aid between school districts beginning in 1995-96. The common levy provisions were expected to impact the property tax levy of approximately 174 Class I school districts within Class VI systems.⁷³⁴

LB 839 would also reduce the rate used to calculate the in-lieu-of school land tax reimbursement from 143%, under the old law, to the same percent of the appraised value as the percent of the assessed value is of market value.⁷³⁵ The bill also affected the interaction of the Class VI system-wide levy with the in-lieu-of tax payments to school districts. It provided that a specified percentage of the in-lieu-of payment based upon the new common levy would be provided to the Class VI district and the remainder would be distributed to the Class I district(s).⁷³⁶

⁷³¹ Id.

⁷³² Legislative Bill 839, in *Laws of Nebraska, Ninety-Third Legislature, First Session, 1993*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), §§ 2-3, pp. 3-4 (2934-35).

⁷³³ Id., § 6, pp. 5-7 (2936-38).

⁷³⁴ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 839 (1993)*, prepared by Sandy Sostad, Nebraska Legislature, 93rd Leg., 1st Sess., 1993, 7 June 1993, 1.

⁷³⁵ LB 839, Session Laws, 1993, § 5, pp. 4-5 (2935-36).

⁷³⁶ Id.

Table 37. Summary of Modifications to TEEOSA
as per LB 839 (1993)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
6	79-3806	Equalization aid; amount	Provided that the amount of state aid allocated to Class I and Class VI districts through the equalization component of the state aid formula would be determined based upon the formula need of the entire Class VI system.

Source: Legislative Bill 839, in *Laws of Nebraska, Ninety-Third Legislature, First Session, 1993*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 6, pp. 5-7 (2936-38).

F. The 1994 Legislative Session

LB 1066 - State Investments

Legislative Bill 1066 took members of the Nebraska Legislature in an unusual yet interesting area of debate in 1994. Issues such as apartheid in South Africa and the “troubles” in Northern Ireland are not typical items of business for the Nebraska Legislature. Nevertheless, ten years earlier, in 1984, Nebraska was the first state to pass legislation formally condemning the practice of apartheid in South Africa.⁷³⁷ This action was credited to Senator Ernie Chambers of Omaha, who, ten years later, would pursue another piece of legislation designed to take a political stand on international issues.

As introduced, LB 1066 would repeal statutory restrictions on investment of Nebraska funds in financial entities having business relations in South Africa.⁷³⁸ “Passage of LB 1066 signals the closing of an old book and – I hope, the dawning of new and better days relative to affairs within South Africa,” Senator Chambers wrote in his Statement of Intent.⁷³⁹ Initially, LB 1066 had nothing to do with the ongoing battle

⁷³⁷ LB 553 (1984), introduced by Senator Ernie Chambers, passed on a 28-19 vote and was approved by Governor Kerrey. LB 553 placed restrictions on the investment of state funds in firms that conduct business in South Africa.

⁷³⁸ Legislative Bill 1066, *Eliminate certain restrictions on investment of public funds in South Africa and change provisions for investments in N. Ireland*, sponsored by Sen. Ernie Chambers, Nebraska Legislature, 93rd Leg., 2nd Sess., 1994, title first read 12 January 1994.

⁷³⁹ Senator Ernie Chambers, *Introducer's Statement of Intent, LB 1066 (1994)*, Nebraska Legislature, 93rd Leg., 2nd Sess., 1994, 1 February 1994, 1.

between the Catholics and Protestants, between unionists and nationalists of Northern Ireland and its occupation by the United Kingdom. This particular facet of the bill would make an otherwise slam-dunk bill into one of controversy and heated debate. And, although only in a minor way, LB 1066 would ultimately have an impact on the state aid formula for public education in Nebraska.

The public hearing for LB 1066 was held before the Banking, Commerce, and Insurance Committee on February 1, 1994. Don Mathes, State Investment Officer, spoke favorably but very briefly on behalf of the Nebraska Investment Council, saying simply, “It eliminates restrictions which we think is a good idea.”⁷⁴⁰ Stan Sibley, representing the Omaha Public Schools Retirement System, also supported the bill and urged the attachment of the E-clause to expedite the legislation. Said Sibley:

I understand that a number of the pension funds and so forth are moving their funds out of the South African Free International Trust, that’s leaving fewer funds in there. To delay seems not to be unnecessary, and I would urge you to put the “E” clause on.⁷⁴¹

Senator Chambers also arranged to have Eric Broekhuysen, the South African Consulate-General in Chicago, appear at the hearing to support the legislation and provide a more detailed account of the current situation in his country.

Had the legislation, as advanced from committee, relate specifically and only to the matter for which it was originally introduced, the bill would have likely sailed through the legislative process. On Select File, however, the debate heated up considerably. On March 17, 1994, St. Patrick’s Day no less, Senator Tim Hall stood before the body to request adoption of his amendment related to Northern Ireland.⁷⁴² The amendment was co-sponsored by Senator Chambers and Senator John Lindsay and essentially held the contents of LB 705, a bill related to investments in Northern

⁷⁴⁰ Committee on Banking, Commerce and Insurance, *Hearing Transcripts, LB 1066 (1994)*, Nebraska Legislature, 93rd Leg., 2nd Sess., 1994, 1 February 1994, 5.

⁷⁴¹ *Id.*, 6.

⁷⁴² NEB. LEGIS. JOURNAL, *Hall-Lindsay-Chambers AM3685*, 16 March 1994, 1256-57.

Ireland.⁷⁴³ Introduced by Senator Hall in 1993, LB 705 had been advanced to General File by the Banking, Commerce, and Insurance Committee.⁷⁴⁴

LB 705 and, subsequently, the Hall amendment to LB 1066 would propose adoption of the “MacBride principles” that represented an affirmative action measure for purposes of individuals who happen to be members of a religious minority, in this case the Catholics in Northern Ireland.⁷⁴⁵ As stated by Senator Hall, the amendment would require the State Investment Council to “invest in corporate stocks or obligations in a manner to encourage corporations that in the state investment officer’s determination pursue a policy of affirmative action in Northern Ireland.”⁷⁴⁶ The amendment also required the Investment Council, whenever possible, to sponsor, cosponsor or support shareholder resolutions designed to encourage corporations in which the state investment officer has invested to pursue a policy of affirmative action in Northern Ireland.⁷⁴⁷ Senator Hall reported that 15 other states had already adopted similar laws.

The Hall amendment would be adopted by a 28-0 vote on April 7, 1994 when Select File debate resumed.⁷⁴⁸ LB 1066 would withstand several motions to derail the bill during the evening of April 7th, but the measure would eventually advance to Final Reading. On April 14, 1994, LB 1066 passed by a 34-5 vote.⁷⁴⁹

As passed by the Legislature and signed into law by Governor Nelson, LB 1066 made a number of substantive changes to investment practices by the State Investment Council. The bill also made a series of citation corrections in various state statutes. One of these corrected sections was found within the laws related to the school finance

⁷⁴³ Legislative Bill 705, *Provide duties for the state investment officer with respect to corporations doing business in Northern Ireland*, sponsored by Sen. Tim Hall, Nebraska Legislature, 93rd Leg., 1st Sess., 1993, title first read, 21 January 1993.

⁷⁴⁴ NEB. LEGIS. JOURNAL, 24 March 1993, 1161.

⁷⁴⁵ Legislative Records Historian, *Floor Transcripts, LB 1066 (1994)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 93rd Leg., 2nd Sess., 17 March 1994, 10934.

⁷⁴⁶ *Id.*, 10933.

⁷⁴⁷ NEB. LEGIS. JOURNAL, *Hall-Lindsay-Chambers AM3685*, 16 March 1994, 1256-57.

⁷⁴⁸ *Id.*, 7 April 1994, 1807-08.

⁷⁴⁹ *Id.*, 14 April 1994, 2068-69.

formula, in this case, concerning the maintenance of the School District Income Tax Fund and the Tax Equity and Educational Opportunities Fund. The technical change simply struck the statutory citation to the investment laws and, in its place, listed the “Nebraska Capital Expansion Act” and the “Nebraska State Funds Investment Act” by name.⁷⁵⁰ This particular modification had no substantive effect at all.

Table 38. Summary of Modifications to TEEOSA
as per LB 1066 (1994)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
94	79-3812	School District Income Tax Fund; Tax Equity and Educational Opportunities Fund; created; investment	Made technical change to eliminate statutory citations to the laws relevant to investment practices of state funds.

Source: Legislative Bill 1066, in *Laws of Nebraska, Ninety-Third Legislature, Second Session, 1994*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 94, p. 36 (911).

LB 1290 - Adjusted Valuation

Legislative Bill 1290 (1994) was originally introduced as “a very simple bill,” according to its sponsor, Senator Jerome Warner of Waverly.⁷⁵¹ And he was correct, at least in the beginning of the 1994 Session. The original purpose of the bill was to delay by one year, from 1994 to 1995, the requirement for the Department of Revenue to compute the adjusted valuation of property for each school district for purposes of calculating state aid.⁷⁵² What this meant, of course, was a second delay in the implementation of the provision under LB 1059 (1990) for the equalization of property

⁷⁵⁰ Legislative Bill 1066, in *Laws of Nebraska, Ninety-Third Legislature, Second Session, 1994*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 94, p. 36 (911).

⁷⁵¹ Committee on Education, *Hearing Transcripts, LB 1290 (1994)*, Nebraska Legislature, 93rd Leg., 2nd Sess., 1994, 8 February 1994, 7.

⁷⁵² Legislative Bill 1290, *Change provisions relating to calculation of state aid to schools under the Tax Equity and Educational Opportunities Support Act*, sponsored by Sen. Jerome Warner, Nebraska Legislature, 93rd Leg., 2nd Sess., 1994, title first read 20 January 1994.

values from school district to school district. In 1991, the Legislature passed LB 829, which, in part, delayed this component of the new school finance formula until 1994.⁷⁵³

The idea behind LB 1059 was to require the Department of Revenue to establish the *adjusted* valuation for each school district essentially by determining *what should be* rather than *what is* the assessed property value. The adjusted valuation figures would be used to calculate state aid in order to create an even playing field among school districts. Property assessment had become, and perhaps remains, as much an issue of politics as it is an issue of utilizing proper assessment practices. County assessors, as elected officials, varied in their assessment practices, leaving significant disparities in property valuation from county to county, and, consequently, from school district to school district. (Assessment practices have become more stabilized and centralized in recent years.)

The idea behind LB 1059 was to consider, at least for purposes of calculating state aid, all real property at adjusted value as determined by the Department of Revenue. However, as often the case, the problem was funding. In 1990, the Department of Revenue estimated the cost of establishing actual valuation of property on a school district to school district basis would require more than a half million dollars of additional agency budget authority, mostly for new staff.⁷⁵⁴ In addition to the staffing issue, the department quite frankly had to determine how best to accomplish the objective, which was easier said than done. The central problem, as Senator Warner explained at the hearing for LB 1290, was that “the comparisons of value of property and classes of property are to be done by school district” for purposes of calculating state aid, but the only available data was county-by-county, not district-by-district.⁷⁵⁵ In the meantime, the intended effects of the equalization component of LB 1059 would be held up so long as the district-by-district data was not available for computing state aid.

⁷⁵³ LB 829, Session Laws, 1991, § 32, p. 41 (2269).

⁷⁵⁴ The estimate by the Department of Revenue called for an additional \$553,936 for expenses to hire necessary staff to complete the process of determining actual value of real property on a school district-by-district basis. *Fiscal Impact Statement, LB 1059 (1990)*, 26 March 1990, 3.

⁷⁵⁵ *Hearing Transcripts, LB 1290 (1994)*, 8 February 1994, 22.

For his part, Senator Withem, the chief sponsor of LB 1059, was willing to go along with the three-year delay passed under LB 829 (1991). But he was less than enthusiastic to go along with the additional one-year delay in 1994 as proposed by LB 1290. During the hearing for LB 1290 on February 8, 1994, Senator Withem dispatched his legislative aide, Marsha Babcock, to speak on his behalf. Her testimony presented support for the bill, but with strong reservations. She said the Governor and his administration had failed to take proper leadership of the situation in order to prevent another delay. She also took note that the Governor failed to include any additional funds in the mid-biennium budget recommendation for the Department of Revenue to hire the staff it required to complete the objective. “That presents the question as to whether or not there was a sincere attempt on the part of the administration to address this particular issue with the funding that was necessary in order to accomplish the mission,” she said.⁷⁵⁶

Tax Commissioner Berri Balka also appeared at the hearing in a neutral capacity and to respond to questions from members of the committee. Initially, he said only that his presence was requested by Senator Warner, and had no formal statement to offer about the pending legislation. This put members of the Education Committee in the position of having to ask questions in order to glean any useful information from the commissioner. Senator Ardyce Bohlke of Hastings asked if an additional one-year delay would be the last delay, or if this would become an ongoing saga of delays and more delays. Balka said one year would be enough and, in the meantime, his department would provide to the Department of Education the “best information” available with regard to assessment data.⁷⁵⁷ This information would be available by March 1, 1994, a date that would play a pivotal role in the outcome of LB 1290.

Balka alluded to some issues concerning the meaning of “best available assessment practices” in order to establish adjustment factors for purposes of calculating state aid. Somewhat perplexed, several senators wondered aloud why, if there was confusion about policy, had it taken three years to seek clarification. Senator Bohlke

⁷⁵⁶ Id., 14.

⁷⁵⁷ Id., 17.

asked, “[H]as there been an attempt prior to this to try and get a further clarification as to the wording [in the law]?”⁷⁵⁸ To which Balka replied:

I think it’s not necessarily what I would like. I guess it’s trying to find out what the public policy of the state is and that, I don’t think if you use the language as it exists, may not be clear and is subject to, I guess, open debate as to what that might mean. So if we want to put a rest to that, that’s why I’m saying, yes, it needs to be done. No, as far as I know, the department has not asked for a clarification up to this point.⁷⁵⁹

His answer was less than comforting to some members of the committee, although his elusiveness may have been due to the threat of a lawsuit against the state. In a discussion with Balka during the hearing, Senator Bob Wickersham seemed to bolster the Tax Commissioner’s concerns, saying, “[Y]ou’ve indicated that the language is imprecise and I absolutely agree with you, in fact, I wonder if it’s so imprecise that it can’t be implemented at all.”⁷⁶⁰ Accordingly, several senators, specifically Senators Warner and Wickersham, would eventually take it upon themselves to help the department understand what was expected under the school finance laws. And LB 1290 would serve as the vehicle to provide this clarification.

The Education Committee wasted no time in its disposition of the bill. Immediately following the hearing on February 8th, the committee met in executive session and voted to advance the bill, without amendment, to General File on a 6-0 vote.⁷⁶¹ At this time, the bill only sought to delay the requirements upon the Department of Revenue by one additional year, as suggested by Senator Warner. The issues and questions yet to unfold were whether the data to be released by March 1st would closely approximate what was expected from the Department of Revenue and whether the

⁷⁵⁸ Id., 20.

⁷⁵⁹ Id.

⁷⁶⁰ Id., 7-8.

⁷⁶¹ Committee on Education, *Executive Session Report, LB 1290 (1994)*, Nebraska Legislature, 93rd Leg., 2nd Sess., 1994, 1. Senators Bohlke, Janssen, Monen, Rasmussen, Warner, Wickersham voting yes; Senator McKenzie present, not voting; and Senator Beutler absent, not voting.

Governor's office would be forthcoming on the additional budget authority for necessary department staffing.

The advancement of LB 1290 was not welcome news to everyone. "I'll be madder than hops," said Senator Scott Moore, referring to the proposed delay.⁷⁶² Senator Moore was one of the original sponsors of LB 1059 and had waited patiently for the full and complete implementation of the new school finance formula. "When you're distributing \$370 million in state aid, it's important we do it fairly," Moore said, "If these valuations aren't adjusted and equalized, it's not done fairly."⁷⁶³ Senator Warner agreed with the fairness issue, but this, in his opinion, was a matter of making sure the assessment procedures were conducted accurately and legally. "If we go ahead," said Warner meaning not to delay for another year, "I think it's good grounds for a lawsuit, which I don't think the state could win."⁷⁶⁴ With these remarks, the sides were essentially drawn for the early stages of debate on LB 1290. Senator Moore, joined by Senator Withem, advocated moving ahead with the assessment process as outlined in LB 1059. Senator Warner, joined by Senator Wickersham, advocated an additional one-year delay. In the end, both sides would give and take. In addition, several events would occur to help resolve the matter, at least as far as the Legislature was concerned.

General File debate of LB 1290 began on February 23, 1994 at which time Senator Moore immediately launched the first of two bracket motions. Senator Moore's first bracket motion would have delayed initial debate until March 1st, the date by which the Department of Revenue promised to submit at least preliminary assessment data to the Department of Education.⁷⁶⁵ Moore wanted the body to wait until the data could be reviewed prior to any legislative action on LB 1290. He said the delay was never publicly request by the Department of Revenue nor was the department short of funds or staffing to conduct the necessary procedures. Moore admitted his concern that the data to

⁷⁶² Henry J. Cordes, "Moore: Delay Of School Aid Law Not Fair," *Omaha World-Herald*, 9 February 1994, 11.

⁷⁶³ Id.

⁷⁶⁴ Id.

⁷⁶⁵ NEB. LEGIS. JOURNAL, 23 February 1994, 822.

be submitted on March 1st may or may not be sufficient, but that it was worth waiting until the data could be analyzed.

Warner opposed the bracket motion and said he did so on the grounds of “policy.”⁷⁶⁶ What Warner meant was that even if the Department of Revenue was able to produce data as promised, there was no reason to believe the data would be accurate since the department, itself, would not have all the current data, including enrollment data, to complete the objective. “I don’t know what the impact of the numbers [would be on school districts],” said Warner.⁷⁶⁷ Senator James Monen of Omaha came to Warner’s assistance on the argument against the bracket motion. Senator Monen, who prioritized LB 1290 for the 1994 Session, agreed with Warner that the proposed delay represented “good educational policy.”⁷⁶⁸ But Monen took it a step further, saying:

What is at question here is the integrity of 1059. Is it going to work the way it was intended to work or are we going to let the failure of the Department of Revenue or whose ever failure it is to properly assess this property, comparing by school districts rather than by some delinquent assessments or old assessments or stale assessments compared with current assessments and by that accident result in a failure of the integrity of 1059?⁷⁶⁹

Senator Wickersham also opposed the bracket motion and based his objections on some technical aspects, issues he would eventually attempt to remedy through LB 1290. “There are problems with the process that is currently in statute,” Wickersham said, referring to the issues of vagueness and ambiguity to which Tax Commissioner Balka had alluded at the public hearing.⁷⁷⁰

On a roll call vote, the Legislature rejected the bracket motion on a 20-24 vote.⁷⁷¹ The absence of a majority, one way or another, had not escaped the attention of Senator

⁷⁶⁶ Legislative Records Historian, *Floor Transcripts, LB 1290 (1994)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 93rd Leg., 2nd Sess., 23 February 1994, 9338.

⁷⁶⁷ Id.

⁷⁶⁸ Id., 9339.

⁷⁶⁹ Id.

⁷⁷⁰ Id., 9340.

⁷⁷¹ NEB. LEGIS. JOURNAL, 23 February 1994, 823.

Warner, who had reason to worry the bill may not have sufficient votes to advance. But Warner also knew, as did Senator Wickersham, the debate was about to take a step in a different direction. Following the failure of the bracket motion, Senator Wickersham offered an amendment to LB 1290 that would significantly expand the scope of the bill.⁷⁷² The Wickersham amendment, co-sponsored by Warner, was filed on the day of the debate, so very few had any advance notice of its contents.

As explained by Wickersham, the amendment would accomplish four objectives: (1) establish the “best assessment practices” that were to be used by the Department of Revenue in determining values; (2) establish the valuation standards for the property that would be valued under those practices; (3) implement an appeal process if a school district was dissatisfied with the values; and (4) establish limits on the remedies that were available to the protesting school districts in the event they do not accept the values.⁷⁷³ In essence, the Wickersham amendment was meant to eliminate any ambiguity as to what was meant by the provisions of LB 1059 passed four years earlier. If the Department of Revenue needed clarification as to what was originally meant, the Wickersham amendment would offer such clarification, and then some.

The Wickersham amendment would help the Department of Revenue understand what was expected, but the department would still receive another year to put the process into place. Therefore, while opponents of the bill may have appreciated the clarification language, they would remain opposed to the idea of waiting another year to receive district-by-district adjusted property valuation figures. Senator Curt Bromm of Wahoo, for instance, joined those opposed to the one-year delay.

During discussion of the Wickersham amendment, Bromm said he believed three political concerns were involved with the move to delay, and none of the concerns were valid in his opinion. First, the figures due by March 1st “may not be perfect” in the sense that they may not be “as accurate as the law intended.”⁷⁷⁴ Second, some legislators may

⁷⁷² Id., *Wickersham-Warner AM3360*, 822.

⁷⁷³ *Floor Transcripts, LB 1290 (1994)*, 23 February 1994, 9347.

⁷⁷⁴ Id., 9356.

be “afraid” that the adjusted valuation may hinder, not help the school districts within their own legislative district.⁷⁷⁵ The third reason for a delay, according to Bromm, involved the “political ramifications of implementing the law,” referring to county assessment practices.⁷⁷⁶ Said Bromm:

Those counties and areas [that] have not been doing their job of updating their land values are getting a windfall to the detriment of those who are sticking their political necks out. The assessors out there that are doing their jobs are, in effect, penalizing their areas because they’ve updated their values. That is so blatantly unfair that I think if you took it to court, it would be a slam dunk. If you’re worried about going to court, I think there is litigation there that would be a slam dunk.⁷⁷⁷

Senator Warner did not deny the inconsistent practices by county assessors. Instead, Warner said the political reasons offered by Senator Bromm actually supported the purpose of another delay. “What is wrong with the system now is the fact it rewards those school districts that lie in counties [where county assessors] have not done their job and it penalizes those who have,” Warner said.⁷⁷⁸

The Legislature adjourned on February 23rd before a vote could be taken on the Wickersham amendment. On February 28th, the body once again took up debate on LB 1290. The Wickersham amendment was sidelined temporarily when a second priority motion, by Senator Moore, was made to bracket the bill until March 2nd.⁷⁷⁹ This time the bracket motion was meant to offer the Legislature time to sift through the data that had been submitted by the Department of Revenue on February 25th. Moore said:

[T]he fact remains that none of us know, shall I say the doability of those numbers and standing up to court challenges, changing state aid and so on. And so I think it’s important that we take a time-out, so to speak, have an opportunity to have the leaders of the Legislature of this issue or the entire body to have a chance to sit down with the administration and the Department of Revenue and the Department

⁷⁷⁵ Id.

⁷⁷⁶ Id.

⁷⁷⁷ Id., 9357.

⁷⁷⁸ Id.

⁷⁷⁹ NEB. LEGIS. JOURNAL, 28 February 1994, 902.

of Education, look at these numbers, have the experts in the field in both those departments tell us whether or not this data is good, whether or not this data is defensible, and more importantly what I want to know is does the administration in the Department of Revenue and the Department of Education feel that there is a need for a delay.⁷⁸⁰

Moore stopped short of swearing by the data offered by the department, but he did insist that the data was both delivered on time and was, as required, within the proper school district-by-district format. Moore would eventually withdraw the bracket motion, and, after more debate, the Wickersham amendment was adopted on a 29-1 vote.⁷⁸¹ Perhaps seeing the wisdom in waiting a few more days, Senator Warner then requested and received unanimous consent to bracket his bill until March 2nd.⁷⁸²

Following the successful bracket motion, three events would occur to shape the outcome of LB 1290. The first would occur on March 9th when the Legislature took up General File debate for the third time and agreed to advance the bill on faith. By this time, the battle lines were clearly drawn. There were those who favored the one-year delay to make sure the Department of Revenue properly prepared adjusted property valuations based upon each school district. There were those who favored moving ahead with the law, as it stood, and utilize the data already submitted by the Department of Revenue.

Both sides, perhaps, had good policy intentions. The Moore-Withem camp was correct in that the policy directives under LB 1059 had simply not been met. Moving ahead with the data, then available, was, as Withem said, “[T]he right thing to do because delay just begets another delay.”⁷⁸³ The Warner-Wickersham camp, on the other hand, also was correct in that use of the available data would result in inaccurate results since the data would be applied to outdated student membership figures. Senator Warner, in particular, was instrumental in creating enough doubt in the minds of his colleagues

⁷⁸⁰ *Floor Transcripts, LB 1290 (1994)*, 28 February 1994, 9478-79.

⁷⁸¹ NEB. LEGIS. JOURNAL, 28 February 1994, 902.

⁷⁸² *Id.*

⁷⁸³ *Floor Transcripts, LB 1290 (1994)*, 9 March 1994, 10155.

concerning the data to gain a crucial, yet very close vote to advance the bill to the next stage of debate. After passionate speeches by both sides, the bill was advanced by a 25-19 vote.⁷⁸⁴

Table 39. Record Vote, Advance LB 1290 (1994) to E&R Initial

Voting in the affirmative, 25:

Abboud	Cudaback	Hillman	McKenzie	Wehrbein
Ashford	Dierks	Kristensen	Monen	Wesely
Beutler	Elmer	Landis	Pedersen	Wickersham
Coordsen	Hall	Lindsay	Rasmussen	Will
Crosby	Hartnett	Matzke	Warner	Witek

Voting in the negative, 19:

Avery	Bromm	Fisher	Jones	Schellpeper
Bernard- Stevens	Byars Day	Haberman Hudkins	Lynch Moore	Schmitt Vrtiska
Bohlke	Engel	Janssen	Robinson	Withem

Present and not voting, 3:

Chambers	Preister	Schimek
----------	----------	---------

Excused and not voting, 2:

Pirsch	Robak
--------	-------

Source: NEB. LEGIS. JOURNAL, 9 March 1994, 1072.

“The argument isn’t over, obviously,” Warner said after the vote.⁷⁸⁵ But within a day, a second event would occur to secure a relatively peaceful resolution to the issue. On March 10th, the Legislature took up General File debate on LB 991 (1994), the mainline mid-biennium budget bill.⁷⁸⁶ Fresh from the debate on LB 1290 a day before, the Legislature took steps to give the Department of Revenue the necessary funds to complete the adjusted valuation process for purposes of calculating state aid. The Legislature voted to restore \$473,000 in the budget bill to the department in order to hire

⁷⁸⁴ NEB. LEGIS. JOURNAL, 9 March 1994, 1072.

⁷⁸⁵ Paul Hammel, “Delay in Adjusting Aid Wins 1st Round,” *Omaha World-Herald*, 10 March 1994, 24.

⁷⁸⁶ Legislative Bill 991, *Appropriate funds for state government expenses*, sponsored by Spkr. Ron Withem, req. of Gov, Nebraska Legislature, 93rd Leg., 2nd Sess., 1994, title first read 10 January 1994.

staff and implement the process necessary to complete the objective.⁷⁸⁷ “By doing this, a couple of years down the road it will come back to us in better data on which to base distribution of state aid to schools,” said Senator Moore.⁷⁸⁸ In fact, it was Senator Warner who originally championed the cause of additional funding for the department by introducing a separate bill, LB 1289 (1994), to appropriate necessary funds.⁷⁸⁹ Warner’s bill never advanced from the Appropriations Committee, but it helped to draw attention to the issue as evidenced during the debate on LB 1290 and LB 991.

The third event to shape the outcome of LB 1290 perhaps best represents the democratic, political process in action: a compromise. Between the advancement of LB 1290 on General File (March 9th) and the commencement of debate on Select File (April 5th), the two opposing camps united to formulate a win-win situation for both sides. Senators Warner, Wickersham, and Withem joined forces to draft an amendment, which would embody various remedies to the concerns expressed during previous debates.⁷⁹⁰ Senator Withem articulated the situation leading up to the compromise amendment:

If you recall, on 1290 there was a strong difference of opinion with Senators Wickersham and Warner on one side of the issue, indicated that they felt that the data that has been gathered by the Department of Revenue certified for this year was not adequate. On the other side, you had Senators Moore and Withem arguing that if we delay then that will send the wrong message and it will prelude just to future and future delays.⁷⁹¹

The middle ground, Withem said, was to utilize current student membership data and to move forward with the adjusted valuation process immediately. Relieved of the tension surrounding the bill, the Legislature adopted the compromise amendment on a unanimous

⁷⁸⁷ NEB. LEGIS. JOURNAL, 10 March 1994, 1119.

⁷⁸⁸ Bill Hord, “Funds Restored for Data on Valuations,” *Omaha World-Herald*, 11 March 1994, 11.

⁷⁸⁹ Legislative Bill 1289, *Appropriate funds to the Department of Revenue*, sponsored by Sen. Jerome Warner, Nebraska Legislature, 93rd Leg., 2nd Sess., 1994, title first read 20 January 1994.

⁷⁹⁰ NEB. LEGIS. JOURNAL, *Warner-Wickersham-Withem AM4339*, 5 April 1994, 1719.

⁷⁹¹ *Floor Transcripts, LB 1290 (1994)*, 5 April 1994, 12394.

25-0 vote after a very short discussion during Select File consideration of LB 1290.⁷⁹² Shortly thereafter, the bill was advanced to Final Reading by voice vote.⁷⁹³

As amended, LB 1290 provided that state aid would be calculated using the adjusted valuation for the property tax year ending during the school year in which the aid is to be paid beginning in 1994-95. The bill also provided for the use of prior year student information rather than data two years in arrears. Beginning in 1994, the Department of Revenue was required to provide the Department of Education with adjusted property valuation by school district based upon adjustment factors for each class of property. The adjusted valuations would be used to compute state aid beginning in school year 1994-95, which did not leave anyone much time to prepare (state agencies and school districts alike). The bill provided a mechanism for school districts to file objections to adjusted valuations with the Tax Commissioner who must then hold hearings on the objections.⁷⁹⁴

The final impact on each school district was not immediately known upon the passage of LB 1290 on April 13, 1994.⁷⁹⁵ As the Legislative Fiscal Office reported on April 12th:

The changes in the valuation and student information used in the state aid calculation will alter the distribution of aid between school districts beginning in 1994-95. Generally, schools with valuations increasing greater than typical would lose aid and those with adjustments less than typical will gain equalization aid.⁷⁹⁶

But the initial problem was simply meeting the deadlines imposed in the bill. LB 1290 was signed into law on April 19th and became operative one day later. The Departments of Revenue and Education had to work fast and furious to meet the July 15th deadline to

⁷⁹² NEB. LEGIS. JOURNAL, 5 April 1994, 1733.

⁷⁹³ Id.

⁷⁹⁴ Legislative Bill 1290, in *Laws of Nebraska, Ninety-Third Legislature, Second Session, 1994*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 7, p. 5 (1299).

⁷⁹⁵ LB 1290 passed with the E-clause by a 41-0 vote. NEB. LEGIS. JOURNAL, 13 April 1994, 2016-17.

⁷⁹⁶ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 1290 (1994)*, prepared by Sandy Sostad, Nebraska Legislature, 93rd Leg., 2nd Sess., 1994, 12 April 1994, 1.

certify state aid to school districts. And, as it turned out, the certification results would not make everyone happy.

School districts began receiving state aid certifications a few days prior to the stated deadline imposed under the new law. But this was still very late for school districts trying to plan for the upcoming school year, which began in August. School officials could only make educated guesses at what their district would receive in state aid for the ensuing school year. But when the certification notices were finally received, some school officials probably wished LB 1290 had never passed. Some school districts, large and small, rural and urban, received dramatic cuts in state aid due to the imposition of the adjusted valuation data. Loup City Public Schools lost approximately half its state aid compared to the year before, Kearney Public Schools lost 9%, and Grand Island Public Schools lost 6% of its state aid.⁷⁹⁷

But where there are losers of state aid, there also are winners. For instance, Omaha Public Schools gained \$7 million in state aid over the previous year.⁷⁹⁸ Minden Public Schools gained 18% in state aid compared to the previous year.⁷⁹⁹ Just why some districts gained or lost state aid was puzzling to school officials and policymakers alike. Pam Roth of the Department of Education explained the matter as an “interplay” of various factors, including district valuation and student population.⁸⁰⁰ “A great many of these increases and decreases in state aid are completely unrelated to LB 1290,” Warner said, “The state formula was designed not to be stable but to respond to changes in school districts’ needs.”⁸⁰¹ In any event, the only recourse for many school districts was to raise property tax rates to compensate for the lost state support, which eventually helped to push the Legislature toward capping property tax levies. The issues of unpredictable

⁷⁹⁷ Jackie Kroeger, “Law’s Effect Became Known Only This Week,” *Omaha World-Herald*, 13 July 1994, 1.

⁷⁹⁸ Jackie Kroeger, “Aid Figures A Shock To Schools Omaha Wins, Others Lose in New Formula,” *Omaha World-Herald*, 13 July 1994, 1.

⁷⁹⁹ Jackie Kroeger, “Law’s Effect Became Known Only This Week,” 1.

⁸⁰⁰ *Id.*

⁸⁰¹ Jackie Kroeger, “Law Blamed For Funding Uncertainty Senators Say School Finance Now Fairer,” *Omaha World-Herald*, 15 July 1994, 1.

state aid and the need to cap property tax rates would surface and re-surface in legislative debates within the two years following the passage and implementation of LB 1290.

Table 40. Summary of Modifications to TEEOSA as per LB 1290 (1994)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
3	79-3803	Terms, defined	For the calculation of state aid in school year 1994-95 and thereafter, "adjusted valuation" would mean the adjusted valuation for the property tax year ending during the school year in which the aid based upon that value is to be paid. Added was a definition for "fall membership," which means the total membership in grades K-12 as reported on the fall school district membership report. "Formula students" would mean the sum of fall membership and tuitioned resident students from the school year immediately preceding the school year in which the aid is paid.
4	79-3806	State aid; amount	Harmonize use of current data for number of option students enrolled at each district for purposes of calculating state aid.
5	79-3807	Total formula need; computation	Effectively phases-out the rapid student growth provision in the formula since one of the objectives of the bill was to use current data in calculating state aid.
6	79-3808	District formula resources; local effort rate; determination	Harmonize use of current data in affiliated school districts for purposes of calculating district formula resources.
7	79-3809	Adjusted valuation; adjustment factors established	Provides that by July 1st for 1994 and by June 1st for each year thereafter, the Department of Revenue must compute and certify to the Department of Education the adjusted valuation of each district using assessment practices established by the Department of Revenue. The term "state aid value" was defined to mean 100% for real property other than agricultural land, and 80% for agricultural land. New language provided for districts to file written objections with the Department of Revenue concerning the adjusted valuations prepared by the department. Hearing/appeal procedures were also established.
8	79-3813	Distribution of income tax receipts and state aid; effect on budget	Provides for a July 15 th deadline for the Department of Education to certify state aid amounts for 1994 only. The certification date would return to July 1 st for each year thereafter.
9	79-3824	State assistance; payments; reports; use; requirements; early payments	Editorial, technical changes to existing language. No substantive impact.

Source: Legislative Bill 1290, in *Laws of Nebraska, Ninety-Third Legislature, Second Session, 1994*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), §§ 3-9, pp. 1-6 (1295-1300).

LB 1310 - Technical Cleanup, LB 76 - Election Law

Another two bills passed during the 1994 Session had only technical or minor substantive impact on the school finance system. The first of these, LB 76 (1994), was a rewrite of the Nebraska election laws. The second was LB 1310 (1994), which represented the technical cleanup bill for the Department of Education.

Sponsored by Senator Ron Withem, LB 76 was originally introduced during the 1993 Session. The bill was the result of an election law recodification process officially begun in 1988 when the Legislature's Executive Board contracted with former state senator Steve Wiitala to undertake the project.⁸⁰² The Government, Military, and Veterans Affairs Committee advanced the legislation to General File late in 1993 where it remained until the beginning of the 1994 Session. One of the controversial provisions of the bill would have created a separate state agency to administer state elections. This provision was removed from the bill prior to advancement to the first stage of debate.⁸⁰³ The Legislature eventually passed the bill on April 14th by a 39-2 vote.⁸⁰⁴

Naturally, it was not the mere recodification of the election laws that would produce so much controversy, but rather the major substantive election law changes that legislators desired to tack onto the measure. One of the major issues, for instance, related to the Electoral College and how Nebraska's five votes would be counted in presidential elections. In 1991, the Legislature changed the system so that one vote would be awarded to the winner within each congressional district, and the other two votes would be awarded to the overall winner of the popular vote in the state. At the time only Nebraska and Maine used such an approach.⁸⁰⁵ During debate on LB 76, an attempt was made to revert Nebraska to the "all-or-nothing" approach used by the state prior to 1991.

⁸⁰² Senator Ron Withem, *Introducer's Statement of Intent, LB 76 (1993)*, Nebraska Legislature, 93rd Leg., 1st Sess., 1993, 17 February 1993, 1.

⁸⁰³ Henry J. Cordes, "Committee Advances Election Law Revision," *Omaha World-Herald*, 28 April 1993, 12.

⁸⁰⁴ NEB. LEGIS. JOURNAL, 14 April 1994, 2057.

⁸⁰⁵ Leslie Boellstorff, "Electoral-Vote Change Rejected," *Omaha World-Herald*, 18 March 1994, 15.

The attempt failed, but it helped to make LB 76 a much more controversial bill than it may have otherwise been.

Among other changes to Nebraska’s election laws, LB 76: (i) restricted the use of voter registration lists and provided a warning for misuse; (ii) allowed persons unable to go to the polls on election day to cast an absentee ballot; (iii) prohibited special elections within 30 days before or 60 days after a regular election; (iv) restricted the use of initials for petition purposes; (v) allowed defeated primary candidates to petition on the ballot if a vacancy exists; and (vi) authorized homeless persons to use the county clerk’s office as an address for voter registration purposes.⁸⁰⁶ The bill also incorporated the “Motor-Voter” provisions found within the National Voter Registration Act of 1993. This permitted people to register to vote while obtaining their drivers’ licenses.⁸⁰⁷

LB 76 also was important in that it made some changes to election laws that were used by political subdivisions to place issues before their respective electorates. It clarified the manner in which individuals were elected to local boards of education within various classes of school districts. The only specific change made to the school finance system, however, was purely editorial in nature. The measure simply changed a reference concerning special elections to the “Election Act.”⁸⁰⁸ The amended section pertained to special elections to exceed a district’s applicable spending limitation.

Table 41. Summary of Modifications to TEEOSA as per LB 76 (1994)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
608	79-3820	Applicable allowable growth percentage; district may exceed; vote required.	Harmonize provisions by changing reference from “provisions of Chapter 32 special elections” to “Election Act.”

Source: Legislative Bill 76, in *Laws of Nebraska, Ninety-Third Legislature, Second Session, 1994*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 608, p. 155 (162).

⁸⁰⁶ Nebraska Legislative Research Division, “A Review: Ninety-Third Legislature, Second Session, 1994,” September 1994, 39.

⁸⁰⁷ *Id.*

⁸⁰⁸ Legislative Bill 76, in *Laws of Nebraska, Ninety-Third Legislature, Second Session, 1994*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 608, p. 155 (162).

Legislative Bill 1310 (1994) represented the annual technical cleanup bill for the Department of Education. The legislation was introduced by the Education Committee and designated a Speaker priority bill.⁸⁰⁹ LB 1310 was somewhat unique among technical bills in that it never became the “Christmas tree” that so many technical bills become. Lawmakers typically use technical cleanup bills to *hang ornaments*, other related or unrelated amendments.

Among other provisions, LB 1310 changed the filing deadline for annual school district budgets from August 25 to September 1, deleted requirements for the department to collect information on wages paid by school districts to substitute teachers, changed the deadline for filing verification of annual inspection of school buses from October 1 to July 31, and repealed the requirement that school districts submit requests for services from educational service units on forms prescribed by the Commissioner of Education.⁸¹⁰

In relation to the school finance system, LB 1310 made only one change, and this pertained to the filing of duplicate copies of annual budgets. Prior to this legislation, school districts were required to file duplicate copies of annual budgets with both the State Auditor and the Department of Education. However, the department did not deem it necessary to receive such duplicate copy. As stated by Dennis Pool, representing the Department of Education, the change was made “in order to save the local districts, time, money and reduce the volume of paper stored and retained at NDE.”⁸¹¹

Table 42. Summary of Modifications to TEEOSA
as per LB 1310 (1994)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
16	79-3813	Distribution of income tax receipts and state aid; effect on budget	Eliminate requirement for school districts to file duplicate copy of budget with the Department of Education.

⁸⁰⁹ Legislative Bill 1310, *Change provisions relating to schools and the issuance of passes for school district and community college activities*, sponsored by Education Committee, Nebraska Legislature, 93rd Leg., 2nd Sess., 1994, title first read 20 January 1994, 417. NEB. LEGIS. JOURNAL, 25 February 1994, 875.

⁸¹⁰ “A Review: Ninety-Third Legislature, Second Session, 1994,” 30.

⁸¹¹ Committee on Education, *Hearing Transcripts, LB 1310 (1994)*, Nebraska Legislature, 93rd Leg., 2nd Sess., 1994, 8 February 1994, 97.

Table 42—Continued

Source: Legislative Bill 1310, in *Laws of Nebraska, Ninety-Third Legislature, Second Session, 1994*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Allen J. Beermann, Secretary of State), § 16, p. 8 (1322).

G. Review

Between 1991 and 1994, the Legislature grappled with many of the details of school finance that tend to lull policymakers to sleep. This was a period of fine-tuning for the TEEOSA, but there were also some major issues sprinkled in the mix. Among the major topics was the final piece to the common levy issue and the implementation of adjusted valuation under the school finance formula. In addition, the formula had to evolve to a certain degree with the ongoing and tedious constitutional problems with Nebraska's personal property tax system. In fact, the personal property tax issue would dominate much of the Legislature's time in the early 1990s. Lawmakers found themselves reacting to several key court cases on this subject.

Legislative Bill 511 (1991) was the first comprehensive technical cleanup bill after the passage of LB 1059 (1990) a year earlier. The bill contained both technical and substantive changes to a wide array of education-related, and some non-education-related statutes. The major change with regard to affiliation concerned the extension of the deadline for Class I districts to affiliate from February 1, 1992 to February 1, 1993. This change was meant to give Class I districts more time to complete the affiliation process set out in LB 259 (1990). LB 511 also changed the method of financing for the enrollment option program. Beginning in the 1992-93 school year, the program would be funded through the state aid formula, as opposed to a separate fund and distribution system. The payment amounts to school districts would be phased-in during the 1992-93 and 1993-94 school years. In the 1994-95 school year, districts would receive tiered cost per student for option students served in the 1992-93 school year since state aid was calculated based on data two years in arrears. LB 511 marked the first direct connection between option students and the new formula, although the original formula did include

option payments as other actual receipts. Option payments to districts would continue to be an issue as the formula evolved in later years.

In 1991, the Legislature passed LB 829 (1991) and served as the first salvo fired by the Legislature in response to a Nebraska Supreme Court opinion relevant to personal property taxes and taxable property. The Legislature chose to use LB 829 to exempt all personal property with the exception of motor vehicles for the 1991 tax year only. One of the consequences of such a mass exemption, of course, was the loss of revenue to local governments that count upon all property tax receipts. School districts would certainly be among the losers. It was decided, therefore, that the Legislature would “reimburse” local governments by a variety of revenue generating measures designed to offset the lost revenue. It was estimated that the total loss of revenue to local governments by the one-time, one-year personal property tax exemption would be \$97 million.

In February 1992 the Nebraska Tax Research Council (NTRC) issued a report on the effectiveness of LB 1059 in meeting its stated goals. The report issued by the NTRC in 1992 represented the first formal effort to evaluate the new state aid formula and how, or if, it was meeting the goals established by the Legislature, particularly as they relate to taxation. On the whole, the report provided relatively good news for supporters of LB 1059. It reported that the tax base had in fact been broadened. The report indicated that statewide property tax relief had, in fact, been achieved. The report also stated that the property tax burden had been made more equitable.

The continuing saga concerning the personal property tax crisis had not dissipated with the passage of LB 829 during the 1991 Session. LB 829 was intended to exempt all personal property from taxation for 1991 only as a short-term solution to the tax crisis. The legislation was meant to buy time in order to resolve the matter once and for all at a later date. In 1992 the Legislature passed LB 1063 (1992) to attempt to resolve the issue. In relation to the school finance formula, LB 1063 extended the duration of the zero percent growth in spending without a three-fourths vote of the local school board (in order to access the normal spending limitations). The zero percent restriction was imposed under LB 829 (1991) and essentially created an initial hurdle over which school

boards must leap before it may access the spending limitations originally imposed by LB 1059. Under LB 1063, the zero growth provision would be extended through the 1994-95 school year.

LB 1063 eliminated two of the five existing spending lid exceptions. Both the lid exception relating to special education enrollment growth and the lid exception relating to collective bargaining agreements were eliminated by the legislation. LB 1063 also eliminated the separate spending limitation for special education costs to school districts. LB 1059 (1990) had originally created one spending limit for general fund expenditures and one for special education expenditures. LB 1063 provided that the budget authority for special education would be the actual anticipated expenditures for special education subject to the approval of the state board.

In the 1992 Session, the Legislature passed LB 719 (1992) to: (1) extend the hold harmless clause of the state aid formula; (2) change provisions related to land transfers between districts; and (3) provide for rapid growth of students in the formula. Also in 1992, the Legislature passed LB 1001 (1992), which expanded the usage of an authorized tax levy by school districts. The legislation authorized school districts to levy up to 5.2¢ per \$100 valuation for purposes of accessibility barrier elimination projects and environmental hazard abatement projects. The bill also allowed parents under the option enrollment program to appeal rejections of students made by resident school districts.

In 1993, the Legislature passed LB 310 (1993) to provide a procedure for schools to levy a property tax for purposes of reimbursing personal property taxes to taxpayers as required by a final order of a court or the Board of Equalization from which no appeal was taken. Also passed was LB 348 (1993), which provided that, for Class I districts having more than one general fund levy, the minimum effort calculation would be based on a derived general fund levy for the district. The derived general fund levy would be calculated by adding the general fund property tax yield for all portions of the district and dividing the result by the total assessed valuation of the district. LB 348 also required NDE to provide data to the Governor by December 1st of each year in order for the Governor to prepare necessary legislation for the upcoming session. The Legislature

passed LB 839 (1993) to provide for a common levy for Class I - Class VI school systems, effective for the 1995-96 school year. LB 839 also provided a mechanism for releasing apportionment and in-lieu-of-tax funds from state school lands, based on an appraisal rate of 80% for apportionment.

In 1994, the Legislature passed LB 1290 (1994) providing that state aid would be calculated using the adjusted valuation for the property tax year ending during the school year in which the aid is to be paid beginning in 1994-95. The measure also provided for the use of prior year student information rather than data two years in arrears. Beginning in 1994, the Department of Revenue was required to provide the Department of Education with adjusted property valuation by school district based upon adjustment factors for each class of property. The adjusted valuations would be used to compute state aid beginning in school year 1994-95, which did not leave any one concerned much time to prepare (state agencies and school districts alike). The bill provided a mechanism for school districts to file objections to adjusted valuations with the Tax Commissioner who must then hold hearings on the objections.

Spending and Revenue Lids, 1995-1996

A. Introduction

Both 1995 and 1996 proved to be pivotal years for public education, although the direction of the pivot may not have been entirely to school officials' liking. These were the years of the lids, both spending and levy limitations. The Legislature would begin whittling away at school districts' spending authority, and that of other political subdivisions, beginning in 1995. It would become a trend in state policy that continues to unsettle educators to this day. The Legislature would also find itself in a property tax crisis, whether real or perceived, and would attempt to address the issue before various citizen groups succeeded in finding a solution of their own through petition measures.

In addition, and perhaps for the first time in Nebraska history, the Legislature will establish an elaborate state policy of promoting reorganization through financial incentive. Rather than forcing consolidation, the legislative body will dangle the carrot to encourage school districts to merge on their own accord. This also would set a trend in state policy and would eventually foster new forms of school organization in succeeding legislative sessions.

The Legislature would also take on a full scale, comprehensive retooling of the school finance formula. While much of the original formula would remain in tact, an effort was made to modify the formula in such a way as to be more sensitive to the realities faced by school districts in providing a quality education. New components to the formula would be added, and others changed, with the ultimate goal to keep pace with the ever-changing public education fiscal environment.

B. The 1995 Legislative Session

LB 613 - Spending Lid

In his State of the State address to the Legislature on January 12, 1995, Governor Ben Nelson outlined an ambitious plan to streamline state government and place tighter spending limits on local governments. In what some thought may have been as much a bid for higher office as anything else, Nelson also took aim at the federal government by

criticizing its “inefficiency and inflexible regulation.”⁸¹² “The federal government has more control over our state budget than we do,” Nelson said.⁸¹³ Ironically, another Nelson initiative in 1995 would cap appropriations for special education services, which would ultimately leave school districts with less control over their own local budgets.

Governor Nelson launched a variety of initiatives in the 1995 Session, but for those involved in public education two bills would stand out above the rest. LB 613 (1995) would reduce existing spending lids for local governments by 1%, and LB 742 (1995) would cap appropriations for special education services. Senator Jan McKenzie of Harvard would introduce both pieces of legislation at the request of the Governor. Senator McKenzie was appointed to the Legislature by Governor Nelson in 1993, and she served as a member of the Education Committee.

Between the two bills, only LB 613 would directly modify the school finance formula, in terms of amending the TEEOSA itself. But both bills would directly impact the public school finance system on the whole, and both bills would lead to further changes in years to come. LB 613 would mark the first of several reductions in the spending lid for schools (and other political subdivisions) since the passage of LB 1059 in 1990. LB 742 would impose the first ever cap on special education appropriations and would lead to unsuccessful efforts to remodel the special education funding mechanism.

From the start of the session, it was clear to local governments and organizations representing local governments that the Legislature intended to do something about both spending and property tax relief. Numerous bills were introduced in the session to address over-reliance on property taxes and at the same time control local spending authority. Among these bills, LB 610, introduced by Senator LaVon Crosby, sought to allow certain school districts to levy a half-cent city sales tax to relieve the property tax

⁸¹² Paul Hammel, “Nelson Budget Stresses Streamlining Agencies \$70 Million Income-Tax Cut Sought Highlights of Nelson’s Proposals Key Numbers in Nelson’s Budget,” *Omaha World-Herald*, 12 January 1995, 1.

⁸¹³ *Id.*

burden.⁸¹⁴ LB 606, introduced by Senator Ed Schrock, sought to eliminate local-option sales taxes levied by cities and impose a 2% increase in the state sales tax to compensate for lost revenue.⁸¹⁵ LB 648, introduced by Senator Jim Cudaback, sought to eliminate local sales taxes and personal property taxes on farm and business machinery and also allow school districts to levy income taxes to fund education.⁸¹⁶ However, the only bill to advance, among the many options available, was LB 613.

Legislative Bill 613 was referred to the Revenue Committee for disposition.⁸¹⁷ As introduced, the bill eliminated the sunset on the lid for political subdivisions other than school districts,⁸¹⁸ and decreased the lid from 5% to 4%.⁸¹⁹ The lid was scheduled to automatically sunset on July 1, 1995.⁸²⁰ The result of the Governor's proposal would be a permanent 4% lid for municipalities, counties, and other local governments other than school districts. The bill decreased the base spending lid for school districts from 4% to 3% and the maximum lid under the lid range from 6.5% to 5.5%.⁸²¹ It also eliminated the sunset clause that required school boards to conduct an initial vote (requiring a 75% majority vote) to access the spending lids contained within the school finance formula.⁸²² This extra vote requirement was due to sunset at the end of the 1994-95 school year. In

⁸¹⁴ Legislative Bill 610, *Authorize certain school districts to impose a sales and use tax*, sponsored by Sen. LaVon Crosby, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 18 January 1995.

⁸¹⁵ Legislative Bill 606, *Eliminate the Local Option Revenue Act*, sponsored by Sen. Ed Schrock, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 18 January 1995.

⁸¹⁶ Legislative Bill 648, *Change provisions relating to sales and use taxes, income taxes, property taxes, and aid to education*, sponsored by Sen. Jim Cudaback, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 18 January 1995.

⁸¹⁷ NEB. LEGIS. JOURNAL, 20 January 1995, 442.

⁸¹⁸ Legislative Bill 613, *Change property tax limitations for political subdivisions*, sponsored by Sen. Jan McKenzie req. of Gov., Nebraska Legislature, 94th Leg., 1st Sess., 1995, title first read 18 January 1995, § 11, p. 16.

⁸¹⁹ *Id.*, § 3, pp. 4-6.

⁸²⁰ NEB. REV. STAT. § 77-3441 (Cum. Supp. 1994).

⁸²¹ LB 613 (1995), § 8, p. 14. A drafting error in the bill reflected a reduction in the base lid to 3% but inadvertently left the lid range at 4% to 5.5%, rather the correct 3% to 5.5%. This would be corrected later under the committee amendments to the bill.

⁸²² *Id.*, § 6, pp. 12-13.

addition, the bill imposed a new requirement that school boards must hold a special public hearing prior to taking the initial vote in order to access the spending limitation.⁸²³

LB 613 would also eliminate a school district's ability to set aside unused budget authority.⁸²⁴ Under the original formula enacted in 1990, a school district was allowed to choose not to increase its general fund budget of expenditures by the full amount of its applicable allowable growth rate. If a district chose to do so, the Department of Education would calculate the amount of unused budget authority so that it may be carried forward to future budget years.⁸²⁵ The elimination of this provision was particularly upsetting to school officials who believed it would actually cause more spending not less as the Governor intended. It would force school boards to adopt a "use it or lose it" attitude each year in setting annual budgets.

If this was not enough insult to injury, at least in the minds of school officials, LB 613 also proposed to eliminate one of two methods of exceeding its applicable spending limitation by an additional amount. Under the existing formula, a school board was permitted to exceed its applicable allowable growth percentage by an additional 1% upon a 75% vote of the board after a special hearing was held on the matter.⁸²⁶ A second method allowed the voters of the district to approve a resolution by the board or a petition by the general citizenry to exceed the lid by a specific amount at a special election.⁸²⁷ LB 613 sought to eliminate the first option, which would leave only the second method, a vote of the people, available to exceed the lid.⁸²⁸

At the hearing on February 9, 1995, Lt. Governor Kim Robak testified on behalf of the Governor and praised the "quality public servants in our cities and counties and

⁸²³ Id.

⁸²⁴ Id., § 11, p. 16.

⁸²⁵ NEB. REV. STAT. § 79-3821 (Cum. Supp. 1990).

⁸²⁶ Id., § 79-3820 (Cum. Supp. 1994).

⁸²⁷ Id.

⁸²⁸ LB 613, 1995, § 9, pp. 14-15.

schools.”⁸²⁹ Her comment was likely due in part to the criticism by local officials who believed the bill demonstrated a lack of faith and trust in their ability to address the spending and revenue issues at the local level. Robak continued, “I’m also a taxpayer, and the real question that we have to answer is, what can we afford.”⁸³⁰ Other supporters of the bill included tax activists Ed Jaksha of Omaha and David Hunter of Lincoln.⁸³¹

As would be expected, organizations representing local governments had a strong presence at the hearing in opposition to the bill. First among opponent testifiers was Jim Griess, Executive Director for the Nebraska State Education Association (NSEA). Griess also represented the Citizens for Responsible Tax Policy, which he called “a broad-based coalition of education and farm organizations interested in promoting property tax reform and property tax reduction.”⁸³² During his testimony, Griess submitted a report from the coalition that outlined the findings from a series of public forums conducted by the coalition in November 1994. The findings in the report indicated property taxes as a major concern among citizens across the state. “But we also found that citizens are not interested in dismantling essential local government services and I would contend that public schools and the programs that are provided by public schools are, in fact, viewed by most Nebraskans as an essential public service,” Griess said.⁸³³

Other opponents included the Nebraska Association of School Boards (NASB), the League of Nebraska Municipalities (LNM), the Nebraska Rural Community Schools Association (NRCSA), and the Nebraska Council of School Administrators (NCSA), among others. Harlan Metschke, Superintendent at Papillion-LaVista Public Schools, represented NCSA and provided some specific concerns with the legislation. “Our foremost concerns with regard to this legislation include the elimination of the unused

⁸²⁹ Committee on Revenue, *Hearing Transcripts, LB 613 (1995)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 9 February 1995, 3.

⁸³⁰ *Id.*

⁸³¹ Committee on Revenue, *Committee Statement, LB 613 (1995)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 1.

⁸³² Committee on Revenue, *Hearing Transcripts, LB 613 (1995)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 9 February 1995, 18.

⁸³³ *Id.*

budget authority, currently provided in the law, [and] the elimination of a local board of education's options to exceed the limit by one percent and the establishment of expenditure lids," Metschke said.⁸³⁴ He emphasized the value of local control over budgetary decisions and the counter-efficiency contained within the legislation. With regard to the elimination of unused budget authority, Metschke said, "Had this authority not been allowed, many [school districts] would have budgeted to the maximum amount allowed to maintain flexibility for future emergencies."⁸³⁵ In essence, he concluded, "[B]y eliminating unused budget authority, the Legislature would effectively penalize efficient school boards."⁸³⁶

Summarizing their concerns, opponents of the bill claimed the bill would harm essential services at the local level, penalize efficiency among local governments by encouraging maximum spending, and, generally, create a loss of local control. And their arguments apparently earned at least some merit among members of the Revenue Committee.

Following the hearing, on February 16th, the committee met in executive session to review the bill with all eight members of the committee present. By an 8-0 vote, the committee voted to amend the bill by removing the provision that would have eliminated unused budget authority for school districts.⁸³⁷ A vote to advance the bill, as amended, failed by a 4-1 vote (three present, not voting).⁸³⁸ On March 1st, the committee once again met in executive session with six of the members present. Once again, however, a vote to advance failed on a 4-1 vote (one present, not voting).⁸³⁹ On March 8th, the committee met for a final time with one member absent. The panel voted to restore

⁸³⁴ Id., 36.

⁸³⁵ Id., 37.

⁸³⁶ Id.

⁸³⁷ Committee on Revenue, *Executive Session Report, LB 613 (1995)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 16 February 1995, 1.

⁸³⁸ Id., 2.

⁸³⁹ Id., 1 March 1995, 3.

school district authority to exceed its spending limit by 1% if approved by a 75% vote of the board. At last, on a 5-2 vote, the committee voted to advance the bill as amended.⁸⁴⁰

Table 43. LB 613 (1995): Summary of Actions Taken by the Revenue Committee in Relation to Introduced Bill

<i>Provision</i>	<i>Bill as Introduced</i>	<i>Bill as Amended and Advanced</i>
Eliminate July 1, 1995 sunset on the lid for political subdivisions other than schools	Yes	Yes
Decrease lid from 5% to 4% for political subdivisions other than schools	Yes	Yes
Decrease base spending lid for school districts from 4% to 3%	Yes	Yes
Decrease maximum percentage under the lid range from 6.5% to 5.5%	Yes	Yes
Eliminate sunset clause requiring schools to conduct initial vote (requiring a 75% majority vote) to access spending lid	Yes	Yes
Impose requirement for school boards to hold a public hearing prior to taking the initial vote in order to access spending lid	Yes	No
Eliminate school district's ability to set aside unused budget authority	Yes	No
Eliminate school board authority to exceed growth rate by 1% upon a 75% vote	Yes	No

Sources: Legislative Bill 613, *Change property tax limitations for political subdivisions*, sponsored by Sen. Jan McKenzie req. of Gov., Nebraska Legislature, 94th Leg., 1st Sess., 1995, title first read 18 January 1995, §§ 1-10, pp. 2-16; Committee on Revenue, *Committee Statement, LB 613 (1995)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 1.

At this point in the legislative process, opponents of the bill had won a few battles but certainly not the war. The legislative proposal had become strictly one of reducing the spending limits on all political subdivisions and eliminating the sunset clauses on the lids for all political subdivisions.

General File debate on LB 613 began on May 9, 1995. By this time, the bill had been designated as Senator Kate Witek's priority bill for the 1995 Session.⁸⁴¹ However, it was Senator McKenzie, the chief sponsor, who took on the role of guiding the bill through floor debate. McKenzie's first challenge was to ward off Speaker Ron Withem's

⁸⁴⁰ Id., 8 March 1995, 3-4. *Vote to Advance:* Senators Hartnett, Kristensen, Warner, Wickersham and Will voting aye, Senators Coordsen and Landis voting nay, and Senator Schellpeper absent, not voting.

⁸⁴¹ NEB. LEGIS. JOURNAL, 14 March 1995, 1109.

attempt to eliminate any applicability of the bill to school districts. In an amendment offered by Withem, the spending lid provisions for school districts would be left in tact.⁸⁴² But Withem's intent behind the amendment was, perhaps, as much or more an attempt to place perspective on the school finance formula as any serious attempt to carryout the objective of the actual amendment.

Specifically, Withem tried to remind his colleagues of the original intent of LB 1059 relevant to the spending limitation and also some broader policy goals set forth by the Legislature. "One of the most misunderstood things ... was that the lid in LB 1059 on school districts was meant to be a temporary lid," Withem said, "Never was meant to be temporary."⁸⁴³ In addition, he said, the lid was supposed to be reviewed on an annual basis, which, he insisted, had not been done.

Moreover, Withem said, the Governor and the Legislature had failed to uphold the spirit and intent of LB 1059 almost from the very beginning. For instance, the state had yet to meet the 45% state support goal originally set forth five years earlier. "Consequently and because of the inactivity of the Legislature and the inactivity of the Governor, we have ended up with 1059, which again was supposed to have been a breathing, living document, is going stagnant," he said.⁸⁴⁴ LB 1059, Withem believed, was "supposed to promote equalization and we found each year since it passed we've moved further and further from the concept of equalization."⁸⁴⁵ Rather than "arbitrarily lowering the limitations by one percent," as proposed under LB 613, Withem concluded, the Legislature should be addressing some of the larger policy issues concerning the state aid formula.⁸⁴⁶ Having made his point, Withem eventually acknowledged the concern about growth in spending by school districts and withdrew his amendment.⁸⁴⁷

⁸⁴² Id., *Withem AM1819*, 9 May 1995, 2049.

⁸⁴³ Legislative Records Historian, *Floor Transcripts, LB 613 (1995)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 9 May 1995, 6496.

⁸⁴⁴ Id.

⁸⁴⁵ Id.

⁸⁴⁶ Id., 6497.

⁸⁴⁷ NEB. LEGIS. JOURNAL, 9 May 1995, 2047.

Speaker Withem was not alone in his concern for broader policy discussion of the school finance formula. Several senators used the debate on the Withem amendment to add their own commentary on both the spending and resource sides of public education. Senator Ardyce Bohlke, chair of the Education Committee, pointed out the concern for spiking or “radical fluctuations” in state aid received by school districts and how difficult that made the school budget process.⁸⁴⁸ This concern and others would eventually lead to future legislation in the 1996 Session. Senator Jerome Warner also spoke on the Withem amendment and issued one of the more prophetic comments during the debate on LB 613, if not the entire 1995 Session. Said Warner:

Seems to me the goal that we need to look at over the next three, four years if in fact we’re going to do something on property tax and taxes generally and restructuring the government and all the rest, is that in that interim period at least we ought to be striving to keep the growth in government budgets consistent with the growth in revenue and that we should not authorize expenditures beyond a lid that will exceed normal growth in revenue without a change in rates.⁸⁴⁹

Warner’s comments represented one of the earliest public references to what would become legislation to impose property tax levy limitations on political subdivisions during the 1996 Session.

Considering the magnitude of the bill, the General File debate on LB 613 was neither prolonged nor overly contentious. Senator Floyd Vrtiska made an unsuccessful bid to delay any changes to the lid provisions for another year to help local governments determine the impact of decreased spending authority.⁸⁵⁰ “I guess I have enough faith in the local governing people to not expend any more money than they need and just because they are given the ability to do it doesn’t mean they’re going to do it so,” Vrtiska said.⁸⁵¹ But the provisions relevant to school districts remained relatively unchanged

⁸⁴⁸ *Floor Transcripts, LB 613 (1995)*, 9 May 1995, 6508.

⁸⁴⁹ *Id.*, 6505.

⁸⁵⁰ NEB. LEGIS. JOURNAL, *Vrtiska AM2102*, 9 May 1995, 2058.

⁸⁵¹ *Floor Transcripts, LB 613 (1995)*, 9 May 1995, 6522.

from those suggested by the Revenue Committee under the committee amendments, which were adopted by a 27-4 vote.⁸⁵² LB 613 advanced to Select File on a 30-4 vote.⁸⁵³

Select File debate took place on May 25th, the 86th day of the 90-day session. Senator Tim Hall made an unsuccessful attempt to re-insert a provision from the original bill to eliminate school boards' authority to exceed their growth limit by 1% through a supermajority (75%) vote of the board.⁸⁵⁴ "I offer this because I believe that the bill as it was introduced was good policy," Hall said.⁸⁵⁵ The amendment failed on a 7-13 vote.⁸⁵⁶

Senator Jerome Warner also made an unsuccessful attempt to view LB 613 from a broader perspective and extend a form of spending limitation on state government. The Warner amendment would have prevented the Legislature from spending anymore than the level of growth in revenue each year.⁸⁵⁷ Warner's amendment was ruled not germane to the subject of the bill, thereby precluding a debate on the issue. But Warner's amendment and the concept of a "state lid" had been one of the ongoing themes throughout the debate on LB 613. At least a few lawmakers believed what was good for local governments would also be good for state government. "From my viewpoint the consistency would be in a broad area of limitation that we are attempting to apply...to both entities of government," Warner said.⁸⁵⁸

In what would become an ongoing trend in future sessions, Senator Jan McKenzie attempted to amend her own bill on the issue of school district budget prioritization. The McKenzie proposal took aim at school administration in favor of protecting classroom teachers as demonstrated in the text of the amendment:

⁸⁵² NEB. LEGIS. JOURNAL, 9 May 1995, 2059.

⁸⁵³ Id.

⁸⁵⁴ Id., *Hall FA207*, 25 May 1995, 2060.

⁸⁵⁵ *Floor Transcripts, LB 613 (1995)*, 25 May 1995, 8478.

⁸⁵⁶ NEB. LEGIS. JOURNAL, 25 May 1995, 2579-80.

⁸⁵⁷ Id., *Warner AM2455*, 23 May 1995, 2472.

⁸⁵⁸ *Floor Transcripts, LB 613 (1995)*, 25 May 1995, 8483.

It is the intent of the Legislature that reductions in school budgets made to meet spending lid reductions as a result of enactment of this legislative bill:

(1) Protect the instructional expenditures for children and their activities as much as possible;

(2) Unless every reasonable reduction in middle management and central office expenditures and positions has been made, there should be no reduction in expenditures or positions in music, drama, summer school, or like activities;

(3) Reductions should be made as far from the classroom as possible and should include administration travel, memberships, lobbying, transportation, and capital outlays; and

(4) Any cuts in school spending as a result of the enactment of this legislative bill should affect the classroom last.⁸⁵⁹

“[A] district will identify key programs, band uniforms, the art program, music, other areas, rather than look for cuts in spending that might come from administration and management or other such areas of the budget,” McKenzie said.⁸⁶⁰

The counter argument to McKenzie’s amendment was the violation of local control and the ability of an individual local school board to know best how to handle necessary budget cuts. Senator David Bernard-Stevens brought just such an argument to the forefront of the debate. “I would have to oppose the amendment based upon the concept that micromanaging is not the place for the Legislature...it’s the elected local officials and their philosophy that should determine where cuts are or are not going to be made,” he said.⁸⁶¹ On a personal level, however, Bernard-Stevens said he agreed with McKenzie about the need to somehow protect the educational welfare of students first and foremost. Ultimately, the McKenzie amendment was withdrawn without a vote.⁸⁶²

Shortly after the withdrawal of the McKenzie amendment, a vote to advance the bill proved successful on a 29-6 vote.⁸⁶³ The bill would need at least 33 votes to pass with the emergency clause attached, which it did on the last day of the session, June 8th,

⁸⁵⁹ NEB. LEGIS. JOURNAL, *McKenzie AM2017*, 25 May 1995, 2582.

⁸⁶⁰ *Floor Transcripts, LB 613 (1995)*, 25 May 1995, 8497-98.

⁸⁶¹ *Id.*, 8498.

⁸⁶² NEB. LEGIS. JOURNAL, 25 May 1995, 2582.

⁸⁶³ *Id.*, 2583.

by a 36-11 vote.⁸⁶⁴ Prior to the final vote, however, there were already rumblings that LB 613 was just the tip of the iceberg for a solution to the property tax situation, which some wanted to elevate to the status of a crisis situation. Governor Nelson was not entirely content with the somewhat watered-down version of LB 613, a bill he had originally requested. At a dinner hosted by the school board of Westside Community Schools in Omaha, Nelson alluded to a plan he hope to introduce in the 1996 Session to create property tax relief through state-mandated lids on property tax rates and even tighter restrictions on spending by local governments.⁸⁶⁵ Nelson knew, as did lawmakers, that the property tax situation was becoming acute, and, if not addressed soon, state leaders would lose control of the matter to those outside state government who were already pursuing remedies through popular initiatives.

Table 44. Record Vote: Final Reading, LB 613 (1995)

Voting in the affirmative, 36:

Abboud	Crosby	Hillman	Pedersen	Warner
Avery	Day	Jensen	Pirsch	Wehrbein
Beutler	Elmer	Kristensen	Preister	Wesely
Bohlke	Engel	Lindsay	Robak	Wickersham
Brashear	Fisher	Matzke	Robinson	Will
Bromm	Hall	Maurstad	Stuhr	Witek
Brown	Hartnett	McKenzie	Vrtiska	Withem
Coordsen				

Voting in the negative, 11:

Bernard-	Dierks	Jones	Schellpeper
Stevens	Hudkins	Landis	Schmitt
Chambers	Janssen	Lynch	Schrock

Present and not voting, 2:

Cudaback	Schimek
----------	---------

Source: NEB. LEGIS. JOURNAL, 8 June 1995, 2784.

⁸⁶⁴ Id., 8 June 1995, 2784.

⁸⁶⁵ Mike Reilly, "Nelson Aims To Reshape Property Tax Shifting Load To Businesses Is Proposed," *Omaha World-Herald*, 6 June 1995, 1.

Table 45. Summary of Modifications to TEEOSA
as per LB 613 (1995)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
3	79-3814	General fund budget of expenditures; limitations; Legislature; duties	Eliminated the sunset clause on the zero percent lid provision, which requires an initial 75% affirmative vote in order to access the normal spending lid provisions.
4	79-3816	Basic allowable growth rate; allowable growth range	Changed the base spending lid from 4% to 3% and lowered the growth range from 4-6.5% to 3-5.5%.

Source: Legislative Bill 613, in *Laws of Nebraska, Ninety-Fourth Legislature, First Session, 1994*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-4, pp. 1-3 (1159-61).

LB 742 - Special Education Funding Lid

The second major education-related funding piece introduced on behalf of the Governor in 1995 concerned special education programs and services. Both LB 613 (relating to general fund expenditures) and LB 742 were essentially on the same legislative timeline in that the hearings and floor debate occurred relatively parallel with one another throughout the session. The hearings occurred in different committees but within several weeks of one another. Initial floor debate occurred within a few weeks of one another. The bills advanced to the final stage within a few days of one another, and the bills passed on the same day. A part from the parallel timeline, however, the bills would take entirely different paths with LB 742 consuming twice as much floor debate and considerably more emotional dialogue among legislators.

As introduced by Senator Jan McKenzie, LB 742 would have eliminated the requirement for the state to fund 90% of the allowable excess costs for Level II and Level III special education programs and 80% for Level I programs for school age children. The requirement to fund 90% of allowable costs for early childhood special education programs would also have been eliminated.⁸⁶⁶ In its place, the bill established a somewhat open-ended process by which the Legislature would set the annual

⁸⁶⁶ Legislative Bill 742, *Change reimbursement provisions for special education programs*, sponsored by Sen. Jan McKenzie req. of Gov., Nebraska Legislature, 94th Leg., 1st Sess., 1995, title first read 19 January 1995, §§ 1-2, pp. 2-4.

appropriation (for the prior year's cost reimbursement) and the State Board of Education would then set a "percentage" for cost reimbursement to school districts.⁸⁶⁷ Although not expressly stated in the bill, the intent was to cap the special education appropriation at \$121.3 million for each year of the 1995-97 biennium.⁸⁶⁸ Since the projected appropriation for FY1996-97 was \$133.6 million, the state would theoretically save \$12.3 million by capping the appropriation at the FY1995-96 level.

Only two proponents appeared during the public hearing for LB 742 on February 21, 1995 before the Education Committee. The first was the sponsor of the legislation, Senator McKenzie, and the second was Lt. Governor Kim Robak on behalf of Governor Nelson. In her opening remarks, McKenzie outlined the rationale for the legislation, which ostensibly boiled down to high projected annual increases in appropriations and the allegation of over-identification of special education students by school districts. The official line was, as stated by McKenzie, the need to "identify cost containment strategies through which the current system can be made more efficient and effective in closing the large and growing gap between special education and general education."⁸⁶⁹

While most members of the Education Committee may not have disagreed with the ever-increasing costs of special education, both the motives and strategy behind the bill remained less than clear from McKenzie's testimony. Seeking to understand the intent of the bill, Senator David Bernard-Stevens pressed McKenzie on the overall strategy for the bill, as illustrated in the following excerpt of the hearing transcripts:

SENATOR BERNARD-STEVENS: Final question, if the bill made it out of committee in its present form, and got to the floor of the Legislature, is going to be debated, would you want the bill passed this year?

⁸⁶⁷ Id.

⁸⁶⁸ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 742 (1995)*, prepared by Sandy Sostad, Nebraska Legislature, 94th Leg, 1st Sess., 1995, 15 February 1995, 1. The FY1994-95 General Fund appropriation for special education was \$115.4 million; the NDE request for the following biennium was \$121.3 million for FY1995-96 and \$133.6 million for FY1996-97.

⁸⁶⁹ Committee on Education, *Hearing Transcripts, LB 742 (1995)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 21 February 1995, 28.

SENATOR McKENZIE: Gee, I would prefer to see us work on solving part of our problem in Nebraska in terms of how we deliver services and to just see a flat cap passed with no allowance for growth from year to year.

SENATOR BERNARD-STEVENS: I think that is a no.

SENATOR McKENZIE: That's a no, a qualified no, if I might.⁸⁷⁰

At least one representative of the media interpreted her response to mean, “[S]he’d prefer that the Legislature allow the next year for studying ways to contain special education costs - and take up the bill next year.”⁸⁷¹ The confusion over legislative intent was understandable considering McKenzie’s remarks, but nonetheless inconsistent with that of the administration, as Lt. Governor Robak would make clear in her testimony.

“Legislative Bill 742 really addresses financial reality,” Robak testified, “[O]ur state expenditures for special education have doubled in the last six years, and if we don’t tackle the problem now, we are headed for the 200 million dollar mark by the year 2000, nearly doubling again in five years.”⁸⁷² Robak said a cap on special education appropriations was not a revolutionary idea. In fact, such a cap was proposed in the December special session in 1986, but Robak said, “The response at that time was that the issue was too complex and controversial to tackle in a special session... .”⁸⁷³ In 1993, Robak continued, the Legislature created the Special Education Accountability Commission “to look at the growing cost of special education.”⁸⁷⁴ The Legislature created the commission under LB 520 (1993) with the primary goal to “identify strategies for accomplishing cost containment in special education that will result in average special education costs increasing at a rate no greater than the average annual education growth

⁸⁷⁰ Id., 31.

⁸⁷¹ Leslie Boellstorff, “Special Ed Spending Cap Is Protested Lt. Gov Robak Says Measure Is Necessary,” *Omaha World-Herald*, 22 February 1995, 15.

⁸⁷² *Hearing Transcripts, LB 742 (1995)*, 21 February 1995, 34.

⁸⁷³ Id. During the 4th Special Session, held December 5-12, 1986, Senator Tom Vickers introduced LB 2 to place a cap on special education appropriations, but the bill failed to advance from committee.

⁸⁷⁴ Id.

rate.”⁸⁷⁵ The commission issued a report to the Legislature outlining several recommendations, one of which was to limit growth in appropriations for special education by matching such growth to the aggregate general fund growth rate (between 4% and 6.5%). But this recommendation was either unacceptable or simply ignored by the administration. The Governor preferred a more immediate and lasting savings, hence the cap coupled with a 0% growth on special education appropriations.

Being tough on spending when it comes to students with special needs is not exactly the most popular thing a politician could do, and Robak addressed that concern head on. “We have no intention of abandoning children with needs,” Robak said.⁸⁷⁶ Nor she said was the bill intended as a “punishment to school districts for not holding down the costs” referring to alleged over-identification of special education students in order to reap more state financial assistance.⁸⁷⁷ “We don’t believe that there is a wholesale dumping of kids into special education programs to get more state dollars,” she said.⁸⁷⁸ But the bottom line for the administration was about savings to the state while at the same time providing the same services to the same students. “We believe, however, that special education services can be provided in a more cost-effective manner, and it is time now to look to those local districts, those teachers, and those parents, and students to find better ways of delivering the services,” she said.⁸⁷⁹

As to the issue of a timeline for the bill, Robak made it perfectly clear that a delay was not part of the plan. “[I]t is the Governor and my belief that this bill does need to become law in order to provide incentives for change to the special education program,” Robak said.⁸⁸⁰ The use of the word “incentives” was an interesting choice of terminology, since the bill provided no incentive at all. As noted by Senator David

⁸⁷⁵ NEB. REV. STAT. § 79-3367 (Cum. Supp. 1993).

⁸⁷⁶ *Hearing Transcripts, LB 742 (1995)*, 21 February 1995, 35.

⁸⁷⁷ *Id.*

⁸⁷⁸ *Id.*

⁸⁷⁹ *Id.*

⁸⁸⁰ *Id.*, 36.

Bernard-Stevens, the bill represented more of a “hammer” than any form of incentive.⁸⁸¹

As he said somewhat sarcastically:

[T]he attitude now is let’s go ahead and give them two years of their funding, the next years after that, they are going to be nailed, school districts will be hit incredibly hard, and that will be the hammer necessary to make them come to the table.⁸⁸²

The metaphorical table, to which Bernard-Stevens referred, was the overall discussion about how to change the service delivery system along with the funding system. Whether one calls it a hammer or an incentive, however, the fact remained that there was only so much local school districts could do about complying or not complying with federal and state mandated special education service requirements. As Elkhorn Superintendent Roger Breed testified, “The dilemma we face...is that the expense of providing services to students with disabilities and the expense of complying with multiple levels of special education rules is to a large extent beyond the control of the local school board and school administrators and teachers.”⁸⁸³

Representatives for school boards and school administrators appeared at the hearing to oppose the bill and to explain what seemed to be unclear to some state leaders. First of all, the Lt. Governor insisted the bill was not meant to harm students or otherwise deprive any student of needed services. What may not have been understood by the administration, however, was that the reduction of special education funding meant the very real possibility that regular education funding would have to be used to make up the difference at the local level. As Martha Fricke of the Nebraska Association of School Boards testified, “[T]he repercussions that could take place if this bill is placed would affect all of public education, we feel, not just special ed.”⁸⁸⁴

⁸⁸¹ Id., 37.

⁸⁸² Id.

⁸⁸³ Id., 68-69.

⁸⁸⁴ Id., 56.

The second issue, perhaps unclear to the Governor's office, concerned the actual practices used to identify special education students. As Don Anderson of the Department of Education testified:

Individuals closest to the child, the parents, educators, and the child when appropriate, are in the best position to make program decisions for individual children. State special education reimbursement and funding systems should be as program neutral as possible and should not drive individual program decisions for children. Reimbursement and funding systems should allow school districts and approved cooperatives the flexibility to make program decisions based on individual needs rather than standardized eligibility criteria.⁸⁸⁵

Anderson represented the State Board of Education, which opposed the bill as drafted. However, he did offer several recommendations to improve the bill. The primary recommendation was to link the growth in annual special education appropriations to the aggregate statewide percentage growth in general fund expenditures within the existing spending lid range (4% to 6.5%). "This would allow the growth rate of special education reimbursement and funding and the state appropriation to increase at the rate of the average annual education growth rate," he said.⁸⁸⁶ The result of such a proposal was expected to produce a 6% to 6.5% increase in special education appropriations each year. This was certainly less than the existing growth of upwards to 10% annually, and certainly more preferable than the zero percent growth proposed by the Governor.

It was a compromise. It also embraced the original goal of the Special Education Accountability Commission as set forth under LB 520 (1993), which was, once again, to "identify strategies for accomplishing cost containment in special education that will result in average special education costs increasing at a rate no greater than the average annual education growth rate."⁸⁸⁷

The Education Committee accepted Anderson's recommendation and advanced the bill with a significant change from that recommended in the original bill. As proposed in the committee amendments, LB 742 would limit the total annual state

⁸⁸⁵ Id., 66.

⁸⁸⁶ Id.

⁸⁸⁷ NEB. REV. STAT. § 79-3367 (Cum. Supp. 1993).

appropriation for special education services to an increase between 4% and 6.5%.⁸⁸⁸ The idea was to mirror the existing general fund spending lid base and range, which would decrease by 1% upon the passage of LB 613. LB 613 proposed to reduce the base lid and lid range to 3 - 5.5%.

General File debate commenced on April 19, 1995. By this time, Senator Curt Bromm had designated the bill as his priority measure for the 1995 Session.⁸⁸⁹ After four hours of debate and the adoption of several amendments, including the committee amendments, the bill would retain the 4% to 6.5% growth lid, but would also take on several new components. One of these new provisions would direct the Special Education Accountability Commission to suggest a plan to the Legislature for a block grant approach to funding special education to replace the existing cost reimbursement system. The bill advanced on a 28-0 vote and appeared, at that time, to be on solid ground with the majority of the body.⁸⁹⁰

As advanced on first-round debate, LB 742 would: (1) maintain the amount of reimbursement/funding to school districts and approved cooperatives for school age, early childhood and transportation programs for FY1995-96; (2) allow the Legislature to determine the amount of appropriation for special education funding in FY1996-97; (3) establish a 4% to 6.5% growth rate on appropriations for FY1997-98 and thereafter; and (4) establish an intent to change the funding mechanism from a cost reimbursement system to a grant system.

Second-round debate began on May 16, 1995 and would last through three separate session days. The debate would temporarily divide members of the Education Committee and the Legislature as a whole on just how to address the issue of rising costs in special education services. The debate would also address Governor Nelson's original contention that schools had been over-identifying special education students, which thereby drove the overall need for funding at higher and higher levels.

⁸⁸⁸ Committee on Education, *Committee Statement, LB 742 (1995)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 2.

⁸⁸⁹ NEB. LEGIS. JOURNAL, 13 March 1995, 1068.

⁸⁹⁰ *Id.*, 19 April 1995, 1735.

After a relatively contentious period of debate, the Legislature adopted a compromise amendment concerning the funding elements of the bill. Even at the second stage of debate, there were still those who felt the spending on the part of school districts was out of control. They believed the only way to control spending was to cap the state appropriations for special education services.

The compromise amendment would appropriate \$122 million for FY1995-96 (for special education costs arising from service year 1994-95). The appropriation amount would increase by 2.5% for FY1996-97 (for service year 1995-96), and 3% for FY1997-98 (for service year 1996-97).⁸⁹¹ The amendment would carry a sunset provision to repeal the existing cost reimbursement system on August 31, 1998. This would require the Legislature to enact a new funding system for special education services during the 1998 Legislative Session. The new system would be designed so average annual special education costs increase at a rate no greater than the growth rate of general education.⁸⁹²

LB 742 was passed by a solid 45-3 vote on June 8, 1995, the 90th and last day of the 1995 Session.⁸⁹³ However, while the legislation certainly seemed important at the time, much of what it proposed in policy never came to pass. The Legislature would not adopt a new funding system to replace the cost reimbursement system. And the Legislature would eventually settle on a maximum 5% annual growth in state appropriations for special education programs. On the other hand, school officials did receive the message loud and clear that special education appropriations would not be open ended, blank checks from state government. No doubt the most important lesson from LB 742 was that both local and state governments have only so much flexibility on issues related to special education in light of federal laws, rules and regulations. In addition, some policymakers learned or would learn in subsequent sessions that unrealistic caps on appropriations for special education would necessarily have an impact on the state aid formula.

⁸⁹¹ Id., *Bromm-Bernard-Stevens-Bohlke-McKenzie AM2483*, 23 May 1995, 2485-86.

⁸⁹² Id.

⁸⁹³ Id., 8 June 1995, 2780.

LB 490 - TERC

Prior to 1996, the body established to equalize the values of real property among counties was the State Board of Equalization and Assessment, which was comprised of the Governor, Secretary of State, State Auditor, State Treasurer, and the Tax Commissioner. The board was established under the State Constitution and had a variety of functions and duties that were, from time to time, modified by the Legislature. By the 1990s it became evident that some major changes were needed in order to achieve true equalization. In 1994, the Legislature passed LR 277CA to replace the board with the Tax Equalization and Review Commission (TERC), but due to a technical defect the amendment did not appear on the 1994 General Election Ballot.⁸⁹⁴ In 1995, Senator Doug Kristensen of Minden made a second attempt to eliminate the board and implement the TERC, and ultimately succeeded with the passage of LB 490 and LR 3CA.

Legislative Bill 490 (1995) would create the Tax Equalization and Review Commission, a body comprised of three appointed members (a fourth member would be added in 2002). The commission would have the power and duty to hear and determine appeals of decisions of county boards of equalization concerning the equalization of real property and the granting or denying of tax exempt status for real or personal property.⁸⁹⁵ LB 490 would also empower the commission to hear and determine appeals of various decisions of the Property Tax Administrator, a newly created position.⁸⁹⁶ The companion piece to LB 490 was LR 3CA, a constitutional amendment to eliminate the Board of Equalization and replace it with the TERC.

Kristensen renewed his effort to create the TERC in 1995 due in part to the “dire need for equalization” and to ensure that the property tax system operates as fairly as

⁸⁹⁴ Leslie Boellstorff, “High Court Orders 5 Issues Off Ballot: Term-Limits Question Not Affected,” *Omaha World-Herald*, 4 November 1994, 1. The Legislature’s Executive Board was one day late in filing the explanatory language for five ballot issues submitted by the Legislature. The amendments involved replacement of the Board of Equalization, binding arbitration, rights of crime victims, off-track betting on horse racing, and the waiver of the requirement to read aloud bills in their entirety before a final vote of the Legislature.

⁸⁹⁵ “A Review: Ninety-Third Legislature, Second Session, 1994,” 77.

⁸⁹⁶ *Id.*

possible.⁸⁹⁷ “The only way, in my opinion, that you’re going to achieve good equalization across the State of Nebraska is by proper equalization and valuation and proper assessment of individual tracts,” Kristensen said.⁸⁹⁸ The Minden senator would designate LB 490 as his priority bill for the 1995 Session.⁸⁹⁹

Critics of the measure, including the Nebraska Association of County Officials (NACO), alleged that it would merely add another layer of bureaucracy to state government. Other critics, including several state senators, argued against the bill due to the cost of creating a new state agency, which was expected to exceed \$300,000 per year.⁹⁰⁰ The public education community remained fairly silent on the proposal even though the bill would amend, albeit slightly, the school finance formula.

LB 490 would amend three sections of the formula. Most of the amendments simply harmonized the law by including the newly created position of Property Tax Administrator within relevant sections of law. In one of the few substantive changes, the Property Tax Administrator replaced the Tax Commissioner in the duty to receive objections by school districts concerning adjusted valuations, which would now be established by the Property Tax Administrator rather than the Department of Revenue. LB 490 also changed the date by which the Property Tax Administrator must enter an order to modify or decline to modify the adjusted valuations from September 1st to December 1st. The final determination may be appealed to the Tax Equalization and Review Commission whereas before such appeals were filed with the Tax Commissioner.⁹⁰¹

⁸⁹⁷ Committee on Revenue, *Hearing Transcripts, LB 490 (1995)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 9 February 1995, 56.

⁸⁹⁸ *Id.*, 57.

⁸⁹⁹ NEB. LEGIS. JOURNAL, 9 March 1995, 1037.

⁹⁰⁰ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 490 (1995)*, prepared by Doug Nichols, 17 May 1995, 1-2.

⁹⁰¹ Legislative Bill 490, in *Laws of Nebraska, Ninety-Fourth Legislature, First Session, 1995*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 185, p. 50 (956).

LB 490 was passed on May 31, 1995 by a 28-10 vote.⁹⁰² The bill was signed into law by Governor Nelson and became operative on January 1, 1996. The companion piece to eliminate the State Board of Equalization, LR 3CA, was eventually passed by a sufficient margin to be placed on the primary election ballot rather than the general election ballot in order to expedite the implementation process. LR 3CA became Amendment No. 4 on the 1996 Primary Election ballot and was passed by the voters on May 14, 1996.⁹⁰³

Table 46. Summary of Modifications to TEEOSA as per LB 490 (1995)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
185	79-3809	Adjusted valuation; how established; objections; filing; appeal; notice; injunction prohibited	Replace the office of the Tax Commissioner with the Property Tax Administrator as the entity to receive objections from schools concerning adjusted valuations. Change the deadline from September 1 st to December 1 st for disposition of such objections. Change the appeal agent from the Tax Commissioner to the TERC.
186	79-3819	Applicable allowable growth rate; district may exceed; situations enumerated	Modifies existing spending lid exclusions to include final actions of the TERC and the Property Tax Administrator.
187	79-3823	School Finance Review Committee; created; members; duties	Adds the Property Tax Administrator as a member of the School Finance Review Committee.

Source: Legislative Bill 490, in *Laws of Nebraska, Ninety-Fourth Legislature, First Session, 1995*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 185-187, pp. 50-51 (956-57).

LB 542 - Federal Impact Aid

Legislative Bill 542 (1995) represented what one prominent school attorney called a “fairly complicated fiscal matter.”⁹⁰⁴ It was, said Lincoln attorney James Gessford, a “matter that’s so complicated that almost no one can explain it.”⁹⁰⁵ The chief sponsor of

⁹⁰² NEB. LEGIS. JOURNAL, 31 May 1995, 2692.

⁹⁰³ Secretary of State Scott Moore, comp., *Official Report of the State Board of State Canvassers of the State of Nebraska, Primary Election, May 14, 1996* (Lincoln, Nebr.: Office of Sec’y of State).

⁹⁰⁴ Committee on Education, *Hearing Transcripts, LB 542 (1995)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 27 February 1995, 52.

⁹⁰⁵ *Id.*

the bill, Senator Chris Beutler of Lincoln, called the legislation “a real brain teaser.”⁹⁰⁶ In fact, it was *so* complicated that it generated very little debate and passed by a unanimous vote. If such a thing exists within the realm of the Legislature, LB 542 would certainly be classified as an “I’ll take your word for it” piece of legislation.

LB 542 concerned the long-standing issue of back payments to a select few school districts that were denied certain amounts of state aid for the 1990-91 school year, the first year of implementation of LB 1059 (1990). Specifically, the bill focused on some, but not all, the school districts that receive federal impact aid funds provided to districts in which the presence of the federal government resulted in a financial burden. This federal presence may be through the acquisition of land that is no longer taxable or because of educational needs of children who either reside on federal land or have parents who work on federal land.

As passed by the Legislature under LB 1059, the state aid formula provided that district resources include all local revenue from property taxes as well as a list of “other receipts,” which include such items as interest on investments, transportation receipts, and special education receipts, and others. Within this list of “accountable” receipts was the impact aid funds received by school districts “to the extent allowed by federal law.”⁹⁰⁷ In addition to listing specific accountable receipts, the same section of law provided that district formula resources “shall include other actual receipts as determined” by the Nebraska Department of Education.⁹⁰⁸ The language was sufficiently ambiguous to cause a disagreement between the department and various affected school districts as to the extent to which, or whether, federal impact aid funds should be an accountable receipt within the school finance formula. The matter came to a head prior to the 1995 Session, when the U.S. Department of Education ruled that “none of the impact aid receipts should have been held accountable” for the 1990-91 school year.⁹⁰⁹ Consequently, LB 542 was

⁹⁰⁶ Id., 50.

⁹⁰⁷ NEB. REV. STAT. § 79-3811 (Cum. Supp. 1990).

⁹⁰⁸ Id.

⁹⁰⁹ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 542 (1995)*, prepared by Sandy Sostad, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 24 February 1995, 1.

introduced as a means to resolve the issue at the state level, but final resolution was still contingent upon the passage of federal legislation to sort out the matter once and for all.

At the time LB 542 was introduced, there were several categories of federal impact aid awarded to school districts across the nation depending upon specific circumstances. Historically, the Nebraska school district receiving the most federal impact aid was Bellevue Public Schools due to the location of the U.S. Air Force base. Bellevue Public Schools received sizable amounts of impact aid for several reasons. First, the Air Force base consumes a considerable portion of tax-exempt land, designated federal land, which would otherwise be subject to local property taxation. The result, naturally, is a loss of local revenue to the school district. In addition, the residency laws require the Bellevue Public School District to educate the school-age children whose parent(s) are employed by the Air Force base. Another category of federal impact aid springs from the lost property valuation due to federally designated lands within a school district but without the dual burden of significant populations of school-age children.

In the 1990-91 calculation of state aid, Bellevue Public Schools was denied approximately \$3 million in state aid due to the receipt of about the same amount of impact aid funds. Eleven other Nebraska school districts were held accountable for about \$1 million in impact aid receipts under the then newly created state aid formula. These districts included Lincoln and Grand Island to a large extent and several other districts to a lesser extent. Simple math would produce a total price tag of \$4 million in state aid to be recovered by the passage of LB 542. But, in fact, this was not the amount to be recovered under LB 542, and this was where part of the complexity derived.

Due to the nature of the category of impact aid received by Bellevue Public Schools, any funds appropriated or otherwise forwarded to the district under LB 542 would have to flow back to the federal government. In essence, the federal government would have viewed the funds under LB 542 as reimbursement for the funds it allocated to Bellevue Public Schools in 1990. Accordingly, the twelve districts involved, including Bellevue, decided against pursuing back payment of the full \$4 million. Instead, LB 542 applied only to the remaining eleven school districts, excluding Bellevue, which

effectively lowered the total asking under the bill to slightly less than \$1 million (\$912,050 to be exact).⁹¹⁰ This amount would be divided among the eleven applicable districts according to the computations of the Nebraska Department of Education.

Even with the agreement among the districts involved, there were still legal entanglements to sort out at the federal administrative level. In addition, the Nebraska congressional delegation would have to secure federal legislation within a short timeframe, by October 1, 1995, to essentially legitimize the steps taken at the state level through LB 542. Among all the facets of this complicated matter, it was the passage of federal legislation that caused the most concern and skepticism. After all, it was one thing to pursue legislation through the Nebraska Legislature and quite another to pursue legislation through Congress. In essence, LB 542 was one piece among several that had to fall into place at just the right time.

The other major question, specifically related to the mechanics of LB 542, was how the state would make the back payments to the eleven applicable districts. Where would the money come from? And this is, perhaps, where the careful crafting of LB 542 was most evident. The language in the bill presented two methods of financing the back payments. The first, and preferred method was a separate appropriation by the Legislature in the amount of \$912,050. The second method was to require the Department of Education to set aside this amount of funds from the total appropriation granted to the state aid fund for the 1995-96 fiscal year. The second method, to use equalization funds, was believed to be feasible due to the sunset of the original hold harmless provision under LB 1059 (1990). This would free up nearly \$3 million in state aid of which roughly \$1 million could be set aside for the one-time back payment prescribed under LB 542.

What was not immediately taken into consideration was that the Governor already earmarked the \$3 million in hold harmless funds to be used for reorganization incentives under LB 840 (1995), which was ultimately passed by the Legislature. Therefore, in the absence of a separate appropriation by the Legislature, the only way to fund LB 542

⁹¹⁰ Id.

would be through equalization aid under the annual TEEOSA appropriation. And, in fact, that is what happened.

LB 542 breezed through the legislative process. The only potential snag occurred during Select File consent calendar when Senator Ardyce Bohlke attempted to suspend the rules to permit consideration of a non-germane amendment.⁹¹¹ The Bohlke amendment related to a federally mandated requirement that students should be (but are not required to be) expelled for a full calendar year for the offense of possession of a firearm on school grounds.⁹¹² Bohlke said the failure to comply with this mandate would mean the loss of \$33 million in federal education funding. The motion to suspend the rules was passed by a 32-0 vote,⁹¹³ but consideration of the amendment exceeded the fifteen-minute time limit for consent calendar bills. No vote was taken on the Bohlke amendment and no vote was taken to advance the bill that day. A week later, on April 13, 1995, the Bohlke amendment was withdrawn and the Legislature took quick action to advance the bill.⁹¹⁴

LB 542 was passed by the Legislature on April 27, 1995, with the E-clause attached, by a 36-0 vote.⁹¹⁵ The Governor signed the bill into law on May 3rd, which made the bill operative on May 4th.⁹¹⁶ By this time, the concerned school districts had already commenced lobbying efforts at the federal level to secure necessary congressional legislation prior to the October 1, 1995 deadline imposed under LB 542. Ultimately, however, the federal legislation did not materialize within the timeline anticipated by the proponents of LB 542. An extension of the deadline would be sought a

⁹¹¹ Consent calendar is a special legislative procedure whereby non-controversial bills may be debated for no more than fifteen minutes each. If the all pending business on a consent calendar bill can be completed within this time period, a vote to advance the bill is taken. If all business cannot be completed within the time period, the body moves on to the next bill listed on the consent calendar agenda.

⁹¹² NEB. LEGIS. JOURNAL, *Bohlke AM1526*, 7 April 1995, 1559-60.

⁹¹³ *Id.*, 1558.

⁹¹⁴ Senator Bohlke would ultimately find success in attaching the expulsion provision to LB 658 (1995), which was passed and signed into law.

⁹¹⁵ NEB. LEGIS. JOURNAL, 27 April 1995, 1870-71.

⁹¹⁶ *Id.*, 3 May 1995, 1942.

year later and contained within one of the most significant school finance bills to pass since the inception of the new formula: LB 1050 (1996).

Table 47. Summary of Modifications to TEEOSA
as per LB 542 (1995)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
1	79-3801	Act, how cited	Added two new sections to the act.
2	79-3811.01	Federal impact aid entitlements; how treated <i>new section</i>	Required back payment of state aid to those districts that were denied certain amounts of aid for the 1990-91 school year. The back payments were contingent upon the passage of corresponding federal legislation by October 1, 1995.
3	79-3811.02	Aid allocation adjustments; department; duties <i>new section</i>	A provision was added under LB 542 to ensure that the Department of Education would actually make the back payments to applicable districts once the legislative and legal entanglements surround the impact aid issue were resolved.

Source: Legislative Bill 542, in *Laws of Nebraska, Ninety-Fourth Legislature, First Session, 1995*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-3, pp. 1-2 (1015-16).

LB 840 - Reorganization Incentives

Legislative Bill 840 (1995) represented a significant policy change in that, for the first time, financial incentives for reorganization would be built into the school finance formula. One of the principle advocates of this policy objective was Governor Ben Nelson, who, during his 1994 re-election bid, heard from citizens and educators alike on the problems faced by school districts that were contemplating consolidation. The major problem encountered was what many called the “disincentives” to reorganization. The disincentives involved real examples of school districts voluntarily consolidating only to discover that the reorganized district actually received less state aid than the school districts involved would have received had they not consolidated. The effect of the disincentive caused more than a few school districts to reconsider plans for consolidation.

Senator Ardyce Bohlke, serving in her second year as chair of the Education Committee, was asked by the Governor to file the legislation on his behalf. Senators Bob Wickersham and Ron Withem served as co-sponsors of the legislation, which added the credibility from both rural and urban-based lawmakers. The bill would be designated a

priority by Senator Ed Schrock, also a rural area legislator.⁹¹⁷ And the bill would have only a minor fiscal impact to the state with an anticipated expenditure of a few thousand dollars to the Department of Education for computer reprogramming costs. In short, LB 840 was a well-crafted bill both on technical and political considerations. But how would the disincentives be addressed?

As with many political ideas before and since, LB 840 was the result of opportunity and timing. The Governor and key lawmakers closely connected to the state aid formula were well aware that the hold harmless provision implemented as a part of LB 1059 (1990) was about to sunset (after the 1994-95 fiscal year). The funds set aside for the hold harmless provision could either revert to normal use under the equalization formula, or, perhaps, be used for a different purpose, a different policy objective.

The general objective to reduce the number of school districts was certainly not new to the Nebraska political landscape. From 1985 with the passage and ultimate repeal of LB 662 through the passage and retention of LB 1059 (1990) and through the early 1990s, the issue of consolidation had not dissipated within legislative debates nor faded from public attention. While the total number of school districts had decreased over a fifteen-year period, most of the reductions were elementary-only (Class I) districts. In 1985 there were 977 school districts of which 288 were K-12 districts, in 1990 there were 838 school districts of which 278 were K-12, and in 1995 there were 680 school districts of which 269 were K-12.⁹¹⁸ Whether progress was being made depended upon who was asked. But by 1995, it was not just the Class I districts at issue but also some of the smaller K-12 districts that existed within a few miles from one another.

LB 840 would address the issue by offering financial incentives to reorganize and thereby eliminate the so-called disincentives to reorganization. It would also establish, whether consciously or not, the policy of the state to *encourage* rather than *force* consolidation of school districts. This unwritten policy became an understanding between policymakers and school officials, although every session it seems at least one

⁹¹⁷ Id., 10 March 1995, 1057.

⁹¹⁸ NEB. BLUE BOOK, 2004-05 ed., 931.

attempt is made to forcibly restructure school districts. But LB 840 was not about forcing anyone to do anything. It was meant to address the barriers to reorganization and was brought forward by those who would otherwise consider consolidation if the law was changed to make it an acceptable proposition to all concerned.

“The philosophy behind this bill is simple,” said Trent Nowka, legal counsel to Governor Nelson, “If a district finds that it is cost effective and feasible to voluntarily merge into another district, they should have the opportunity to do so without being hurt in the state aid they are receiving.”⁹¹⁹ Testifying on behalf of the Governor at the hearing on March 7, 1995, Nowka also emphasized the voluntary nature of the bill. Said Nowka:

This bill is the Governor’s attempt to allow local districts the ability to make changes in their structure only if they voluntarily agree to do so. The Governor feels very strongly that these decisions should be made at the local level. It is an attempt to allow those types of decisions to be made without the disincentives that the current formula has.⁹²⁰

The local control aspect of the bill made it difficult for anyone to oppose it on philosophical grounds, unless affording local authority over such decisions ran counter to one’s philosophy of government. But for the school community and lobby, this bill represented a non-threatening, straightforward, perhaps even easy bill to agree upon. No one opposed the bill at the hearing, but that is not to say no one had concerns.

The Education Committee met in executive session to discuss the bill on the same day as the public hearing. Several changes were made and the bill was advanced on a 6-1 vote, with Senator Bernard-Stevens being the lone dissenter.⁹²¹ Senator Bernard-Stevens would eventually support the bill but only after a compromise was struck on Select File debate. As noted below, the compromise related to a sunset clause on the bill.

As advanced by the committee, LB 840 would enlarge the Tax Equity and Educational Opportunities Support Act by adding two new sections, both related to

⁹¹⁹ Committee on Education, *Hearing Transcripts, LB 840 (1995)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 7 March 1995, 4.

⁹²⁰ *Id.*

⁹²¹ Committee on Education, *Executive Session Report, LB 840 (1995)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 7 March 1995, 1-2.

incentives for consolidation and reorganization. The bill defined “consolidate” as the voluntarily reduction in the number of school districts providing education to a grade group, and “reorganized district” as any district involved in a consolidation and currently educating students following a consolidation.⁹²²

The incentive program would essentially be a phase-in hold harmless mechanism, which would be applied when two or more districts consolidate into one or more reorganized districts. In the “base fiscal year” (the first year of participation in the program), the reorganized district would receive 100% of the state aid each of the individual districts involved in the reorganization would have otherwise received had no reorganization occurred, or the total amount the newly reorganized district would receive under the formula, whichever is greater.⁹²³ The bill defined “base fiscal year” as the first fiscal year in which all data sources reflect the reorganized district as a single district for the calculation of state aid.⁹²⁴

In the second year of participation in the program, the same method would be used to compute state aid, except that the hold harmless provision would be reduced to 66% of the amount the reorganized district would receive. In the third year of participation in the program, the same method would once again be used to compute state aid, except that the hold harmless provision would be reduced to 33% of the amount the reorganized district would receive. At the conclusion of the three-year hold harmless program, the reorganized district would receive the amount of state aid entitled to it under the normal provisions of the school finance formula.⁹²⁵

The amount of funds available for reorganization incentives was capped at the amount of funds used for the original hold harmless clause created under LB 1059

⁹²² Legislative Bill 840, in *Laws of Nebraska, Ninety-Fourth Legislature, First Session, 1995*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 4, pp. 1-2 (1249-50).

⁹²³ *Id.*, § 7, pp. 4-5 (1252-53).

⁹²⁴ *Id.*, § 4, pp. 1-2 (1249-50).

⁹²⁵ *Id.*

(1990).⁹²⁶ In the final year of its implementation, FY1994-95, \$2.9 million was distributed to qualifying districts under the original hold harmless provision. Accordingly, the total amount of funds available for reorganization incentives each year, beginning in 1995-96, would be \$2.9 million.⁹²⁷ If the demand for reorganization incentives exceeded the capped amount, each qualifying reorganized district would receive a pro rated share.

As advanced by the Education Committee, LB 840 did not contain a sunset provision. Presumably, the incentive program would simply exist for use by school districts until such time as the law was changed. But the failure to include a sunset clause was not an oversight by the Governor. “We talked about it but we did not put one in there,” said Trent Nowka on behalf of the Governor.⁹²⁸ For at least one legislator, however, this would become a sticking point because without a sunset clause school districts may not have any sense of urgency about taking advantage of the financial incentives. Senator Bernard-Stevens, a member of the Education Committee, would eventually strike a compromise with proponents of the bill to insert a sunset provision.⁹²⁹ As amended on Select File, the bill specified that the incentive program would only apply to reorganizations occurring on or before June 30, 2005.⁹³⁰ This would essentially give school districts a ten-year window of opportunity to take advantage of the program.

LB 840 received strong support throughout the legislative process with very little debate. Even the addition of the sunset provision came without controversy. But one of the prevailing undertones of the brief floor debate was a sense of urgency on the part of some rural legislators to secure a policy of permissive rather than mandatory consolidation. This was particularly evident during a brief exchange between Senator

⁹²⁶ Id., § 7, pp. 4-5 (1252-53).

⁹²⁷ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 840 (1995)*, prepared by Sandy Sostad, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 3 March 1995, 1.

⁹²⁸ Committee on Education, *Hearing Transcripts, LB 840 (1995)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 7 March 1995, 6.

⁹²⁹ AM1553 offered by Senators Bernard-Stevens, Wickersham, and Bohlke was adopted on a 26-0 vote. NEB. LEGIS. JOURNAL, 27 April 1995, 1899.

⁹³⁰ LB 840, Session Laws, 1995, § 10, p. 5 (1253).

Dan Lynch of Omaha, who in the past had introduced a countywide school district bill, and Senator Ed Schrock of Elm Creek, who prioritized LB 840. Said Schrock:

Senator Lynch, you may find this odd, but I use you when I campaign and talk about school consolidation. I say that if you, if the people in rural Nebraska don't take some action on their own, there's always Senator Lynch with his one school district per county bill and I think it behooves rural Nebraska to listen because we all know there's fewer rural senators in the body and the fear out there that the urban Nebraska Legislature will do something in the area of forced consolidation I think is a powerful mechanism to provide incentives for these people to consolidate.⁹³¹

The tongue-in-cheek banter between Senators Lynch and Schrock may not have had any serious consequence to the passage of LB 840, but consolidation was far from a joking matter especially to those rural community residents who feared the closing of their school. The lawmakers who represented these communities knew if something akin to LB 840 were not enacted, then those who favored the more draconian approach to consolidation would eventually have their views heard in serious legislative debates.

LB 840 passed on June 8, 1995, the last day of the 1995 Session. The bill passed with the E-clause attached on a 47-1 vote (Senator Chris Beutler cast the sole dissenting vote).⁹³² The bill became operative on June 14, 1995, one day after Governor Nelson signed the bill into law.⁹³³

Table 48. Summary of Modifications to TEEOSA
as per LB 840 (1995)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
3	79-3801	Act, how cited	Expanded the Act from 24 sections to 26 sections with the inclusion of two new sections related to reorganization incentives.
4	79-3803	Terms, defined	Added three new definitions. Defined "consolidate" as the voluntarily reduction in the number of school districts providing education to a grade group.

⁹³¹ Legislative Records Historian, *Floor Transcripts, LB 840 (1995)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 94th Leg., 1st Sess., 23 March 1995, 2996.

⁹³² NEB. LEGIS. JOURNAL, 8 June 1995, 2781-82.

⁹³³ *Id.*, 14 June 1995, 2801.

Table 48—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
4	79-3803	Terms, defined <i>Continued</i>	Defined “reorganized district” as any district involved in a consolidation and educating students following a consolidation. Defined “base fiscal year” for purposes of reorganization incentives as the first fiscal year in which all data sources reflect the reorganized district as a single district for the calculation of state aid.
5	79-3804	Income tax receipts; use and allocation for public school system	Extends the income tax rebate provision to newly reorganized school districts.
6	79-3806	Equalization aid; amount	Provides an exception for normal distribution of state aid for newly reorganized school districts.
7	79-3806.01	Reorganized districts; state aid; amount <i>new section</i>	Provides a phased-in formula to distribute aid to reorganized districts. Provides that in the base year of reorganization, aid would be calculated so the reorganized district receives the greater of 100% of the aid the districts involved in the reorganization would have received in the prior year or the amount the reorganized district would be entitled to receive. The guaranteed percentage decreases to 66% in the 2 nd year and 33% in the 3 rd year. The total amount of aid distributed to reorganized districts under the incentive program is limited to the amount of hold-harmless aid distributed in 1994-95. This limited the additional aid to reorganized districts to \$2.9 million.
8	79-3812	School District Income Tax Fund; Tax Equity and Educational Opportunities Fund; created; investment	Ensures funding for the reorganization incentive program to the extent the Tax Equity and Educational Opportunities Fund receives General Fund appropriations and dedicated income tax funds.
9	79-3813	Distribution of income tax receipts and state aid; effect on budget	Ensures the certification and distribution of incentive payments to qualified districts in the same manner as other state aid payments are made.
10	79-3806.02	Reorganized districts; applicability of section <i>new section</i>	The reorganization incentive program would only apply to districts that reorganize on or before June 30, 2005.

Source: Legislative Bill 840, in *Laws of Nebraska, Ninety-Fourth Legislature, First Session, 1995*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 3-10, pp. 1-5 (1249-53).

C. The 1996 Legislative Session

LB 1114 and LB 299 - Levy and Spending Lids

Genesis - LR 93CA/petition drives

The 1996 Session produced some of the most important legislation in the history of the State of Nebraska, its local governments, and its taxpayers. By the end of the session, school districts, educational service units, and all other political subdivisions, would be faced with statutory property tax levy limitations, and taxpayers would be given the impression that their property tax bills would be reduced. The property tax relief package of 1996 actually consisted of six separate bills, of which five passed and became law, including LB 1114. Legislative Bill 1114 would change the way local governments operate, and, for the public school sector, eventually result in necessary changes in the school finance system.

The genesis of the levy lids under LB 1114 involved both immediate political circumstances and the long-standing, perhaps overdue issue concerning the overall property tax burden in Nebraska. By 1995 there were already movements afoot by tax activist groups and other organizations to pursue petition efforts designed to limit property tax rates. The considered opinion among these groups was that any such limitation ought to be placed in the Nebraska Constitution rather than state statute, thus providing more permanence. In fact, some prominent members of the Legislature would join, albeit briefly, the idea of using the Constitution rather than statute to implement the levy limitations. Nevertheless, the petition drives, coupled with Governor Nelson's personal agenda to control government spending, brought a sense of urgency among some legislators to act on the issue.

The sense of urgency became apparent by the unusual introduction of a legislative measure late in the 1995 Session. On April 12, 1995 (the 61st day of the 90-day session), the Legislature agreed to Senator Jerome Warner's request to suspend the rules in order to permit the consideration of a constitutional amendment to limit local property tax

rates.⁹³⁴ Legislative Resolution (LR) 93CA would produce the first look at an array of tax lids on various political subdivisions, an array which would essentially become part of the subsequent statutory solution contained in LB 1114 a year later.

From a larger perspective, most state lawmakers viewed the property tax issue as a matter of crisis proportions. Something, they felt, must be done to reduce the property tax burden. This was particularly evident during the floor debate on Warner's motion to introduce LR 93CA. Senator Stan Schellpeper, a co-sponsor of the resolution, rose to support the resolution and said perhaps what many were thinking:

I think everybody realizes that we have to do something. To do nothing is not acceptable. I think there's going to be some referendums on the ballot if we do nothing, and hopefully this [LR 93CA] will give the taxpayers and the voters an alternative, something that will be fiscally sound, that we'll know exactly where the dollars are going to come from and who they're going to come from and where they're going to be going. ... We need to take that first step to property tax relief in this state. It's past due, something has to happen, and I think this is a way to go about it that we can have a solution, hopefully, to some type of property tax relief in this state.⁹³⁵

Both rural and urban senators alike were united on the existence of a problem, as indicated by the unanimous vote to suspend the rules and permit introduction of LR 93CA late in the 1995 Session.⁹³⁶

And it certainly did not hurt their cause, or the timing of events, to have the senior-most member of the Legislature, Senator Jerry Warner, serving in the capacity of chair of the Revenue Committee at the time. The Legislature had, among its own membership, a man who could personally attest to decades of attempts by the Legislature at property tax relief. In fact, Senator Warner's three decades of experience in the Legislature would not only help pave the way for a seemingly viable legislative solution,

⁹³⁴ NEB. LEGIS. JOURNAL, 12 April 1995, 1626.

⁹³⁵ Legislative Records Historian, *Floor Transcripts, LR 93CA (1995)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 94th Leg., 1st Sess., 12 April 1995, 4481.

⁹³⁶ The Warner motion to suspend the rules for introduction of LR 93CA was adopted on a 38-0 vote. NEB. LEGIS. JOURNAL, 12 April 1995, 1626.

but also create an atmosphere of relative trust, although perhaps not total agreement, among the body.

The sense of trust, agreement, and recognition of leadership was apparent during the debate on Senator Warner's motion to introduce LR 93CA. The senator distributed a handout to his colleagues on the floor that outlined very succinctly the past legislative efforts at property tax relief. Some of the efforts noted by Senator Warner may have, in reality, been more reactionary than proactive, but the result was the same. He noted, for example, that the Legislature had adopted sales and income taxes in 1967 "to broaden the tax bases available to Nebraska government and lessen the burden of the property tax."⁹³⁷ Of course, the adoption of a new state tax base was inevitable in 1967 since the voters of Nebraska had approved the 1966 initiative measure to eliminate the state property tax. The Legislature simply had no choice.

The Legislature did have a choice, as did the voters ultimately, in the passage of LB 1059 (1990), which Senator Warner pointed out as having a major influence toward lowering property taxes, at least for a period of time. The handout distributed by Senator Warner claimed that LB 1059 represented the "largest property tax relief bill" in the history of Nebraska. The document further claimed:

Over the two years it took to be fully implemented, LB 1059 provided over \$250 million in property tax relief. Actual property taxes levied fell by more than 5 1/2% immediately. What's more, unlike some other programs, all proceeds from the tax increases passed in LB 1059, continue to flow to school aid, giving some permanence to the relief provided. 1994-95 marked the first year in which the property taxes levied for the operation of schools exceeded the amount levied in 1989 in actual dollars.⁹³⁸

In fact, upon the passage of LB 1059 in 1990, some viewed it as a school finance bill with a collateral impact to reduce property taxes while others viewed it primarily in terms of a property tax relief measure.

⁹³⁷ Senator Jerome Warner, "LR 93CA, Proposed Constitutional Levy Limit Discussion Paper," handout distributed during floor debate, 12 April 1995. 1.

⁹³⁸ Id.

Senator Warner's handout noted the "inadequacy of past efforts" at sustained property tax relief, which gave rise to the concept of permanent levy limitations as proposed under LR 93CA.⁹³⁹ The handout outlined three goals to help guide the discussion process that would follow: (1) Restructuring local and state government services in Nebraska; (2) Reducing the use of the property tax to finance public services; and (3) Restructuring state aid to local government to enable reaching goals (1) and (2).⁹⁴⁰ The handout hinted at the virtue of levy limitations in relation to the issue of equity for both services and tax rates:

The levy caps would also tend to make property tax levies more uniform statewide for the same services, dealing with one of the greatest disadvantages of the tax as it exists in Nebraska. The fact of a cap will prevent, to a great extent, the rising cost of providing government services from being reflected in greater and greater property tax rates. Certain services, especially those with high growth rates, may have to be shifted to the state.⁹⁴¹

The key, of course, was the extent to which state government would be willing to absorb the shift in financial responsibility, an issue the Legislature would bat around in various directions in subsequent years.

LR 93CA specified an array of levy lids for various categories of political subdivisions based upon each \$100 of actual market value of the taxable property subject to the levy. The school general fund operating levy limit was established in the proposal as \$1.00. Municipalities would be subject to a 60¢ lid, unless the property within the municipality also was subject to a separate fire district levy. In such a case, the municipality would be subject to a 50¢ lid. Fire districts would be allotted a 10¢ limit, sanitary improvement districts, a 50¢ limit, and county governments, a 30¢ limit. Community colleges would exist under a 7¢ cap while natural resource districts would be subject to a 3¢ cap. The only exclusion to the levy limits was bonded indebtedness since bond levies are generally adopted by a local vote of the people, a choice that would be

⁹³⁹ Id., 5.

⁹⁴⁰ Id.

⁹⁴¹ Id.

preserved in this proposal.⁹⁴² Educational service units were ignored in the proposal, as were such other entities as county agricultural societies, libraries, airport authorities, and public building commissions. These entities, it was believed, would have to compete for funds from the other entities that were allotted levy authority.

A public hearing for LR 93CA was held on May 1, 1995 before members of the Revenue Committee. The hearing was conducted during a legislative recess day with the principle hearing location at the State Capitol in Lincoln. Satellite television connections were also established in Kearney, Chadron, North Platte, Norfolk, Scottsbluff, Omaha, and Hastings. The hearing lasted for nearly eight hours and managed, as Senator Warner hoped, to bring to the forefront the opinions of both private citizens and representatives of local governments. Interestingly, there was widespread support for the proposal with a recurring recognition that a property tax “crisis” or at least problem existed in Nebraska. Naturally, those with an understanding of the legislative process had the advantage of knowing that LR 93CA would likely not have a chance to advance in the 1995 Session. But then neither Senator Warner nor perhaps any other member of the Revenue Committee actually believed the resolution was meant to go the distance in 1995.

LR 93CA may have represented, as much as anything else, a hopeful signal to all concerned that the Legislature was on top of the issue and would, in fact, address the issue in due time. There was still a concern among some legislators that, absent any sign of leadership from their end, a well-organized citizen action group would likely take the matter into their own hands and succeed with a petition effort. In essence, LR 93CA had to be seen by some as a means to stall on the issue long enough to undertake a serious study of the issue and then pursue a final proposal in the 1996 Session. And that was exactly what happened.

One of the most interesting outcomes of the hearing for LR 93CA had nothing to do with what was emphasized so much as what was not emphasized. Very few testifiers outwardly questioned the problems inherent in placing levy limits in the Constitution

⁹⁴² Legislative Resolution 93CA, *Constitutional amendment to establish ad valorem property tax limitations for political subdivisions*, sponsored by Revenue Committee, Nebraska Legislature, 94th Leg., 1st Sess. 1995, title first read 12 April 1995.

rather than in statute. This is not to say, however, that such discussions were not happening behind the scenes. In fact, the issue was a central point of discussion among representative groups for various political subdivisions, including schools, municipalities, counties, and community colleges. Many of these groups would ultimately form a coalition to address the issue of property taxes from the perspective of local governments.

In 1994, a variety of associations agreed to meet and discuss possible solutions to overhaul the state's property tax system without sacrificing necessary government services and functions. The meetings were primarily held at the offices of the Nebraska State Education Association (NSEA). Eventually, the group would form the "Citizens for Responsible Tax Policy," a coalition comprised not only of local government-related associations but also such notable groups as the Nebraska Farm Bureau. By 1996 the coalition was largely disbanded with the exception of two groups, the NSEA and the Farm Bureau, due to disagreements about whether to place a property tax solution within the State Constitution. The remaining two groups would eventually pursue an initiative petition campaign to impose levy limitations within the Constitution.⁹⁴³

The Package

As noted earlier, the property tax relief package of 1996 was comprised of six separate measures (five bills and one constitutional amendment) of which five (four bills and one constitutional amendment) would pass, but only four would ultimately become law. Five of the six measures would be designated as individual senator priorities for the 1996 Session, and two of these five prioritized measures would be granted further designation as Speaker major proposals ("super priorities").

Legislative Resolution 292CA (1996), which was prioritized by Senator Owen Elmer of Indianola, represented a constitutional amendment to provide the Legislature authority to establish methods for counties to merge with other counties or with cities.⁹⁴⁴ Such mergers could occur only by vote of the affected citizens. The measure would allow separate tax rates on property inside and outside cities to facilitate mergers and

⁹⁴³ The result of the petition effort became Initiative Measures 411 and 412, both of which failed by large margins in the 1996 General Election.

⁹⁴⁴ NEB. LEGIS. JOURNAL, 31 January 1996, 666.

consolidations. It also would remove constitutional requirements concerning distribution of motor vehicle taxes, the effect of which would permit only counties, cities, villages, and school districts to receive motor vehicle tax proceeds.⁹⁴⁵ LR 292CA was passed by the Legislature on a decisive 46-1 vote and placed on the November 1996 General Election ballot.⁹⁴⁶ However, the voters would have the final word on this proposal, and the word was “no.” LR 292CA, which became Amendment No. 2 on the 1996 General Election ballot, failed to pass by a margin of 47% (for) to 53% (against).⁹⁴⁷

Legislative Bill 1176 (1996), which was the only measure of the 1996 property tax relief package lacking a priority designation, would have established a fee-based system in place of the property tax system on motor vehicles. The legislation would also establish a statutory distribution of motor vehicle fee revenue among political subdivisions. LB 1176 was advanced to first-round debate by the Revenue Committee, but did not pass. It was generally believed that LR 292CA would first need to be approved by the voters before any such legislation could be passed by the Legislature. Since LR 292CA (i.e., Amendment No. 2) failed at the 1996 General Election, the idea of a fee-based motor vehicle tax would have to wait until after approval of a similar constitutional amendment in 1998.

Legislative Bill 1177 (1996), prioritized by Senator Jan McKenzie of Harvard, created the Municipal Equalization Fund for the purpose of providing state-funded equalization aid to qualifying municipal governments beginning July 1, 1998.⁹⁴⁸ The dollar amount of such state aid would be equal to (1) the municipality’s per capita

⁹⁴⁵ Nebraska Legislative Research Division, “A Review: Ninety-Fourth Legislature, Second Session, 1996,” July 1996, 86-87.

⁹⁴⁶ NEB. LEGIS. JOURNAL, 10 April 1996, 2001.

⁹⁴⁷ Secretary of State Scott Moore, comp., *Official Report of the State Board of State Canvassers of the State of Nebraska, General Election, November 5, 1996* (Lincoln, Nebr.: Office of Sec’y of State). Only 83% of those voting in the 1996 General Election chose to cast votes on Amendment No. 2. The lower percentage of participation may have been due in part to a lack of understanding for the purpose of the amendment. In 1998, the Legislature placed essentially the same amendment on the General Election ballot. The measure was divided into four separate ballot issues of which three passed by significant margins, including the provision related to mergers and consolidations of local governments.

⁹⁴⁸ NEB. LEGIS. JOURNAL, 20 February 1996, 848.

property tax levy multiplied by the municipality's current population, minus (2) the municipality's average property tax levy multiplied by the certified valuation of taxable property within the municipality. The measure also contained a number of provisions pertaining to the joint financing and operation of public safety services under Nebraska's Interlocal Cooperation Act. Among other things, the provisions (1) authorized counties to levy sales and use taxes in certain instances and (2) granted additional property tax levy authority under some circumstances.⁹⁴⁹ LB 1177 passed on a 43-3 vote.⁹⁵⁰

Legislative Bill 1085 (1996), prioritized by Senator Bob Wickersham of Harrison, and contained a number of property tax-related provisions aimed principally at county government.⁹⁵¹ The measure contained procedures for the use of "preliminary" and "final" property tax levies; changed provisions governing the state assumption of county assessment functions; changed certain levy powers of county boards; changed procedures for inter-county and intra-county consolidation; provided for a study of natural resources districts; and changed residency requirements for certain county officers.⁹⁵²

LB 1085 required county clerks to certify a preliminary property tax rate for each political subdivision by September 10th each year. The preliminary property tax rate was calculated by dividing the amount requested for property taxes in the budget of the previous year by the final valuation in the political subdivision for the current year. The preliminary levy would be deemed final unless changed by the political subdivision's governing body before October 15th following the adoption (by a majority vote and after holding a special public hearing) of an ordinance or resolution setting the levy at a different amount.⁹⁵³ LB 1085 passed on a 45-0 vote.⁹⁵⁴

⁹⁴⁹ "A Review: Ninety-Fourth Legislature, Second Session, 1996," 101.

⁹⁵⁰ NEB. LEGIS. JOURNAL, 11 April 1996, 2032.

⁹⁵¹ *Id.*, 20 February 1996, 834.

⁹⁵² "A Review: Ninety-Fourth Legislature, Second Session, 1996," 94-95.

⁹⁵³ *Id.*

⁹⁵⁴ NEB. LEGIS. JOURNAL, 10 April 1996, 1998.

The other two pieces of legislation were LB 1114 (1996), concerning levy limitations for political subdivisions, and LB 299 (1996), concerning spending/resource limitations for political subdivisions.

LB 1114 - Introduction and Hearing

On February 1, 1996 the Revenue Committee held another historic public hearing on the issue of property tax levy limitations on local governments. The focus of this hearing was LB 1114, a statutory solution to the property tax issue based in part on the proposal set forth in LR 93CA (1995). LB 1114, sponsored by Senator Warner, was introduced as a direct result of interim studies, hearings, and numerous meetings conducted a year earlier. As demonstrated in Table 49, the statutory solution embodied in LB 1114 was very similar to the constitutional solution proposed in LR 93CA (1995).⁹⁵⁵

Table 49. Comparison Chart of LR 93CA (1995), LB 1114 (1996) as Introduced, and LB 1114 (1996) as Passed

	<i>LR 93CA (As introduced) Beginning in FY2000-01</i>	<i>LB 1114 (As introduced) Beginning in FY1998-99</i>	<i>LB 1114 (As passed)</i>	
			<i>Beginning in FY1998-99</i>	<i>Beginning in FY2001-02</i>
Public schools	\$1.00	\$1.10	\$1.10	\$1.00
Municipalities	.50 ^a	.50 ^b	.45 ^d	.45 ^d
Sanitary improve. dist.	.50	.10	.40 ^c	.40 ^c
County governments	.30	.30 ^c	.50 ^f	.50 ^f
Community colleges	.07	.075	.08	.04
Natural resource	.03	.045	.045	.045
ESUs	No Provision	.01	.015	.015
Fire districts	.10	No Provision	No Provision	No Provision
Other political subs.	No Provision	.12	.15	.15
TOTAL LEVY	\$2.50	\$2.25	\$2.74	\$2.60

^a A municipality with no fire district may levy up to another 10¢.

^b Plus up to another 10¢ for interlocal agreements.

^c Plus up to another 15¢ for interlocal agreements.

^d Plus up to another 5¢ for interlocal agreements.

⁹⁵⁵ LR 93CA was introduced in the 1995 Session, but did not pass.

Table 49—*Continued*

^e Only for SIDs that have been in existence for more than five years. SIDs that have been in existence for five years or less would not have a maximum levy.

^f Except that 5¢ may only be levied to provide financing of interlocal agreements. The county may allocate up to 15¢ of its authority to all other political subdivisions not specifically named in the legislation.

Sources: Legislative Resolution 93CA, *Constitutional amendment to establish ad valorem property tax limitations for political subdivisions*, sponsored by Revenue Committee, Nebraska Legislature, 94th Leg., 1st Sess. 1995, title first read 12 April 1995; Legislative Bill 1114, *Change and provide limits on property tax levies for governmental subdivisions*, sponsored by Sen. Jerome Warner, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, title first read 8 January 1996; Legislative Bill 1114, in *Laws of Nebraska, Ninety-Fourth Legislature, Second Session, 1996*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State).

LR 93CA provided for only one exception to the levy limitations. The constitutional amendment provided that bonded indebtedness secured by a levy on property would not be included within the limitations.⁹⁵⁶ LB 1114, as introduced, also would contain one exclusion to the levy limits, which was bond debt secured by a levy.⁹⁵⁷ It was obviously the intent of the sponsors for both measures to avoid the political game of adding levy exclusions, which would thereby create additional levy authority for political subdivisions. But bond debt was viewed as a reasonable exclusion since most bond debt occurs as a result of a bond election and approved by the people. The bond debt levy exclusion was in keeping with the political philosophy that the decision of the people reigns supreme over any action taken by the Legislature. In any event, the lobbying groups representing political subdivisions had everything to gain and nothing to lose by advocating an expanded array of levy exclusions under LB 1114. And, at least to some degree, they succeeded.

During the hearing for LB 1114 on February 1, 1996, lobbyists and member representatives from school boards, community colleges, municipalities, hospitals, educational service units, and sanitary and improvement districts all testified in opposition to the legislative proposal. In fact, there was emphatic opposition to the

⁹⁵⁶ LR 93CA (1995), 3.

⁹⁵⁷ Legislative Bill 1114, *Change and provide limits on property tax levies for governmental subdivisions*, sponsored by Sen. Jerome Warner, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, title first read 8 January 1996, § 1, p. 3.

concept of levy limitations. This was in stark contrast to the LR 93CA public hearing a year earlier when the content of most testimony focused on recognition of the problem and the willingness to participate in a solution. This may have been due in part to the nature and venue of the public hearing for LB 1114 in relation to LR 93CA. In 1995 the public hearing for LR 93CA was conducted in a very public setting via satellite connection to eight different Nebraska communities, including the base site in Lincoln. The public hearing for LB 1114 was conducted as part of the normal hearing schedule, with no special provisions for participation or testimony. Only those who chose to make the trip to Lincoln would observe and/or participate in the hearing.

Brian Hale, representing the Nebraska Association of School Boards (NASB), said his organization opposed the bill “as a stand-alone measure.”⁹⁵⁸ Hale noted that the NASB supported the concept of levy limitations so long as there was an adequate replacement funding mechanism. Said Hale:

Our opposition to the bill is generated from the perspective that, as a piece of legislation unaccompanied by replacement revenue, this bodes pretty ominous for school districts. Limiting school districts to a levy of \$1.10 without the prospect of additional state support would be crippling to many districts, and it would hit our poorer evaluation districts in our analysis the hardest.⁹⁵⁹

Neither LB 1114 nor any companion piece of legislation in 1996 offered replacement revenue to school districts. Hale did say, however, that his organization preferred a statutory rather than constitutional solution if levy limits were to be implemented.

Dennis Baack, representing the Nebraska Community College Association, opposed the bill based upon the dramatic impact the levy limits would have on local colleges. Baack said community colleges were already under statutory limitations that permitted a maximum tax rate of no higher than 13.3¢, including extra levy authority for capital improvements.⁹⁶⁰ LB 1114 would reduce community colleges to a maximum 7.5¢

⁹⁵⁸ Committee on Revenue, *Hearing Transcripts, LB 1114 (1996)*, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 1 February 1996, 36.

⁹⁵⁹ *Id.*, 37.

⁹⁶⁰ *Id.*, 40.

levy, which would force local colleges to raise tuition and fees to compensate. This, of course, was not a surprise to members of the Revenue Committee who knew that shifts in funding and resources would naturally arise under a system of levy limitations.

Mary Campbell, representing administrators and boards of educational service units, echoed the concerns expressed by previous testifiers concerning the loss of revenue and the general impact upon ESUs. She also noted, however, that LB 1114 had at least one positive component in that the legislation actually granted ESUs levy authority where LR 93CA (1995) did not. “In many ways,” she said, “LB 1114 is kind of a refreshing change for the ESUs in that it’s not eliminating ... their tax-levying authority outright and, for that, we are most appreciative and willing to have this kind of discussion today.”⁹⁶¹ However, she noted, the amount of levying authority provided under LB 1114 represented a sizeable decrease in revenue sources. This in turn would have an impact on the services that ESUs were able to provide to member school districts.

Testifying in a neutral capacity, Jack Mills of the Nebraska Association of County Officials (NACO) applauded the effort of the Revenue Committee. “First, it’s my opinion that you have the vehicle here, of all of the vehicles that I’ve seen thus far, to begin your march toward some solution,” Mills said.⁹⁶² He noted, however, “It’s going to cause some pain.”⁹⁶³ Mills also raised an interesting constitutional issue with regard to the proposed legislation. He noted that the State Constitution already contained a 50¢ levy limitation for county governments.⁹⁶⁴ The constitutional levy limit was one of the successful ballot issues at the 1919-20 Constitutional Convention.⁹⁶⁵ Mills further noted that the introduced version of LB 1114 provided for a 30¢ levy limit for counties, which clearly did not correlate with the constitutional provision. Ultimately, this situation would be addressed in the committee amendments to the bill by allotting county

⁹⁶¹ Id., 53.

⁹⁶² Id., 73.

⁹⁶³ Id.

⁹⁶⁴ NEB. CONST. art. VIII, § 5.

⁹⁶⁵ NEB. BLUE BOOK, 2002-03 ed., 253. Ballot issue #28 placed a county tax limit at 50¢ on \$100 actual valuation.

governments 50¢ total levy authority including 5¢ for interlocal agreements and up to 15¢ for levy authority to political subdivisions that did receive specific levying authority under LB 1114.⁹⁶⁶

Following the public hearing for LB 1114, the Revenue Committee would meet in executive session four separate times between February 28 to March 7, 1996 to consider action on the legislation.⁹⁶⁷ The committee adopted seven amendments to the bill before taking a final vote on March 7th to advance the bill by a 7-1 vote.⁹⁶⁸

Table 50. Executive Session Report, LB 1114 (1996)

<i>Date</i>	<i>Motion</i>	<i>Motion by</i>	<i>Vote</i>
Feb. 28	Motion to amend by adding the provisions of LB 1062 (1996), giving counties control of the levies of miscellaneous districts.	Will	7-1
	Motion to allow political subdivisions to exceed the levy caps with a vote of the people and also allow miscellaneous political subdivisions to exceed the limits at a “town hall” meeting attended by a quorum of at least 10%.	Will	7-1
Feb. 29	Motion to create two-stage levy restrictions for schools and community colleges.	Coordsen	8-0
Mar. 6	Motion to amend by adopting harmonizing and clean-up language.	Kristensen	8-0
	Motion to amend by adopting a 7¢ limit for community colleges.	Kristensen	6-2
	Motion to amend to allow an exemption for federal impact aid.	Hartnett	8-0
Mar. 7	Motion to amend by changing the community college levy caps from 7¢ in 1999 and 6¢ in 2002 to 8¢ and 4¢.	Will	7-1

Source: Committee on Revenue, *Executive Session Report, LB 1114 (1996)*, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 1-4.

It was during the closed sessions that members of the Revenue Committee decided to utilize a two-stage, phase-in of the maximum levy for schools. The maximum levy would be initially set at \$1.10 beginning in fiscal year 1998-99 and would automatically lower to \$1.00 beginning in fiscal year 2001-02. The idea was to give

⁹⁶⁶ Committee Amendment (AM3657) to LB 1114 (1996), § 1(8), p. 2.

⁹⁶⁷ Committee on Revenue, *Executive Session Report, LB 1114 (1996)*, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 1-4.

⁹⁶⁸ Committee on Revenue, *Committee Statement, LB 1114 (1996)*, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 1. Voting yes - Senators Coordsen, Hartnett, Kristensen, Landis, Warner, Wickersham, and Will; Voting no - Senator Schellpeper.

schools a chance to gradually make the financial and operational adjustments necessary to arrive at the legislative goal for a uniform one-dollar levy. In order to assure themselves that school districts would in fact adhere to their timeline and make the necessary adjustments, the Revenue Committee decided upon a temporary spending authority restriction, which was embodied in LB 299 (1996).

LB 299 - Introduction and Hearing

Legislative Bill 299 had a much different legislative history than LB 1114, but the two measures would eventually become mutually essential components of the 1996 property tax relief package at least from the perspective of lawmakers. Introduced in the 1995 Session by Senator Warner, the original purpose of LB 299 was to create a legislative vehicle to increase the sales and income tax rates.⁹⁶⁹ It is not unusual for the chair of the Revenue Committee to introduce such a bill in the event that it becomes necessary for the Legislature to consider tax increases. LB 299 was never used for its intended purpose nor was it advanced from committee in 1995. It was, therefore, an available vehicle in the 1996 Session to be used as needed. And there would be a need.

The Revenue Committee decided to “gut” LB 299 and use it, in legislative terms, as a “shell bill” to house the expenditure limitations in conjunction with the proposed levy limitations. The committee amendments to LB 299 replaced the original provisions of the bill to provide an expenditure limit on all political subdivisions that have the authority to levy a property tax for two years only, fiscal years 1996-97 and 1997-98. The purpose was to “bridge the gap between now and the imposition of levy caps” to be imposed under LB 1114.⁹⁷⁰ In essence, the purpose was to force political subdivisions to begin the process of evaluating services, existing operations, necessary personnel, etc.

As advanced from committee, LB 299 would essentially provide a uniform spending lid on political subdivisions for the two-year period prior to enactment of the levy limitations. For 1996-97, the lid would equal 2% over the prior year budget plus

⁹⁶⁹ Senator Jerome Warner, *Introducers’ Statement of Intent, LB 299 (1996)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 10 March 1995, 1.

⁹⁷⁰ Committee on Revenue, *Committee Statement, LB 299 (1996)*, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 1.

growth in population, if applicable.⁹⁷¹ Growth in population, for school districts, would mean the percentage increase or decrease in average daily membership compared to the prior school year.⁹⁷² For 1997-98, the lid would equal 0% over the prior year budget plus growth in population.⁹⁷³ The committee amendments excluded financing for capital improvements, expenditures in relation to interlocal agreements (for two fiscal years only), and expenditures to repair damage to infrastructure due to natural disasters.⁹⁷⁴ Political subdivisions would be allowed to carry forward unused budget authority.⁹⁷⁵

One of the problems with the committee version of LB 299 was that it treated all political subdivisions in the same manner in terms of how budgets were constructed. Since the inception of the TEEOSA in 1990, school districts were held to a lid based upon spending patterns, but did not have a limit on property tax levy authority. The idea was that schools could only utilize the amount of tax revenue permitted by their applicable allowable growth rate (i.e., their spending limit). Schools might be able to collect a certain amount in tax revenue, but they could only spend that amount permitted by the spending limit. On the other hand, cities, counties, and all other political subdivisions utilized a restricted fund budget system. Under such a plan, the budget growth was tied to the tax resource growth. In other words, a city council, for example, could roughly spend the amount collected in tax revenue.

For political subdivisions other than school districts, therefore, the type of budget lid proposed under LB 299 was not all that different than what had existed prior to 1996. School districts, however, had existed on a more flexible spending lid in order to account for past spending patterns and other cost requirements unique to schools (e.g., special education services). The school lid also was designed to address the issue of equity

⁹⁷¹ NEB. LEGIS. JOURNAL, *Com AM3654*, printed separate, 11 March 1996, 1167. Committee amendments, AM3654, to LB 299 (1996), § 2, pp. 2-3.

⁹⁷² *Id.*, § 1(4), pp. 1-2.

⁹⁷³ *Id.*, § 2, pp. 2-3.

⁹⁷⁴ *Id.*, § 3, p. 3.

⁹⁷⁵ *Id.*, § 4, pp. 3-4.

among school districts, large and small, rural and urban, etc. The lid proposed under LB 299 provided no such flexibility to schools for a period of two fiscal years.

Another problem with the committee version of the bill was that it repealed outright those sections of the school finance formula relevant to expenditure lids. Whether intended or not, once the “LB 299 lids” expired after the 1997-98 fiscal year, school districts would have no expenditure limitations on which to fall back since the “TEEOSA lids” would have been eliminated. Perhaps the intent was to simply place all political subdivisions in the same budget structure. Perhaps the intent was to address the post-LB 299 spending limitations during the 1997 or 1998 Legislative Session. In any event, the issue would emerge several times during floor debate.

LB 299 and LB 1114 may have had different legislative histories in the beginning, but they would be intertwined for the remainder of the 1996 Session. These two bills represented the cornerstone of the property tax relief package. This was made particularly evident on March 12, 1996 when the Legislature’s Executive Board approved Speaker Withem’s suggestion that the measures become two of the first “major proposals” under a new rule of the Legislature.⁹⁷⁶

At the beginning of the 1996 Session, the Rules of the Legislature were amended to allow the Speaker to designate up to five measures as “Speaker major proposals” (often referred to as “super priorities”).⁹⁷⁷ In order to qualify as a major proposal, the measure must also have been designated as a senator priority or otherwise represent a general appropriation (budget) bill, and all major proposals must be approved by a two-thirds vote of the Executive Board. But perhaps the most interesting aspect of major proposals was that they take precedence over all other prioritized measures and permit the Speaker to establish an order for debate on pending amendments and motions.⁹⁷⁸ This newly vested power in the hands of the Speaker would prove helpful during the debate on LB 299 and LB 1114. “I expect these two bills will be knock-down, drag-outs until the

⁹⁷⁶ NEB. LEGIS. JOURNAL, 12 March 1996, 1211.

⁹⁷⁷ RULES OF THE NEB. LEG., Rule 1, § 17.

⁹⁷⁸ *Id.*

very end,” Speaker Withem predicted in announcing his decision to designate the two lid bills as super priorities.⁹⁷⁹

General File Debate on LB 1114

Floor debate on the 1996 property tax relief package began on March 19th (the 45th day of the 60-day session). The Legislature gave quick and resounding first-round approval to LB 1085, a bill to provide procedures for merging county offices within or between counties.⁹⁸⁰ But the relatively smooth advancement of LB 1085 did not leave some veteran lawmakers any allusions. “The debate’s gone well, although these are still the warm-up bills,” said Senator Roger Wehrbein of Plattsmouth.⁹⁸¹ Senator Warner agreed with Wehrbein’s assessment. “There seems to be a good level of support for the broad issues,” Warner said after the debate.⁹⁸² “The real test comes on the next two bills,” he added in reference to LB 1114 and LB 299.⁹⁸³

While the early success of the property tax relief package bolstered the hopes of its proponents, it did not deter opponents of the legislation to launch a full-scale lobbying effort. Members of the Nebraska State Education Association (NSEA) held vigil in the Capitol rotunda during the first day of debate and urged senators to understand the consequences to schools and children. The NSEA paid travel expenses to about 75 teachers who appeared at the Capitol that day and even paid the cost of hiring substitute teachers to their employer schools. The teachers were briefed earlier in the day by NSEA President Craig Christiansen and encouraged to tell senators how the spending lids under LB 299 would eliminate teaching positions and limit opportunities for students.⁹⁸⁴

⁹⁷⁹ Bill Hord, “Tax, Water Bills Make Priority List Speaker Narrows Session’s Agenda,” *Omaha World-Herald*, 11 March 1996, 1.

⁹⁸⁰ LB 1085 (1996) advanced to second-round consideration on a 38-1 vote. NEB. LEGIS. JOURNAL, 19 March 1996, 1316.

⁹⁸¹ Bill Hord, “Tax Package’s First Proposal Passes Round 1,” *Omaha World-Herald*, 20 March 1996, 1.

⁹⁸² Id.

⁹⁸³ Id.

⁹⁸⁴ Id.

Two days after the initial debate, the Legislature would resume discussion of the property tax relief package. Shortly after the lunch recess, on March 21, 1996, the body commenced debate on one of the most significant pieces of legislation in the history of Nebraska. Proponents would ultimately view the legislation as a great victory for the taxpayer while opponents called it a lid on essential services or, from the school perspective, a “lid on kids.” Unfortunately for the opponents, their ranks consisted mostly of those with a vested interest in the status quo, and most state senators were listening to the taxpayer side of the issue rather than the concerns of teachers, city officials, and the like. The political atmosphere of the day simply did not bode well for those who opposed the perceived elemental truth that a property tax crisis existed and had to be addressed. It was not so much a matter of *whether* LB 1114 would pass as *what form* it would pass. It was a matter of haggling over details rather than general, conceptual acceptance. To be sure, there were a few narrow, close votes on some crucial amendments and even some lukewarm votes to advance. But the vote to pass would be considered solid even by those interested parties who vainly hoped for a different result.

Lobby groups, particularly from schools and municipalities, worked feverishly to point out the folly of spending and levy limits, both to the public and to individual senators. At the same time, however, most saw the “writing on the wall” clearly enough to work quietly with key legislators in an effort to carve some livable space within the proposed limitations. Interest groups for public schools knew in advance that several crucial pro-education senators would likely vote to adopt levy limitations. These leaders included Senator Ardyce Bohlke, then chair of the Education Committee, and Speaker Ron Withem, chief architect of the existing school finance formula. Both legislators ultimately voted to pass LB 1114 and LB 299. But both also helped to alleviate as much anticipated financial misery to schools as politically possible.

Similar to other major legislative battles, the principle proponents and antagonists of LB 1114 made their presence known early in the legislative process. During General File debate on March 21, 1996, it was quickly apparent that a few members of the Revenue Committee, particularly Senator Warner and Senator Doug Kristensen of

Minden, would lead the proponent discussion on the bill. They would serve as the unofficial “point people” to whom others would look for guidance to understand the measure and, perhaps, to seek support for possible amendments. Naturally, the pressure would be placed squarely on the principle proponents of the bill to sell the concept to their colleagues. Once again, Senator Warner’s reputation as a thoughtful and highly regarded lawmaker certainly did not hurt the prospects of the pro-levy limit camp.

Two of the principle opponents of the bill were Senator Dave Maurstad of Beatrice and Senator Chris Beutler of Lincoln. Senator Maurstad, a former school board member and mayor of Beatrice, would primarily focus his attention on the concerns raised by municipalities. In 1996 Senator Maurstad was serving in the second year of his four-year term of office. Senator Beutler, on the other hand, was a seasoned veteran of the Legislature in 1996, having been first elected in 1978, and, after resigning in 1986, was elected again in 1990. Senator Beutler was particularly concerned about the impact of levy limits on public schools and also natural resource districts. At the time, Senator Beutler was serving as a member of the Education Committee and the chair of the Natural Resources Committee. Both Senator Beutler and Senator Maurstad would win some and lose some of the battles they forged to amend the levy limit measure.

In addition to Senators Maurstad and Beutler, one member of the Revenue Committee, Senator Stan Schellpeper of Stanton, would also raise some concerns to his colleagues during floor debate. Schellpeper was the only member of the Revenue Committee to vote against final passage of LB 1114. In fact, one of the first successfully adopted amendments to the measure came by way of Senator Schellpeper.

The Schellpeper amendment concerned lease purchase contracts engaged by political subdivisions, and was brought to his attention by county officials. Senator Schellpeper was a farmer and livestock feeder by trade and had a strong background in county politics. The amendment offered by Schellpeper applied to all political subdivisions with property tax levy authority. The amendment simply provided that property tax levies for any preexisting lease-purchase contract approved prior to July 1,

1998 would be excluded from the levy limitations.⁹⁸⁵ Schellpeper argued that a local government's ability to perform these contracts depends upon their ability to levy property taxes. "If these contracts are not exempted from the levy limits it could create some serious legal questions with respect to the impairment of the contracts when the levy limits come into effect in 1998," he said.⁹⁸⁶

As would become customary throughout the debate on the property tax relief package, proponents of the legislation often awaited a response from Senator Warner to help determine the viability of an amendment. Senator Warner was not known for lengthy or well-articulated speeches, but this never detracted from the respect afforded by his colleagues. A simple nod or a few soft-spoken words from the senior statesman was usually sufficient to let the body know how he felt about an issue. In the case of the Schellpeper amendment, Warner said merely, "I think it would be appropriate to adopt."⁹⁸⁷ The Schellpeper amendment was adopted without opposing debate on a 26-0 vote.⁹⁸⁸ The amendment represented the first successful levy exclusion proposal in addition to that proposed by the Revenue Committee under the committee amendments. The only levy exclusion originally provided in the committee amendments involved property tax levies for bonded indebtedness, which was a consistent provision in both LR 93CA (1995) and LB 1114 (1996).

Immediately following the adoption of the Schellpeper amendment, the body took up discussion on the first of many amendments offered by Senator Chris Beutler, most of which would prove unsuccessful. Public schools represented one of the major concerns to Senator Beutler, who felt the levy limitation would unfairly treat schools in comparison to other types of local government that have non-property tax revenue sources. Said Beutler:

⁹⁸⁵ NEB. LEGIS. JOURNAL, *Schellpeper AM3965 to AM3657*, 20 March 1996, 1377.

⁹⁸⁶ Legislative Records Historian, *Floor Transcripts, LB 1114 (1996)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 94th Leg., 2nd Sess., 21 March 1996, 13578.

⁹⁸⁷ *Id.*

⁹⁸⁸ NEB. LEGIS. JOURNAL, 21 March 1996, 1412.

It seems to me that we have done a lot in this particular bill and in the other related bills in the package to at least attempt to protect cities and attempt to protect counties, and there are various alternative taxes and mechanisms by which those two entities can move to protect themselves under this particular proposition. But the school districts ... but the school districts are left out there extremely exposed.⁹⁸⁹

Beutler believed counties and municipalities, in particular, could offset limited property tax revenue with other forms of revenue, such as increased fees and other taxes.

It was Beutler's belief that schools would be facing between \$150 and \$250 million in lost revenue with no means of making up the difference. Accordingly, the first Beutler amendment to LB 1114 during the first day of debate was designed to force the Legislature to either make up a large portion of the lost school revenue, through increases in state aid, or, in the alternative, refrain from limiting school property tax levies. The amendment provided that if the Legislature fails to enact legislation to raise taxes and increase state aid to schools by at least \$150 million by July 1, 1999, then the levy limits pertaining to schools under LB 1114 would not be implemented.⁹⁹⁰ The chosen date in the amendment corresponded to the date on which the levy limits were to be implemented under the committee amendments. From the public school perspective, Senator Beutler was considered the hero of the day. For the majority of the Legislature, the amendment was taken as a sincere yet impracticable proposition. The amendment failed after a short debate on an 11-28 record vote.⁹⁹¹

During the first day of General File debate of LB 1114, sixteen amendments, including the committee amendments were considered along with one unsuccessful motion to bracket the bill until April 2nd (essentially killing the bill). The bracket motion, offered by Senator Ernie Chambers of Omaha, was taken up early in the debate and failed by a substantial margin, which indicated a strong willingness on the part of the

⁹⁸⁹ *Floor Transcripts, LB 1114 (1996)*, 21 March 1996, 13580.

⁹⁹⁰ NEB. LEGIS. JOURNAL, *Beutler AM3998 to AM3657*, 21 March 1996, 1412.

⁹⁹¹ *Id.*, 1413.

Legislature to continue discussion.⁹⁹² Other than the Schellpeper amendment noted previously and the adoption of a few minor amendments, all other amendments were either unsuccessful or were withdrawn. The committee amendments were adopted as amended by a 30-1 vote, but the Legislature adjourned for the day before a vote to advance could be taken.⁹⁹³ On the whole, however, proponents of LB 1114 were optimistic after the initial day of debate. “This is some of the best debate we’ve had in terms of tax policy since I’ve been here,” said Senator Doug Kristensen, an eight-year veteran of the Legislature.⁹⁹⁴

LB 1114 returned to General File debate on Monday, March 25, 1996, and would advance on this the 49th day of the 60-day session, but not before some hard questions were asked of its chief sponsor, Senator Warner. The questions were posed by Senator Beutler who said he had received a number of concerns from teachers and school officials at Lincoln Public Schools. Said Beutler:

The people in the Lincoln school system, like people I am sure in many other school systems, think they have a real quality education system, and they are extremely worried about the potential destructive effects of this particular bill, long term, in the sense that the only mechanism here by which they can make up any revenues under the current ... under the current bill is to have an election of the people that would allow them to exceed the levy cap for at least a period of five years.⁹⁹⁵

Senator Beutler was referring to a provision in the committee amendments that allowed a political subdivision to exceed its levy limitation for a period of not more than five years through a ballot issue presented to the voters of the affected local government.⁹⁹⁶

Senator Beutler raised three very relevant questions concerning this provision. First, what is the rationale for a five-year limitation? Second, why would the Legislature

⁹⁹² Id., 1405. The bracket motion failed on a 5-41 vote.

⁹⁹³ Id., 1434.

⁹⁹⁴ Bill Hord, “Attempts to Dilute Tax Caps Defeated Property-Tax Package Impact of Legislative Bill 1114,” *Omaha World-Herald*, 22 March 1996, 1.

⁹⁹⁵ *Floor Transcripts, LB 1114 (1996)*, 25 March 1996, 13763.

⁹⁹⁶ Committee Amendments, AM3657 to LB 1114 (1996), § 3, pp. 3-5.

want to limit or otherwise interfere with the will of the people to tax themselves for the benefit of their own local government? And third, if mandatory tax revenue reductions were imposed, does the Legislature have a responsibility to provide replacement revenue through state aid?

Senator Warner responded to the first question by admitting the five-year period of time was “in a sense, arbitrary.”⁹⁹⁷ He said the Legislature could always adjust the provision in future sessions. Senator Warner answered the second question in a more indirect fashion by referring to the property tax relief package as a whole and also the process of building public confidence. Said Warner:

I think we need this period to engage people across the state with exactly what they are getting for their tax dollars, what they need to know that there is going to be, through this process, the potential for greater consolidation, cooperative efforts, merger efforts. Their other option is going to be to support a higher property tax levy or to support a merger or consolidation to the extent that that can be done, and I think that is going to be a positive without a mandate of saying how it is going to be done.⁹⁹⁸

The third question, concerning replacement funding, was answered in a more straightforward manner. If there is a “dollar for dollar” shift from local revenue to state revenue, Warner said, “[T]hen no efficiency would occur.”⁹⁹⁹ The overriding objective, therefore, was to force local governments to become more efficient even if that meant depriving local voters from unencumbered control over the duration of a levy override.

Warner’s response qualified as an answer, but not necessarily satisfactory to Senator Beutler. “I feel very content with most everything that’s in the set of bills with the exception of leaving the schools hanging out there with absolutely no replacement revenue,” Beutler said.¹⁰⁰⁰ “I still feel great hesitancy and qualms about myself doing the irrational, and also in doing the irrational putting at risk the school system in the sense that we all know in here today that to avoid the destruction of the school systems there

⁹⁹⁷ *Floor Transcripts, LB 1114 (1996)*, 25 March 1996, 13764.

⁹⁹⁸ *Id.*, 13765.

⁹⁹⁹ *Id.*

¹⁰⁰⁰ *Id.*, 13768.

has to be replacement revenues,” he added.¹⁰⁰¹ The Lincoln senator would renew his battle during Select File debate. After a brief discussion, LB 1114 would advance, although less than spectacularly, on a 25-2 vote (14 senators were listed as excused, not voting at the time of the vote to advance).¹⁰⁰²

General File Debate on LB 299

After the first-round vote to advance LB 1114, the Legislature immediately turned its attention to the companion piece of legislation, LB 299. While LB 1114 was designed to implement permanent levy limitations, LB 299 was designed to implement stringent spending limitations to help political subdivisions transition to reduced spending authority. The spending lids proposed under the measure would be in existence for two fiscal years (1996-97 and 1997-98), then the measure would automatically sunset at the same time the levy limits became operative.

The spending limitations under LB 299 applied to all political subdivisions, but the central focus of that first day of debate was the effects on and circumstances of public schools. The body would consider 22 amendments, including the committee amendments, on March 25th, and nine of those amendments had a direct and sole relation to public schools. The vast majority of the pending amendments (16) were withdrawn without debate. Four of the nine amendments related to schools were adopted.

The first successful amendment to the committee amendments focused on several key issues for school districts, but also carried helpful provisions to other political subdivisions. The comprehensive amendment, offered by Senator Warner and Speaker Withem, would do the following:

- (1) Allow the spending lids for schools in place prior to LB 299 to return automatically after the 1997-98 fiscal year;
- (2) Allow receipts for special education services to be excluded from the spending limitations under LB 299;

¹⁰⁰¹ Id.

¹⁰⁰² NEB. LEGIS. JOURNAL, 25 March 1996, 1474. LB 1114 was one of the first items on the agenda for the morning of March 25th. Some members may not have arrived on the floor in time for the vote to advance.

- (3) Permit a governing body to exceed the spending limits under LB 299 by an additional 1% upon a 75% affirmative vote of the governing body; and
- (4) Permit carry over of unused budget authority.¹⁰⁰³

Speaker Withem noted in the introduction of the amendment that, without the first provision, schools would have no spending limitation after the sunset of LB 299. The committee amendments, as filed by the Revenue Committee, proposed to outright repeal those sections of the school finance formula relevant to spending limitations. Under the Withem-Warner amendment, schools would at least know what to expect after 1997-98.

The second provision, related to the exclusion of special receipts, would make a tremendous difference to school districts due to the high costs associated with special education services. The third and fourth provisions, related to additional budget authority and unused budget authority, applied to all political subdivisions and would permit limited flexibility for local governments that did not otherwise exist under the committee amendments. In all, the Withem-Warner amendment represented a clear victory for political subdivisions, particularly school districts. The amendment was adopted unanimously on a 28-0 vote.¹⁰⁰⁴

In addition to the Withem-Warner amendment, three other school-related amendments were adopted, all of which related to budgetary guidelines for school boards. The first of these amendments, offered by Senator Pam Brown of Omaha, provided legislative intent that any reductions in a school district budget, in compliance with the spending limitations of LB 299, “affect classroom expenses as a last resort.”¹⁰⁰⁵ If budget reductions occur, the amendment required school boards to consider reductions in funding for extracurricular activities, student transportation, school building and ground maintenance, and “other related school business expenses” prior to considering reductions in the “funding of academic programs involving students.”¹⁰⁰⁶ In her

¹⁰⁰³ NEB. LEGIS. JOURNAL, *Withem-Warner AM4018 to AM3654*, 21 March 1996, 1414-21.

¹⁰⁰⁴ *Id.*, 25 March 1996, 1475.

¹⁰⁰⁵ *Id.*, *Brown AM3922 to AM3654*, 1475.

¹⁰⁰⁶ *Id.*

introduction of the amendment, Senator Brown said she had filed a similar amendment that required first priority reductions in administrative positions, administrative travel, and professional association memberships.¹⁰⁰⁷ Naturally, she noted, “administrators and lobbyists reacted rather strongly to this” and she ultimately decided to substitute a less threatening version of her original amendment.¹⁰⁰⁸ “I substituted [the amendment] because it is not my intention to pit administrators versus teachers,” she said.¹⁰⁰⁹

Senator Brown anticipated the accusations that her amendment violated the age-old concept of local control and the notion that local governments are best in position to make determinations about their own local situation, needs, etc. However, she insisted, “This is not just about local governing boards and what they do, this is about the future of children.”¹⁰¹⁰ Said Brown:

People have criticized the amendment a little bit because of ... that it ... because it might take away local control, but I believe that if we are willing to tell districts what their budget can be, then I think we should be willing to tell them that we have some intent about protecting children in this whole process.¹⁰¹¹

The “people” to whom Senator Brown referred as being critical of the amendment included some of her own colleagues. Senator Joyce Hillman of Gering, for example, rose to voice her concern that the amendment created additional restrictions on school boards over and above those created by the spending and levy limitations. She did not believe the language in the Brown amendment would motivate school boards “to do the kinds of things that we would like to see them do.”¹⁰¹² She added, “I think we need to give them a certain amount of credit for knowing what it is we are trying to get to, that they recognize what their purpose is, and that we should encourage them to attain ... the

¹⁰⁰⁷ NEB. LEGIS. JOURNAL, *Brown AM3767 to AM3654*, 13 March 1996, 1221.

¹⁰⁰⁸ Legislative Records Historian, *Floor Transcripts, LB 299 (1996)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 94th Leg., 2nd Sess., 25 March 1996, 13793.

¹⁰⁰⁹ *Id.*

¹⁰¹⁰ *Id.*

¹⁰¹¹ *Id.*

¹⁰¹² *Id.*, 13802.

finest education for kids.”¹⁰¹³ Senator Curt Bromm of Wahoo agreed and discussed the micromanaging nature of the Brown amendment. “I think it would be interpreted as a little bit of a slap in the face by local school boards,” Bromm said.¹⁰¹⁴

However, the proponents of the amendment seemed to outnumber the opponents in the case of the Brown amendment. Several members of the Revenue Committee, including Senator Warner and Senator Wickersham, spoke in favor of the amendment and indicated that the concept had been discussed in committee. Said Wickersham:

I think it does call into question what we would consider to be the good-faith actions of the local elected officials in how they are going to deal with the limitations that may be placed on them through 299 and 1114. I guess it is all of our hopes that they will act in a way that most effectively and efficiently reduces their spending without actually getting to the meat, if that is possible.¹⁰¹⁵

The chairwoman of the Education Committee, Senator Bohlke, also rose in support of the amendment, but reminded her colleagues that it represented intent language only.

At the conclusion of the short debate, Senator Brown summed up her purpose of the amendment:

I truly believe that this is a part, an essential part of having the discussion on lids, and that is the only justification, in my mind, for having lids, is engaging in the discussion with the people who are going to be voting on the local level as to what is important in our society.¹⁰¹⁶

The Brown amendment was adopted on a relatively narrow 26-5 vote, seven present, not voting, and 11 excused from the chamber.¹⁰¹⁷

The adoption of the Brown amendment was one of the more noteworthy policy decisions relevant to the spending lids of LB 299. The Legislature clearly established a concern for the welfare of children attending public schools even though the consequence of the Brown amendment would likely cause some reductions in educational

¹⁰¹³ Id.

¹⁰¹⁴ Id., 13801.

¹⁰¹⁵ Id., 13800.

¹⁰¹⁶ Id., 13804.

¹⁰¹⁷ NEB. LEGIS. JOURNAL, 25 March 1996, 1475.

opportunities. While it was not said aloud during debate of the Brown amendment, the real intent was to protect the positions of instructional staff at the expense of other aspects of local school budgets. By protecting classroom teachers, it was believed, students would be best served, due largely to the maintenance of existing student/teacher ratios. For local school boards, however, the amendment would leave very few options since the largest single component of any school budget is labor costs, specifically teacher salaries. Many of the other major portions of the average school budget included fixed costs, such as utilities and fuel, over which a school board would not have much control. While not said aloud on the floor, the aim of the amendment was likely directed toward school administrators, and the perception that some districts employ too many.

The Brown amendment could certainly be interpreted as a victory for those concerned about the loss of teaching positions due to the stringent spending limitations under LB 299. But the body was not yet finished with the issue. Shortly after the Brown amendment was adopted, Senator Lindsay offered a floor amendment that enhanced the “hierarchy,” as he labeled it, for budget cuts made by local school boards.¹⁰¹⁸ The Lindsay amendment maintained the language of the Brown amendment, but added a first tier priority for any budget cuts to school administration.¹⁰¹⁹ Said Lindsay:

What this amendment would do is to insert in that language that the school districts shall first consider reductions in funding administration, and shall then consider reductions in funding extracurricular activities, and then finally would be the reductions in academic programs. So it keeps the academic programs, again, the last place to cut, but it moves administration to the first place to cut.¹⁰²⁰

Senator Lindsay said it was important that some “leverage be placed” against administrators in the budget cutting process since administrators would be those proposing the cuts.¹⁰²¹ The debate on the Lindsay amendment was relatively short, which often times indicates a certain level of unanimity on one side of the issue or another.

¹⁰¹⁸ *Floor Transcripts, LB 299 (1996)*, 25 March 1996, 13851.

¹⁰¹⁹ NEB. LEGIS. JOURNAL, *Lindsay FA574 to AM3654*, 25 March 1996, 1484.

¹⁰²⁰ *Floor Transcripts, LB 299 (1996)*, 25 March 1996, 13851.

¹⁰²¹ *Id.*, 13852.

However, the vote on the Lindsay amendment contradicted the norm in this case. On a record vote, the Legislature narrowly adopted the amendment by a 25-12 vote.¹⁰²² But the matter was not over yet.

Following the adoption of the Lindsay amendment, negotiations began in the rotunda of the Capitol between the teachers' organization (NSEA), the administrators' organization (NCSA), and a few of the legislators involved in the previous amendments. Lobbyists for the organizations agreed on a compromise amendment that did not specify any particular hierarchy for local budget cuts, but it did create legislative intent to keep the cuts away from the classroom if at all possible.¹⁰²³ Senator Eric Will introduced the amendment on the floor as a better approach than spelling out a list of items a school board had to review in making budget reductions. Said Will:

I think this sends the message ... that budget reductions in a school district are to affect the children last, are to affect the classroom last and, at the same time, not getting into a barter, a bartering arrangement over which specific deductions we want to be made prior to the classroom.¹⁰²⁴

The amendment was generally met with acceptance although some would have likely preferred the Brown-Lindsay language to remain in tact while others would have preferred the entire issue dropped. The compromise amendment was adopted, just barely, by a 26-2 vote with 15 members present and not voting.¹⁰²⁵

Immediately after resolution of the school budget cutting process, the committee amendments to LB 299 were adopted as amended and the bill was ready for a vote to advance after a lengthy debate. In closing on the bill, Senator Warner said, "Elected officials can only do the things the public is willing to accept and support."¹⁰²⁶ This was a line Senator Warner often used during debates on major legislation, and certainly no less fitting for this particular bill. LB 299 was designed to usher in the levy limitations of LB

¹⁰²² NEB. LEGIS. JOURNAL, 25 March 1996, 1484.

¹⁰²³ Id., *Will-Lindsay-Bohlke FA575 to AM3654*, 1495.

¹⁰²⁴ *Floor Transcripts, LB 299 (1996)*, 25 March 1996, 13873.

¹⁰²⁵ NEB. LEGIS. JOURNAL, 25 March 1996, 1495.

¹⁰²⁶ *Floor Transcripts, LB 299 (1996)*, 25 March 1996, 13888.

1114 and cause local governments to re-examine their own organization and operation. The question, as Senator Warner alluded, would be the acceptance and support of the public in relation to changes in services due to budget reductions. Warner said:

I would hope that during these two years, as we develop more and more understanding generally of ... state and local government and taxes and services, that that will result in the kind of support for looking at this whole restructure and reorganizing of government to be more cost effective.¹⁰²⁷

The Legislature was sufficiently swayed to advance LB 299 on a solid 29-0 vote.¹⁰²⁸

Select File Debate of LB 1114

Second-round debate on the property tax relief package resumed on April 2, 1996. LB 1114, the levy limitation bill, came up for debate during a late night session. Senator Beutler would once again take up the mantle of extra support for schools in light of the loss of revenue to schools along with other relevant issues. His first attempt was an amendment to change the duration of a levy limit override from a maximum of five years to a maximum of ten years.¹⁰²⁹ His basic arguments were local determination and stability of school budgets in terms of long range planning. "I think it would build in a lot of stability into the system if you allowed local control, a little more local control to vote to overcome the levy cap for a period longer than five years, at least up to ten years," Beutler said.¹⁰³⁰ Senator Bernard-Stevens came to Beutler's aid on the amendment. "I do think that Senator Beutler is giving to local control, the local boards, at least a possibility, an option, if they want to try to push for something that's above five, if they want to try to push for a six-year commitment or a seven," Bernard-Stevens said.¹⁰³¹

However, as with other amendments, the body waited to hear the opinion of Senator Warner for guidance on the issue. Warner briefly reminded the body that Senator Beutler had brought the same issue on General File debate and his opinion had

¹⁰²⁷ Id.

¹⁰²⁸ NEB. LEGIS. JOURNAL, 25 March 1996, 1496.

¹⁰²⁹ Id., *Beutler AM4002*, 1477.

¹⁰³⁰ *Floor Transcripts, LB 1114 (1996)*, 2 April 1996, 14920.

¹⁰³¹ Id., 14922.

not changed. The five-year duration, he said, was an arbitrary timeframe, but it offered a more reasonable and, perhaps, more acceptable timeframe for local voters. Senator Kristensen came to Warner's aid in defense of the existing timeframe and reviewed the thinking of the Revenue Committee to set the five-year levy override period. While Beutler's focus was principally schools, Warner and Kristensen's focus was the taxpayer. The five-year timeframe, Kristensen said, offered a reasonable limit and a sort of checks and balances on the use of the extra revenue. "So if the money that they voted to increase isn't going for the causes and the purposes they thought, there was an escape hatch," Kristensen said.¹⁰³²

The relatively short debate on the Beutler amendment, as usual, signified a strong opinion of the body one way or another. In this case, the prevailing opinion was not on Beutler's side. On a record vote, the body rejected the amendment by a 6-16 count (18 senators were present, not voting).¹⁰³³ Undaunted but slightly wounded, Senator Beutler had other ideas to propose, but his efforts would be interrupted shortly before 7:00 p.m. that evening due to another scheduled item the Speaker had placed on the agenda.

The following day, April 3rd, the 55th day of the 60-day session, would witness some of the most intense discussion concerning LB 1114. The Legislature resumed second-round debate just prior to its noon recess. Following the lunch break, the body took up another major amendment offered by Senator Beutler concerning the impact of the levy limits on schools. Senator Beutler once again asked his colleagues to consider an increase in the sales tax rate, in this case a one-half cent increase, for the purpose of dedicating additional funds for state aid to schools.¹⁰³⁴ Beutler referred to the amendment as the last but "very most important" amendment he would offer to LB 1114.¹⁰³⁵ The sales tax increase, he said, would produce approximately \$80 million in new revenue for the state, all of which would be dedicated to offset lost revenue to school districts.¹⁰³⁶

¹⁰³² *Id.*, 14921.

¹⁰³³ NEB. LEGIS. JOURNAL, 2 April 1996, 1796.

¹⁰³⁴ *Id.*, *Beutler AM4334*, 1806-07.

¹⁰³⁵ *Floor Transcripts, LB 1114 (1996)*, 3 April 1996, 15067.

¹⁰³⁶ *Id.*

Senator Beutler gave an eloquent oration on the higher values in politics and appealed to the better judgment of his fellow politicians to do the right thing even if that thing was unpopular. He asked his colleagues to rise above the fear that if the Legislature did not impose levy limits by law then some petition movement afoot would succeed in doing so. And if the body was determined to pass LB 1114, Beutler believed, then adoption of his amendment to offset lost revenue to schools became imperative. Beutler succeeded in briefly snapping the mood, as he put it, albeit briefly. And some of his colleagues accepted his invitation to look at the issue more philosophically, including some the ardent supporters of the legislation. They commended, or at least understood, his conviction, but not to the degree that they would support a state tax increase.

Senator Warner rose to address the proposed amendment immediately after Beutler's remarks. "You deal with things the way they are, not as you wish they were," Warner began, adding to the philosophical vein Beutler had initiated.¹⁰³⁷ "But what I do believe is that there is a belief that we need to be looking at restructuring how we provide local services, that a we need to be looking for ways to be more cost efficient," Warner said.¹⁰³⁸ Senator Roger Wehrbein, chair of the Appropriations Committee, also rose to cast his opposition to the amendment saying a tax increase may, in fact, be necessary in the future. "But at this point I think, in spite of what some say, and I know it's difficult for me to say, I think we need to keep the pressure on," Wehrbein said.¹⁰³⁹

Senators DiAnna Schimek and LaVon Crosby, both of Lincoln, did their best to sway other members of the Legislature in favor of the Beutler amendment. Both referred to conversations and surveys they conducted to demonstrate concern over potential budget reductions affecting public schools. The debate continued for about an hour before Senator Beutler was asked to close on the amendment. Perhaps sensing failure in gaining the needed support, Beutler used the opportunity to speak to the overall problem with LB 1114, as he viewed it:

¹⁰³⁷ *Floor Transcripts, LB 1114 (1996)*, 3 April 1996, 15069.

¹⁰³⁸ *Id.*, 15070.

¹⁰³⁹ *Id.*, 15079.

And I think part of the problem is simply the fact that the heroes of education in this particular Legislature are all on the side that have made a tactical decision, which says we are abandoning you temporarily because we must do this in order to save you in the long term. In order to get to the place of low property taxes and quality education, we have to take this enormous risk. ... And I'm not willing to take that chance myself without some measure of good will, without some indication from this Legislature today that we're on a course that looks to a balance and that looks both towards quality education and towards reduced property taxes.¹⁰⁴⁰

Beutler also noted his disappointment that even the public education lobby was "in such confusion and disarray" on the issue of a tax increase to support schools, especially, he said, when they were supposed to be the advocates of education and children.¹⁰⁴¹ For all his efforts, the Legislature resoundingly defeated the amendment by a 10-27 vote.¹⁰⁴² True to his word, it would be the last amendment he would pursue concerning LB 1114.

The Beutler tax increase proposal represented the last controversial amendment to the bill. But it was not the last hurrah for those trying to win concessions to political subdivisions, particularly school districts. It was clear to everyone the bill itself would survive and would pass, but not before the adoption of one other amendment.

The last substantive amendment to be adopted was brought forward by Senators Ray Janssen of Nickerson and Curt Bromm of Wahoo. Both former school board members, Senators Janssen and Bromm supported LB 1114 and the concept of levy limits, but they also understood the impact the limits would have on school boards and other governing bodies. Their jointly filed amendment would serve to provide a degree of flexibility for school districts and perhaps make the levy limits slightly more bearable.

The Janssen-Bromm amendment proposed to exclude from the school levy limitations: (1) amounts levied to pay for early retirement incentives in exchange for a voluntary termination of employment; and (2) amounts levied to pay for special building funds and sinking funds established for projects commenced prior to July 19, 1996, for

¹⁰⁴⁰ Id., 15097.

¹⁰⁴¹ Id.

¹⁰⁴² NEB. LEGIS. JOURNAL, 3 April 1996, 1845-46.

construction, expansion, or alteration of school buildings.¹⁰⁴³ The amendment also contained a third levy exclusion, applicable to all political subdivisions, for judgments obtained against a local government, but only to the extent the judgment was not paid by liability insurance coverage.¹⁰⁴⁴

The Janssen-Bromm amendment was met with general acceptance by the body. Senator Warner also supported the provisions of the amendment with just a few exceptions. The first issue Warner had with the amendment involved the proposed cutoff date by which building funds may be excluded from the levy limitations. The date selected by Senators Janssen and Bromm was July 19, 1996, which was the projected operative date for LB 1114. Legislative bills that do not contain the emergency clause or any other specified operative date automatically become operative 90 days after the final adjournment of the legislative session. Since the 1996 Session was set to adjourn sine die on April 18th, LB 1114 would become operative on July 19th.

Senator Warner, however, believed the July 19th date would permit school boards to commence projects for the sake of excluding extra amounts of levy authority even if no real building project was in the works. Therefore, Warner proposed to change the date to April 1, 1996, a retroactive date that prevented school districts from misusing the levy exclusion proposed by Janssen and Bromm.¹⁰⁴⁵ The Warner amendment to the amendment was adopted unanimously on a 26-0 vote.¹⁰⁴⁶ Interestingly, the other relevant concern to the building fund provision was the use and meaning of the word “commence” with regard to when a project actually began. Senator Doug Kristensen, a lawyer by profession, raised the issue briefly, but nothing came of the discussion. It was believed by some that the April 1st retroactive date would resolve any dispute over the intent of a school board since the amendment, as revised, would offer no opportunity for maneuvering. In fact, the issue would reappear in later sessions.

¹⁰⁴³ Id., *Janssen-Bromm AM4295*, 2 April 1996, 1806.

¹⁰⁴⁴ Id.

¹⁰⁴⁵ Id., *Warner FA611 to Janssen-Bromm AM4295*, 3 April 1996, 1846.

¹⁰⁴⁶ Id., 1847.

The second concern voiced by Senator Warner over the Janssen-Bromm amendment involved the exclusion of levy authority for amounts to pay for early retirement incentives. Senator Warner believed the proposed exclusion was a potential windfall for school districts since the concept of early retirement incentives was designed to encourage higher paid employees to retire so that the district can either hire a lower paid replacement or simply not fill the position. Either way the district would save money. Warner, therefore, proposed to eliminate the exclusion for early retirement incentives from the Janssen-Bromm amendment.¹⁰⁴⁷ Senator Janssen disagreed with Warner and argued that the expense of providing the early retirement incentives, which in reality were contract buy-out programs, would still exist for the school district. After a short debate, Senator Warner withdrew his amendment in the interest of moving forward with the legislation. The Janssen-Bromm amendment was adopted, as amended by the first Warner amendment, on a 26-0 vote.¹⁰⁴⁸

Later in the afternoon of April 3rd, the list of amendments had been exhausted and all that remained was a vote to advance the bill to the final round. Several senators rose to address their colleagues and voice their opinion on the broader ramifications of the legislation. No one seemed to question whether LB 1114 would produce property tax relief as intended. The dividing lines appeared to be on the impact on rural versus urban localities, the loss of local control, and the concern that the legislation provided no replacement funds to local governments, particularly to school districts. Senator Ed Schrock of Elm Creek, a rural senator, spoke about the local control issue:

I will continue to vote against 1114 because I believe it takes away the budgeting authority of our local governmental subdivisions. If we elect our school boards, our city councilmen, our county supervisors or commissioners and we don't like the way they're spending money, we have the responsibility as taxpayers of that local governmental subdivisions to put the pressure on them at that level.¹⁰⁴⁹

¹⁰⁴⁷ Id., *Warner FA612 to Janssen-Bromm AM4295*, 1847.

¹⁰⁴⁸ Id., 1848.

¹⁰⁴⁹ *Floor Transcripts, LB 1114 (1996)*, 3 April 1996, 15117.

Senator Stan Schellpeper of Stanton, another rural legislator, voiced his concern that LB 1114 would have a disparate impact on rural communities and local governments. The impact of the legislation, Schellpeper said, would “kill our small towns and our small schools.”¹⁰⁵⁰ “I know it’s the cornerstone of the entire package,” he concluded, “but I just don’t think that this is the right way to have property tax relief in this state.”¹⁰⁵¹

Senator Warner had the last word prior to the vote to advance. He noted the bill had evolved for the better since advancement from committee, but the fundamental goals of the legislation remained in tact. Warner said the legislation would provide a two-year window for local governments and communities to prepare and to consider alternatives:

It’s obviously going to depend upon the cooperation of a lot of people, but I also believe there’s a lot of people who are ready to do exactly that; that they want quality of service, they want to feel comfortable that it’s being provided in a cost-efficient manner, and whether it’s real or perceived it’s almost immaterial. The important thing is we need to build confidence in government and I think this process can help accomplish that goal”¹⁰⁵²

Immediately following Warner’s closing remarks, the Legislature took action to advance LB 1114 on a 26-7 vote.¹⁰⁵³ Sixteen senators were either present and not voting or excused at the time.

Select File Debate of LB 299

Second-round debate on LB 299 began on the afternoon of April 3rd immediately after advancement of its companion piece, LB 1114. By early evening the bill would be advanced, but not before several very important amendments were adopted. The subjects of the amendments included the method by which the spending limit would be computed for school districts, the creation of an unfunded mandates task force, and the adoption of several important spending lid exclusions, among others.

One of the first amendments discussed represented a key change in the bill for school districts. The amendment was sponsored by Senator Warner along with several

¹⁰⁵⁰ Id.

¹⁰⁵¹ Id.

¹⁰⁵² Id., 15119.

¹⁰⁵³ NEB. LEGIS. JOURNAL, 3 April 1996, 1848.

other senators from the Revenue and Education Committees and was supported by several groups from the education lobby. The purpose of the amendment was to permit the two-year spending limit under LB 299 to apply to the expenditure side rather than the revenue side of the budget for school districts.¹⁰⁵⁴

As LB 299 emerged from committee, all political subdivisions were held to a spending limitation based upon revenue sources. This represented a significant departure for school districts since the state aid formula, as per LB 1059 (1990), established a spending lid based upon expenditures rather than revenue sources. Said Warner:

What this amendment does is returns schools so the limitation is on expenditures. It has the same growth and exceptions that was contained before, that is two and zero percent for the two years, but it could be three and one percent with a 75 vote. It allows for growth through average daily membership. It excepts out special ed, as was the case before. It allows out of the limitation capital improvements, as before. It retains the authority for the schools to use unused budget authority and it also has the exception for disaster.¹⁰⁵⁵

Warner' amendment was adopted with very little discussion since many members of the body had been aware the proposal would be offered.¹⁰⁵⁶ The school lobby did its part in informing senators before hand that the amendment would be forthcoming and that they supported the concept.

The next major amendment considered by the body involved an official review of state mandates applicable to political subdivisions. The issue was brought to the attention of several senators early in the legislative life of LB 299 by the lobbyist for the Nebraska Council of School Administrators. In fact, similar amendments were originally brought forward during General File debate but were withdrawn.¹⁰⁵⁷ Between General File and Select File debate, various parties involved with the amendment met to determine exactly

¹⁰⁵⁴ Id., *Warner-Coordsen-Kristensen-Bohlke AM4281*, 2 April 1996, 1807.

¹⁰⁵⁵ *Floor Transcripts, LB 299 (1996)*, 3 April 1996, 15121.

¹⁰⁵⁶ NEB. LEGIS. JOURNAL, 3 April 1996, 1849. The Warner amendment was adopted 27-0 as amended by a separate amendment to further clarify how growth in students would be computed.

¹⁰⁵⁷ Senators Ray Janssen and Curt Bromm jointly sponsored two versions of the same amendment concerning unfunded mandates on General File but withdrew them in order to refine the proposal.

how the proposal should be drafted. It was then decided that Speaker Withem should offer the amendment on Select File debate on behalf of all parties concerned.

The Withem amendment proposed to create a Task Force on Unfunded Mandates, which would be comprised of various chairs of legislative committees and other leaders within the Legislature. The task force would also consist of representatives from organizations of political subdivisions, including municipalities, counties, and the education community. The purpose of the task force would be to identify and review all programs and services enacted by the Legislature that resulted in an increase in expenditures by political subdivisions. The task force would then provide a written report to the Legislature by December 1, 1996, which may include recommendations for changes in state law in order to modify or repeal identified programs and services.¹⁰⁵⁸ The idea behind the amendment would be to reduce the financial burden upon local governments by repealing unnecessary state mandates. The idea was sufficiently sound to be adopted by a unanimous vote (25-0).¹⁰⁵⁹

The last two amendments adopted relevant to schools involved exclusions to the spending limitation to harmonize, at least to some degree, with the levy exclusions provided under LB 1114. Senator Janssen offered the first amendment to exclude expenditures to pay for judgments obtained against a school district to the extent the judgment is not paid by liability insurance coverage. The Janssen amendment would also provide an exclusion for expenditures to pay for early retirement incentive programs in exchange for voluntary termination of employment.¹⁰⁶⁰ The Janssen amendment was adopted by a 27-0 vote.¹⁰⁶¹ However, later in the evening, Senator Kristensen would successfully amend the provisions of the Janssen amendment to specify that judgments against a district do not include orders by the Commission on Industrial Relations.¹⁰⁶²

¹⁰⁵⁸ NEB. LEGIS. JOURNAL, *Withem AM4278*, 1 April 1996, 1731-32.

¹⁰⁵⁹ *Id.*, 3 April 1996, 1850.

¹⁰⁶⁰ *Id.*, *Janssen AM4375*, 1851-52.

¹⁰⁶¹ *Id.*, 1852.

¹⁰⁶² *Id.*, *Kristensen FA615*, 1853.

The provisions of LB 299 applied only to the two fiscal years prior to the implementation of the levy limitations under LB 1114, but the temporary provisions were deliberately stringent and potentially crippling to local governments. The operative word concerning LB 299 was “force,” as in forcing political subdivisions to re-examine current operations and services and to necessitate down sizing in time for the mandatory levy limitations. LB 299 was advanced to final-round consideration without any closing remarks on a 34-10 vote.¹⁰⁶³

Final Reading

The morning of April 11, 1996 was an important day in the 1996 Session. It was the 59th day of the 60-day session and for all practical purposes the last full working day. The Legislature was about to pass and send to the Governor a property tax relief package that would likely be viewed as a major landmark concerning the issue of property taxes in Nebraska. The two pieces of the legislative package most relevant to public schools were LB 299 and LB 1114, and schools, in fact, were a major consideration and point of discussion throughout the legislative process. Public schools had won some minor concessions during the long debates, but there was little doubt that the concessions would not be enough to save some districts from dramatic operational changes.

Throughout the debate on the property tax relief package, Speaker Withem had placed LB 1114, concerning levy limitations, ahead of LB 299, concerning spending limitations. But on Final Reading this would change. On this day, the spending limit bill would be considered first followed by the levy limit bill.

Prior to the final vote on LB 299, Senator Kristensen rose to address his colleagues and somehow put an historical perspective on the legislation they were about to cast final judgment. Said Kristensen:

[T]he property tax debate is not new to this state, that goes without saying. It’s been the subject of debate since this state was born. It’s as old as the state. And the passage of this package of bills won’t end that debate. It will help shape it, but it won’t end it.¹⁰⁶⁴

¹⁰⁶³ Id., 1854.

¹⁰⁶⁴ *Floor Transcripts, LB 299 (1996)*, 11 April 1996, 15744.

Kristensen noted the intensity of the debate and recognized that senators were under pressure from many different perspectives on the property tax relief package. “But the bottom line is, you really are doing a service to the state, the entire state, even though it may be painful at times to do,” he said.¹⁰⁶⁵ Immediately following Kristensen’s remarks, the body voted 36-11 to pass LB 299 with the emergency clause attached.¹⁰⁶⁶

Table 51. Record Vote: Final Reading, LB 299 (1996)

Voting in the affirmative, 36:

Abboud	Hartnett	Kristensen	Pedersen	Vrtiska
Bohlke	Hilgert	Landis	Pirsch	Warner
Brashear	Hillman	Lindsay	Preister	Wehrbein
Bromm	Hudkins	Lynch	Robak	Wesely
Brown	Janssen	Matzke	Robinson	Wickersham
Coordsen	Jensen	Maurstad	Schmitt	Witek
Dierks	Jones	McKenzie	Stuhr	Withem
Engel				

Voting in the negative, 11:

Avery	Beutler	Cudaback	Klein	Schimek
Bernard-Stevens	Chambers	Fisher	Schellpeper	Schrock
	Crosby			

Excused and not voting, 2:

Elmer	Will
-------	------

Source: NEB. LEGIS. JOURNAL, 11 April 1996, 2029.

The final vote on LB 1114 would take considerably more time than LB 299. From start to finish, more than an hour of discussion would take place before a final vote. Senator Bernard-Stevens lead the discussion, but his intent was neither to filibuster nor delay the inevitable. It was simply a matter of putting the issue into perspective. In fact, Bernard-Stevens knew he was serving his last year in the Legislature. He chose not to run for re-election. But, as a former school board member, he understood the gravity of the proposed bill, and had some very relevant points to make.

¹⁰⁶⁵ Id., 15746.

¹⁰⁶⁶ NEB. LEGIS. JOURNAL, 11 April 1996, 2029.

Bernard-Stevens began by publicly noting the Legislature appeared to have competing ideals for the state versus local governments. He pointed out that the Legislature had already taken action on a mid-biennium budget bill that did not seem to uphold the same restraint on spending as the budget restrictions imposed by the same Legislature for political subdivisions. He warned that the impact of the spending and levy limitations would catch up both to the state and its local governments:

A year from now and two years from now is where it's going to get real difficult because you're going to have to ... you're going to have to fess up to what you're going to do here today, because a year or two years from now you're going to have to ... you'll be faced with the ... reality of what you're doing to local subdivisions.¹⁰⁶⁷

Bernard-Stevens went on to warn of the probable reluctance among legislators if not the executive branch to provide a shift of state resources to offset the impact of the lost revenue to political subdivisions, particularly schools.

Senator Warner responded to Bernard-Stevens, but he did so in characteristic style and grace. He acknowledged Bernard-Stevens' comments but he also acknowledged Senator Kristensen's remarks just prior to the final vote on LB 299. Senator Warner had served 33 years in the Nebraska Legislature through the 1996 Session. Little did anyone know that it would be the last complete session that he would serve as a Nebraska lawmaker. The property tax relief package of 1996 would, in fact, be a part of his legacy, both the good and bad aspects. But on that April day, Senator Warner understood, as perhaps no other, the magnitude of the decision before the Legislature. Said Warner:

Instead of government being bad and evil and annoying, it can return to what I used to know when government was looked upon as ... with great respect, great confidence, public support, and I think that can be the end result of this and I would hope that the body would continue to give that opportunity a chance to build that public confidence again that I think can be the end result of all of this. No disaster is going to occur. This body won't let it happen. But what can happen is all positive and I would hope that is the attitude that everyone would participate in over the next two years.¹⁰⁶⁸

¹⁰⁶⁷ *Floor Transcripts, LB 1114 (1996)*, 11 April 1996, 15747.

¹⁰⁶⁸ *Id.*, 15751.

His comments were certainly idealistic, especially from a pragmatic realist that everyone knew him to be, but they were fitting remarks and they worked. The Legislature would continue the discussion for another hour, but the result was certain and relatively decisive. LB 1114 passed on a 36-12 vote.¹⁰⁶⁹

Table 52. Record Vote: Final Reading, LB 1114 (1996)

Voting in the affirmative, 36:

Abboud	Dierks	Janssen	Matzke	Stuhr
Avery	Elmer	Jensen	McKenzie	Vrtiska
Bohlke	Engel	Jones	Pedersen	Warner
Brashear	Fisher	Kristensen	Pirsch	Wehrbein
Bromm	Hartnett	Landis	Preister	Wickersham
Brown	Hilgert	Lindsay	Robak	Witek
Coordsen	Hillman	Lynch	Robinson	Withem
Crosby				

Voting in the negative, 12:

Bernard-	Chambers	Klein	Schimek	Schrock
Stevens	Cudaback	Maurstad	Schmitt	Wesely
Beutler	Hudkins	Schellpeper		

Excused and not voting, 1:

Will

Source: NEB. LEGIS. JOURNAL, 11 April 1996, 2031-32.

Table 53. Summary of LB 1114 (1996)
as Passed and Signed into Law

A. *Levy limitations:* For FY1998-99 through FY2000-01, school districts and multiple-district school systems are limited to a maximum \$1.10 general and special combined levy authority. For FY2001-02 and all future fiscal years, the school levy limit is \$1.00. ESUs are reduced to a 1.5¢ levy authority effective FY1998-99 and beyond.

B. *Levy Limit Exclusions:*

1. Amounts levied to pay for sums agreed to be paid by a district to certificated employees in exchange for voluntary termination of employment (early retirement);

¹⁰⁶⁹ NEB. LEGIS. JOURNAL, 11 April 1996, 2031-32.

Table 53—Continued

-
2. Amounts levied to pay for special building funds and sinking funds established for projects commenced prior to April 1, 1996 for construction, expansion, or alteration of school district buildings;
 3. Amounts levied for judgments against a district to the extent such judgment will not be paid by liability insurance;
 4. Amounts levied for preexisting lease-purchase contracts approved prior to July 1, 1998; and
 5. Amounts levied for bonded indebtedness.
- C. *Federal Aid Districts:* Federal aid school districts may exceed the maximum levy limits to the extent necessary to qualify to receive federal aid pursuant to Title VIII.
- D. *Exceeding Levy Limits:* A school board may exceed its levy limit by an amount approved by a majority of registered voters voting in a primary, general or special election. A measure to exceed the levy limit may be initiated via: (i) the adoption of a resolution by a 2/3s vote of the school board; or (ii) the receipt by the county clerk/election commissioner of a petition signed by 5% of the registered voters in the district. The duration of the excess levy may not exceed five years.
- E. *Council on Public Improvements and Services:* A council may be created in each county for the purpose of reviewing budgets and property tax requests for each political subdivision within the county. The council may discuss issues of efficiency and coordination of services and programs.
- F. *Operative Date:* LB 1114 becomes operative on July 1, 1998.
-

Source: Legislative Bill 1114, in *Laws of Nebraska, Ninety-Fourth Legislature, Second Session, 1996*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-75, pp. 1-30 (1245-74).

Table 54. Summary of LB 299 (1996)
as Passed and Signed into Law

A. *Basic Allowable Growth Rate for General Fund Expenditures:*

1. FY1996-97: 2%* plus the growth in students (ADM) - see exclusions.
2. FY1997-98: 0%* plus the growth in students (ADM) - see exclusions.

* For the two years LB 299 is in effect, the 0% budget lid contained in LB 1059 is not in effect. School districts are automatically allowed a 2% budget lid maximum for FY1996-97 and 0% budget lid maximum for FY1997-98 (excluding the additional 1% which does require a hearing as noted below).

Table 54—Continued

-
- B. *Exceeding the Lids:* A school board may exceed the budget lid by 1% through a 3/4s vote of the board after a hearing is held on the issue.
- C. *Calculation of Growth in Students:* The growth in students is the percentage increase in the number of students calculated by dividing the fall membership count from the school year immediately preceding the school year for which the budget is being determined multiplied by the average ratio of average daily membership to fall membership for the most recent available data year and the two school years prior to that year by the average daily membership in the school district from the second school year preceding the year for which the budget is being determined and then subtracting one from the ratio. If the calculated growth in students is negative, the growth in students is zero.
- D. *Exclusions to Budget Lids:*
1. Expenditures for special education;
 2. Budgeted expenditures for capital improvements financed by the proceeds from a bond issue, appropriations from a sinking fund, or any other means;
 3. Expenditures to all retire bonded indebtedness;
 4. Expenditures in support of a service which becomes the subject of an interlocal cooperation agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or an independent joint entity for two fiscal years beginning with the first budget adopted after the agreement or modification is signed;
 5. Expenditures to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency under the Emergency Management Act;
 6. Expenditures to pay for judgments, except orders from the CIR, obtained against a school district which require or obligate a school district to pay such judgment, to the extent such judgment is not paid by district liability insurance; and
 7. Expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment.
- Note: The Department of Education has indicated that “special grant funds” are also excluded from the budget lids contained in LB 299.
- E. *Allowable Reserve:* The statutory provisions on the allowable reserve are still in effect for FY1996-97 and FY1997-98 (the General Fund Cash Reserve, the Depreciation Fund Total Requirements, the Employee Benefit Fund Cash Reserve, and the Contingency Fund Total Requirements are used to determine the Allowable Reserve Percentage).

Table 54—Continued

F. *Future Budget Reductions*: Provides for the intent of the Legislature that any reductions in a school district budget, made to comply with the budget limitation in the Tax Equity and Educational Opportunities Support Act, affect classroom expenses as a last resort.

G. *Task Force on Unfunded Mandates*:

1. Composition: (a) chairperson of the Legislature's Executive Board; (b) seven additional members of the Legislature to be selected by the Legislature's Executive Board; and (c) five representatives of political subdivisions, including one representative of municipalities, one representative of counties, and three representatives of the education community.
2. Task Force Chairperson: The chairperson of the Legislature's Executive Board shall serve as chairperson of the task force.
3. Purpose of Task Force: (a) the task force shall identify and review all programs and services enacted by the Legislature which resulted or may result in an increase in expenditures of funds by the political subdivisions assigned to perform or provide the programs and services; (b) consider the findings of relevant interim studies on unfunded mandates; and (c) seek recommendations and proposals from groups and individuals on the issue of unfunded mandates.
4. Report: The task force shall provide a written report to the members of the Legislature by December 1, 1996, which may include recommendations for any changes to state law which may either modify or repeal all identified programs and services with the intent of reducing the fiscal impact of the programs and services on the political subdivision or eliminating the programs and services entirely.
5. Interim Studies:
 - a. Required interim studies in 1996 to identify unfunded mandates and to recommend, if desirable, the modification or repeal of unfunded mandates impacting the subject matter jurisdiction of the committee.
 - b. Each standing committee that undertakes such a study shall report its findings to the Task Force on Unfunded Mandates on or before November 1, 1996, and the task force shall consider the findings in making its recommendations.
6. Termination: The task force terminates on December 31, 1996.

Source: Legislative Bill 299, in *Laws of Nebraska, Ninety-Fourth Legislature, Second Session, 1996*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-36, pp. 1-13 (84-96).

Table 55. Summary of Modifications to TEEOSA
as per LB 299 (1996)

[Note: LB 1114 (1996) did not amend TEEOSA]

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
27	79-3814	General fund budget of expenditures; limitations; Legislature; duties	Essentially suspends the original spending lid contained in LB 1059 (1990) and modified by LB 613 (1995) for 1996-97 and 1997-98.
28	79-3816	Basic allowable growth rates; allowable growth range	Establishes a 2% lid plus the growth in students (ADM) for 1996-97 and a 0% lid plus the growth in students (ADM) for 1997-98.
29	79-3817	Applicable allowable growth percentages; determination	For 1996-97 and 1997-98, the allowable growth percentage would be equal to the allowable growth rate set forth in section 79-3816.
30	79-3819	Applicable allowable growth rate; district may exceed; situations enumerated	Suspends the existing lid exclusions for 1996-97 and 1997-98. For 1996-97 and 1997-98, a district may exceed its allowable growth rate for budgeted expenditures for: <ul style="list-style-type: none"> (a) capital improvements financed by the proceeds from a bond issue, appropriations from a sinking fund, or any other means; (b) retire bonded indebtedness; (c) in support of a service that becomes the subject of an interlocal cooperation agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or an independent joint entity for two fiscal years beginning with the first budget adopted after the agreement or modification is signed; (d) to pay for repairs to infrastructure damaged by a natural disaster that is declared a disaster emergency under the Emergency Management Act; (e) to pay for judgments, except judgments or orders from the CIR, obtained against a school district that require or obligate a district to pay such judgment, to the extent not paid by liability insurance; or (f) to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment.
31	79-3820	Applicable allowable growth percentage; district may exceed; vote required	For 1996-97 and 1997-98 only, prohibits a district from exceeding the applicable allowable growth percentage by an amount approved by a majority of registered voters voting on the issue at a special election.

Source: Legislative Bill 299, in *Laws of Nebraska, Ninety-Fourth Legislature, Second Session, 1996*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 27-31, pp. 9-11 (92-94).

LB 1050 - TEEOSA Modifications

Legislative Bill 1050 (1996) would become the most comprehensive and substantively important pieces of legislation concerning the school finance formula since the implementation of the TEEOSA in 1990. It would mark some major policy changes in relation to the original formula, and would become a precursor to more significant changes a year later. It would cause divisions among rural and urban interests, and heavily equalized schools versus non-equalized schools. It would also represent one of the more contested legislative battles of the 1996 Session.

The genesis of LB 1050 was not unlike other major legislative proposals: an interim study. On May 16, 1995, the Education Committee, lead by Senator Bohlke, filed a legislative resolution to conduct a general examination of the school finance formula.¹⁰⁷⁰ Legislative Resolution (LR) 160 carried a simple purpose, which was:

To examine how elementary and secondary education should be financed, including possible modifications to the Tax Equity and Educational Opportunities Support Act, and how those modifications may effectively address student and taxpayer equity.¹⁰⁷¹

The purpose of the interim study embodied two of the same concerns addressed by the interim study that lead to the formation of the existing school finance formula: Equity of educational opportunities for students and equity of taxpayer burden to finance public education.¹⁰⁷²

Under Senator Bohlke's tenure as chair of the Education Committee, interim studies usually involved visitations to school districts across the state along with a series of public hearings that focused on the topic of the study. Most members of the committee were usually in attendance during the "tours," which often took the legislators from one end of the state to another. Members of the public education lobby also participated in these interim study tours in order to witness the hearings and discuss the issues with members of the committee. It was, therefore, no surprise to the education

¹⁰⁷⁰ NEB. LEGIS. JOURNAL, 16 May 1995, 2220.

¹⁰⁷¹ Id.

¹⁰⁷² Id., 13 May 1987, 2237-38.

lobby, and the organizations they represented, that Senator Bohlke intended to formulate legislation based upon the findings of the LR 160 study in time for the 1996 Session.

“LB 1050 is the result of the LR 160 interim study on school finance,” Bohlke recorded in her Statement of Intent.¹⁰⁷³ To be certain, some of the ideas contained in LB 1050 were suggestions made by school officials during the interim study tour. Other components of the bill represented solutions to long-standing issues, and still other provisions represented the political agenda of the Education Committee chairwoman herself. However, if one had to reduce the legislation to an overall theme, it would likely fall within the realm of awarding a greater share of the available state aid funds to equalization-qualified districts, to recapture some of the original intent of LB 1059 toward an equalization-oriented formula. On the whole, the bill would mark the most comprehensive set of changes to the school finance formula since its inception in 1990.

As introduced, LB 1050 contained five major components. Perhaps one of the more controversial components related to the capping of the income tax rebate. Under this provision, the rebate would be capped at the 1990-91 level of appropriation (\$83,307,600)¹⁰⁷⁴ and the distribution of rebate funds to districts would be based upon a statewide allocation percentage applied to the income tax liability of each district.¹⁰⁷⁵ Without LB 1050, the total rebate funds available for 1996-97 would have been \$131,181,793.¹⁰⁷⁶ Under the original bill, the difference between the capped amount and the amount otherwise distributed would then be shifted to equalization aid. This would mean the infusion of \$47,874,193 in new funds for equalization districts.¹⁰⁷⁷

¹⁰⁷³ Senator Ardyce Bohlke, *Introducer's Statement of Intent, LB 1050 (1996)*, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 30 January 1996, 1.

¹⁰⁷⁴ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 1050 (1996)*, prepared by Sandy Sostad, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 31 January 1996, 1.

¹⁰⁷⁵ Legislative Bill 1050, *Change provisions for calculating state aid to schools*, sponsored by Education Committee, 94th Leg., 2nd Sess., 1996, title first read 4 January 1996, § 5, pp. 12-14.

¹⁰⁷⁶ *Fiscal Impact Statement, LB 1050 (1996)*, 31 January 1996, 1.

¹⁰⁷⁷ *Id.*

Another controversial component of the bill would change provisions related to payments to school districts for option enrollment students. The bill proposed to provide option payments only for the net number of option students and also replace the existing per student payment amount with an average amount of equalization aid per student received by equalized districts.¹⁰⁷⁸ This would have the effect of shifting about \$6.4 million of aid received by some districts for option payments to other districts.¹⁰⁷⁹

The other three components the bill were perhaps not as controversial but no less important. First, the bill would recognize transportation costs of districts outside the computation of tiered costs.¹⁰⁸⁰ This would shift aid between school districts and would increase aid for equalization districts with high transportation costs relative to other districts in the same tier.¹⁰⁸¹ Second, the bill would reduce the effect of the minimum effort provisions on districts with large areas of tax-exempt Indian lands.¹⁰⁸² This provision would allow a few school districts to retain state aid calculated under the formula that would otherwise have to be forfeited since these districts did not meet the minimum effort provisions.¹⁰⁸³ Third, the bill changed the definition of “formula students” in order to more accurately reflect average daily membership.¹⁰⁸⁴ The effect of any adjustments in student membership would have the potential of shifting aid between districts due to changes in formula need for individual schools.

To her credit, Senator Bohlke would manage to achieve all five original purposes of the bill, although perhaps not in the exact condition as originally introduced. The bill also would be expanded to incorporate other school finance-related provisions as well as provisions related to school organization. The bill did not represent a unanimous policy

¹⁰⁷⁸ LB 1050 (1996), § 8, p. 29.

¹⁰⁷⁹ *Fiscal Impact Statement, LB 1050 (1996)*, 31 January 1996, 1.

¹⁰⁸⁰ LB 1050 (1996), § 10, pp. 31-32.

¹⁰⁸¹ *Fiscal Impact Statement, LB 1050 (1996)*, 31 January 1996, 1.

¹⁰⁸² LB 1050 (1996), § 8, pp. 25-26.

¹⁰⁸³ *Fiscal Impact Statement, LB 1050 (1996)*, 31 January 1996, 1.

¹⁰⁸⁴ LB 1050 (1996), § 2, p. 6.

modification by any means, among both policymakers and school officials, and the first indication of unrest would arise at the public hearing for LB 1050 on January 30, 1996.

The hearing for LB 1050 would not be remembered for the sheer number of testifiers, as with other major legislative proposals. Only ten individuals, representing themselves or various organizations, would testify on the bill.¹⁰⁸⁵ Generally speaking, the heavily-equalization dependent schools, such as Lincoln, Omaha, and Bellevue appeared at the hearing to support the measure, while representatives for schools less reliant upon equalization aid would either oppose or cast a neutral position on the bill. The lack of testimony was not due to disinterest among school officials, but rather due to the fact that LB 1050 was heard simultaneously with two other school finance bills. The first, LB 1138 (1996), introduced by the Appropriations Committee and referred to the Education Committee, would provide for leasing of certain telecommunications facilities.¹⁰⁸⁶ The second, LB 1145 (1996), introduced by Senator Ron Withem, would funnel nearly every dollar appropriated for aid to education as funding for equalization-qualified districts, both regular education and special education funding.¹⁰⁸⁷

Whether by design or not, the idea to hear testimony on all three bills at one time, particularly LB 1050 and LB 1145, would have a favorable impact on the prospects of LB 1050. Withem's LB 1145, in particular, was viewed by some opponents as an attempt to force consolidation of smaller, rural schools. Errol Wells, representing Elba Public Schools, called the bill "most vile and unfair" and spoke of Withem's "campaign to destroy rural Nebraska."¹⁰⁸⁸ To be fair, Senator Withem's bill was actually designed to fully implement the intent of LB 1059 as passed some six years earlier by establishing a pure equalization formula. On the other hand, Withem's Statement of Intent did in fact

¹⁰⁸⁵ Committee on Education, *Committee Statement, LB 1050 (1996)*, Nebraska Legislature, 94th Leg., 2nd Sess. 1996, 1.

¹⁰⁸⁶ Legislative Bill 1138, *Provide for leasing of certain telecommunications facilities*, sponsored by Appropriations Committee, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 9 January 1996.

¹⁰⁸⁷ Legislative Bill 1145, *Change provisions for state aid and special education payments*, sponsored by Sen. Ron Withem, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 9 January 1996.

¹⁰⁸⁸ Committee on Education, *Hearing Transcripts, LBs 1138, 1050, 1145 (1996)*, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 30 January 1996, 31.

include language to reduce “the degree to which non-viable school districts can generate disproportionate state aid and/or protect their tax from helping to meet the needs of students in other school districts.”¹⁰⁸⁹ In any event, Withem no doubt knew his bill would generate fear and concern among non-equalization schools, as it ultimately did. His bill would never make it out of committee, but his point was well taken by those familiar with the history of the existing formula, and, at the very least, Withem’s bill brought all concerned back to the table once again. His bill also made Senator Bohlke’s LB 1050 appear as the more reasonable approach to modifying the formula.

During the hearing, Dennis Pool of the Department of Education was asked to provide explanatory testimony on both LB 1050 and LB 1145. Pool perhaps best captured the essence of the matter in his opening remarks when he briefly reviewed the concept of the existing formula while noting the range of opinions on how a finite amount of funding should be distributed. “We have a policy question that would say, how are these funds, that are limited, to be distributed to school districts?” he asked rhetorically.¹⁰⁹⁰ Pool continued:

On one hand, we can move towards more equalized concepts. Equalized concepts, again, you have to answer the questions. Well, how do we measure need? How do you measure resources? And many of the people that will testify will debate those issues. On the other hand, we can move toward categorical type of funding where we have a situation where everybody gets an equal amount of that limited funds; but when you have that question before us, it’s how do you measure what things you’re going to count for categorization and how much you’re going to count those? So there’s no easy answers to the many questions that are in front of you.¹⁰⁹¹

Indeed, there were no easy answers given the limited amount of funding. It became a philosophical policy issue on how best to distribute the available funds and which school districts were most in need of the state financial assistance.

¹⁰⁸⁹ Senator Ron Withem, *Introducer’s Statement of Intent, LB 1145 (1996)*, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 30 January 1996, 1.

¹⁰⁹⁰ *Hearing Transcripts, LBs 1138, 1050, 1145 (1996)*, 30 January 1996, 13.

¹⁰⁹¹ *Id.*

Superintendent Steve Joel of Beatrice Public Schools appeared at the hearing representing 13 school districts belonging to the Greater Nebraska Schools Athletic Conference, which he said incorporated 27% of all public education students. Joel testified in favor of both “proequalization bills,” referring to LB 1050 and LB 1145, but also recognized the “real concerns in some of the rural areas and the smaller schools” with regard to LB 1145 in particular.¹⁰⁹² “[O]ur intent is not to drive any kind of a wedge between those of us that may be looked upon as larger versus those that are smaller,” Joel said.¹⁰⁹³ At the same time, he said, the “vast inequities inherent” in the existing formula had to be addressed by the Legislature.¹⁰⁹⁴

Most of the other proponents of LB 1050 concurred with Joel’s comments, including Harlan Metschke, Superintendent at Papillion-LaVista Public Schools. Metschke said the district he represented was a good example of the positive effects of LB 1059 (1990) and the move toward an equalization-based formula. Said Metschke:

Prior to LB 1059 being passed in 90-91, our district had a very high tax rate, one of the highest in the state, and a very low per pupil expenditure rate, one of the lower in the state; and 1059 brought our tax levy down to the neighboring school districts.¹⁰⁹⁵

He encouraged the Education Committee to increase the distribution of funds through the equalization component of the formula in order to avoid an erosion of the beneficial impact of LB 1059. The erosion, he said, was due in part to the spending limitations imposed on school districts, which created a greater need for state financial assistance.

Those who stood to lose by a pronounced move toward equalization funding were largely in a defensive posture at the hearing concerning LB 1145, which left LB 1050 as the lesser of two troublesome bills in their minds. “We have no problems with 1050, at this point,” said Diane Heiser, President of the School Board for Lynch Public School.¹⁰⁹⁶

¹⁰⁹² Id., 47.

¹⁰⁹³ Id.

¹⁰⁹⁴ Id.

¹⁰⁹⁵ Id., 49.

¹⁰⁹⁶ Id., 33.

On the other hand, she said, “Legislative Bill 1145 is just another way of saying that many rural districts are too small and, therefore, have no right to exist.”¹⁰⁹⁷ Heiser and other rural school representatives spoke of the many advantages of smaller schools for students, including low absenteeism, high graduation percentages, preferable teacher to student ratios, and good learning environments.

Perhaps unique among the testimony delivered at the hearing was that of Ken Bird, Superintendent at Westside Community Schools in Omaha. With regard to the school finance formula, Westside was considered an anomaly in that it received no equalization aid while all other Omaha-area school districts were heavily dependent upon equalization aid. This was due to the high property valuation of the Westside district in comparison to the surrounding districts. Westside, however, did receive state aid in the form of income tax rebate and option hold harmless payments. It also received cost reimbursement for special education services.

Therefore, to Bird and his school district, both LB 1050 and LB 1145 represented major threats for continued state financial assistance. Bird emphasized his district’s support for the concept of equalization, but not to the extent outlined in the two bills. Perhaps realizing the remote chances of LB 1145, Bird chose to focus on what he likely regarded as the legitimate threat to his district. “I want to address, specifically, LB 1050,” he said, while narrowing the focus to two provisions of the bill in particular, the income tax rebate and option payment provisions.¹⁰⁹⁸ “Regarding the income tax rebate issue, with the passage of LB 1059, there was a commitment, or more correctly stated, a contract made with communities throughout Nebraska to return to them 20 percent of their state income tax receipts to support their public schools,” Bird said.¹⁰⁹⁹ There was an understanding by virtue of LB 1059, he said, that the rebate amount would fluctuate with the growth or decline in a community’s taxable income, but the 20% rebate provision was meant to remain a part of the formula. The act of denying school districts

¹⁰⁹⁷ Id., 34.

¹⁰⁹⁸ Id., 81.

¹⁰⁹⁹ Id.

the benefit of these funds, Bird believed, would be “a violation of a previous commitment that was made” to taxpayers and to school districts.¹¹⁰⁰

With regard to option enrollment issue, Bird told the Education Committee that state payments for such students were a matter of reimbursement, not a matter of equalization. “This is not an equalization issue,” he emphasized, “This is a reimbursement issue for services provided by schools.”¹¹⁰¹ To lose sight of the original intent of the enrollment option program and turn it into an equalization issue, Bird said, would be “a misuse of the authority of this body.”¹¹⁰² He reminded everyone present that the enrollment option law was meant to give parents more choices with regard to their children’s education, while, simultaneously placing schools “into a competitive market driven environment.”¹¹⁰³ Westside was somewhat unique in that the district was well known for accepting a high number of option students. Naturally, the proposed change in the option hold harmless provision would not be to the liking of Westside since it would lose state aid.

Advancement from Committee

The Education Committee met in executive session on two consecutive days, February 5th and 6th, to consider action on LB 1050. And this would be no ordinary disposition of a bill. In an extraordinary two-day event, nineteen separate motions to amend the bill were considered with most failing to garner a majority vote of the eight-member committee.¹¹⁰⁴ Only seven motions would ultimately pass with the seventh and last being the motion to advance. Executive sessions are closed to the public, except for members of the media, and there are no official transcripts of the proceedings in order to ascertain the views of each member of committee. Nevertheless, in reviewing the executive session report, which contains motions and vote tallies, it appears there were

¹¹⁰⁰ Id.

¹¹⁰¹ Id.

¹¹⁰² Id.

¹¹⁰³ Id.

¹¹⁰⁴ Committee on Education, *Executive Session Report, LB 1050 (1996)*, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 5-6 February 1996, 1-10.

members who were interested in a pure equalization-oriented formula, those who favored a more moderate pro-equalization approach, and those who concerned themselves with the protection of rural schools or schools not receiving a great amount of equalization aid.

This is not to say that the sole item of discussion during the executive sessions and later floor debate concerned only provisions related to the school finance formula. LB 1050 would ultimately become a sort of high level technical and substantive cleanup bill and would contain a variety of non-school finance provisions in addition to some major school finance related provisions. Included among these substantive/technical provisions would be proposed changes to laws related to alternative education for expelled students, and an extension of the deadline to resolve the federal impact aid issue originally addressed in LB 542 (1995). Later amendments to the bill would encompass procedural changes to the option enrollment program and clarification of the jurisdiction of school districts with regard to offenses warranting disciplinary action.

Without question, however, the major focus of the closed sessions involved philosophical, policy discussions on the direction or re-direction of the school finance formula. As evidenced by the records of their proceedings, members of the committee seemed to have been drawn back several times to the separate issues of the income tax rebate and the option payments. With regard to the income tax rebate, all attempts to change the original version of the bill failed. The rebate would be capped at the 1990-91 level (\$83,307,600) and the distribution of rebate funds to districts would be based upon a statewide allocation percentage applied to the income tax liability of each district. Senator Wickersham, in particular, offered several motions to change the provision so that rural schools would not be as hard hit by the rebate cap.

Other major changes made during executive session included Senator Wickersham's successful attempt to merge the contents of two separate bills into LB 1050 concerning school reorganization. First, LB 600, introduced by Senator Bohlke, authorized incentive payments for school district reorganizations that move students into lower cost tiers. This provision would allow qualified districts to receive incentive payments for boundary changes, occurring between May 31, 1996 and August 2, 2001,

resulting in a reduction in the number of school districts. Incentive payments would be made for three years and would derive from equalization aid not to exceed 1% of the TEEOSA appropriation.¹¹⁰⁵ One percent of the total amount of equalization aid would produce approximately \$3 - 3.5 million for such incentive payments.¹¹⁰⁶

The second bill to be merged into LB 1050 was LB 676 (1996), which was introduced by Senator Wickersham, and established the Retirement Incentive Plan and Staff Development Assistance Program for certificated employees in districts involved in school reorganizations. Under this scheme, if a reorganization involves a reduction-in-force (RIF), all certificated employees involved would have the option to: (i) retire under the Retirement Incentive Plan, (ii) terminate employment and receive Staff Development Assistance, or (iii) remain employed subject to the personnel policies and staffing requirements of the reorganized district.¹¹⁰⁷ The provision established procedures for both the districts and school employees in order to guarantee certain rights and permit employees to take advantage of the available programs.

To qualify for the Retirement Incentive Plan, employees must be over 55 years of age and have completed five years of creditable service. The payments would equal \$700 for each year of service and will be made in one or two lump sum payments.¹¹⁰⁸ The Staff Development Assistance Program would be available for one year to employees who terminate their employment voluntarily within a specified period of time. The assistance would come in the form of two semesters of tuition and a stipend equal to 25% of annual salary or 50% if enrolled and attending a Nebraska state college or university. The cost for these plans was to be allocated among the reorganized school districts based upon the proportion of property valuation each district received. The costs were

¹¹⁰⁵ *Committee Statement, LB 1050 (1996)*, 3.

¹¹⁰⁶ *Fiscal Impact Statement, LB 1050 (1996)*, 4 March 1996, 2.

¹¹⁰⁷ *Committee Statement, LB 1050 (1996)*, 4.

¹¹⁰⁸ *Id.*

considered to be general fund operating expenses for purposes of state aid and schools could exceed their allowable growth rates to cover the cost of the benefits.¹¹⁰⁹

The provision would also permit the distribution of matching funds, under the control of the State Board of Education, to contiguous districts for reimbursement of costs associated with reorganization studies. School districts would receive 25% of the cost of the study, up to a maximum of \$2,500. The districts may receive a similar amount once again if voters approved the reorganization plan.¹¹¹⁰

The inclusion of LB 600 and LB 676 within the committee amendments to LB 1050 may have been a concession to Senator Wickersham in order to gain his support for the bill on the whole. It was Wickersham who made several unsuccessful attempts during executive session to change the income tax rebate provisions to make them less daunting to rural schools. In truth, the inclusion of the two reorganization measures may have neutralized his immediate opposition, but his concerns, and ultimate opposition, would reappear during floor debate. On February 6th, the committee voted to advance LB 1050, as proposed under the committee amendments, by a 6-0-2 vote.¹¹¹¹ No member of the committee opposed advancement, but both Senators Wickersham and Stuhr were recorded as present, not voting.¹¹¹²

Floor Debate of LB 1050

The floor debate on LB 1050 was roughly similar in duration and contentiousness to that of LB 1059 in 1990. Many of the same rural/urban philosophical and policy splits among the Legislature in 1990 were present in the 1996 debate. The difference, perhaps, was that LB 1050 was meant, in part, to be a completion piece to the original goals already established under LB 1059, established both by the Legislature and by virtue of the electorate's retention under Initiative 406 (1990). Whereas, in 1990, the proponents of LB 1059 had little more than theoretical evidence that the new school finance system

¹¹⁰⁹ *Fiscal Impact Statement, LB 1050 (1996)*, 4 March 1996, 2.

¹¹¹⁰ *Committee Statement, LB 1050 (1996)*, 5.

¹¹¹¹ *Id.*, 1.

¹¹¹² *Id.*

would in fact work, the proponents of LB 1050 had some fairly powerful evidence that the system was doing what it was expected to do. In 1996, it could be argued, a furtherance of the goals established by LB 1059 would produce additional success to the objectives of tax equity and educational equity.

The problem, of course, was that not everyone agreed with the overall success of LB 1059 over the past six years, or, for that matter, with the wisdom of the additional components proposed in LB 1050. Accordingly, over the course of the floor debate, which consisted of eight session days, the original meaning, intent, and spirit of LB 1059 would be hashed and rehashed as legislators grappled with the changes contained in LB 1050. In this regard, those members of the Legislature who were present at the 1990 debate had an advantage over those who were not present at the time. This, however, did not prevent some from issuing their opinions about what was intended when the existing formula was first enacted.

General File debate began late in the afternoon on February 13, 1996. Senator Bohlke barely had a chance to provide opening remarks on the bill before the body voted to adjourn for the day. Her opening comments, however, did properly set the stage for subsequent debate, at least the stage from which proponents of the bill wanted the bill to be viewed. Said Bohlke:

[I]t is very important that we talk about bringing equity into the formula. When 1059 was passed many people spent a great deal of time talking about if we realized property tax relief or not. But at the time really the real reason for establishing 1059 as a school aid formula was trying to bring equity into the formula. We have accomplished a great deal, but there are still great inequities within the formula.¹¹¹³

Bohlke said that even with the great strides made by LB 1059 six years earlier, there were still examples of wide disparities in property valuation per student. “That is not equitable,” she emphasized.¹¹¹⁴

¹¹¹³ Legislative Records Historian, *Floor Transcripts, LB 1050 (1996)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 94th Leg., 2nd Sess., 13 February 1996, 11088.

¹¹¹⁴ *Id.*

Bohlke presented her colleagues a bullet list of the major components of LB 1050 as per the committee amendments and said the recommendations were meant to increase equity in the formula. The bill, she said, would essentially seek to provide more state funding for purposes of equalization aid in order to “bring more equity into the formula.”¹¹¹⁵ She admitted upfront that some of the provisions for discussion would be considered controversial, but she urged her colleagues to look at the changes from a long-range policy perspective rather than the short term.

Following Bohlke’s opening remarks, and before the Legislature adjourned on that first day of debate, Senator Wickersham suggested a division of the committee amendments for purposes of consideration.¹¹¹⁶ In this way, the body may take up one major component at a time in an orderly fashion. Senator Bohlke was amenable to the suggested division, which would partition the committee amendments into four segments. The first division pertained to option enrollment payments. The second division pertained to the income tax rebate portion of the committee amendments. The third division would involve those elements of the bill related to transportation. And the fourth division would include all other provisions in the committee amendments to LB 1050.¹¹¹⁷

The first division, relating to option payments, was briefly discussed on February 13th prior to adjournment. Bohlke outlined the intent of the original bill, which was to prevent a non-equalized district from receiving option payments, to the compromise in the committee amendments, which provided for net option funding for all school districts.¹¹¹⁸ The net funding concept would be applied to all districts having a net gain in the number of students educated in the district as a result of the option program (i.e., the number of students optioning in minus the number of students optioning out). Under the committee amendments, the option payments were to be paid from the TEEOSA Fund

¹¹¹⁵ Id.

¹¹¹⁶ NEB. LEGIS. JOURNAL, 13 February 1996, 784-785.

¹¹¹⁷ Id. First division, FA439 included § 12(7), § 13 of AM3077, Second division, FA438 included § 7(3), § 8, § 9, and § 2 of AM3077, Third division, FA437 included § 7(1)(26)(28)(32), § 10, § 11, § 15, § 16, and § 24 of AM3077, Fourth division, FA440 included all other provisions of AM3077.

¹¹¹⁸ Id., FA439 (AM3077) to LB 1050 (1996), 784.

(equalization aid) and were counted as formula resources for the calculation of equalization aid. The amount of the payments would be calculated as the average equalization aid per formula student for all districts generating equalization aid. Again, the net option funding would apply to both equalized and non-equalized districts alike.

It should be noted that prior to 1996, payments to the option district amounted to approximately \$4,400 per option student.¹¹¹⁹ For districts like Westside Community Schools, with a high number of option students, this resulted in sizable amounts of state aid each year. As proposed by the committee amendments, however, this amount would be lowered to approximately \$1,100 per option student.¹¹²⁰ For a district like Westside, this change would produce a substantial reduction in state aid. Therefore, sometime between the advancement of the bill from committee on February 6th and the outset of floor debate on February 13th, Senator Bohlke reached another compromise with interested parties on the issue of option payments. In fact, the compromise would represent yet another major policy decision on both the issues of option payments and income tax rebate funds.

Under the Bohlke amendment to the committee amendments, the concept of net option funding would remain in place for both equalized and non-equalized districts. The option payments would equal the lesser of the statewide average tiered cost per student or the option school district's tiered cost.¹¹²¹ This would generally have the effect of keeping the option payments at about the same level per student as the formula previously provided. The major change under the Bohlke amendment concerned the derivation of the option funding. Under the existing formula, option payments derived from equalization aid (i.e., the main pot of state aid funding). However, under the Bohlke amendment, the option payments would be paid, for lack of a better phrase, off the top of the pool of income tax rebate funds. In other words, the first distribution of income tax rebate funds (a capped amount of about \$83 million as proposed under LB 1050) would

¹¹¹⁹ *Floor Transcripts, LB 1050 (1996)*, 13 February 1996, 11092.

¹¹²⁰ *Id.*

¹¹²¹ NEB. LEGIS. JOURNAL, *Bohlke AM3163 to FA439 (AM3077)*, 13 February 1996, 785.

be used for option payments. The remaining amount of income tax rebate funds would be distributed to individual districts according to the income tax liability of each district.

Senator Bohlke attempted to avoid naming the school district that brought about the compromise amendment. Senator Withem was less inclined to keep the concerned party a secret. In fact, as Withem noted during debate on February 14th, Westside Community Schools had launched a full-fledged lobbying campaign to change the option provisions of LB 1050 and re-establish what it considered as a fair share of state aid. Withem mentioned that Omaha-area senators had received numerous phone calls over the previous weekend from concerned parents in the Westside district about the option funding.¹¹²² Some of the phone calls may have been prompted by concerns raised by Westside school officials through correspondence or other communication. Whatever the case may have been, the result was most certainly to the liking of Westside since the Bohlke amendment was adopted on a 27-0 vote, the first official vote during the long debate of LB 1050.¹¹²³ Immediately following the adoption of the Bohlke amendment, the body returned to general discussion of the first division of the committee amendments concerning option payments, which was ultimately adopted by a 25-0 vote.¹¹²⁴

The second division, concerning income tax rebate, would not proceed as smoothly or quickly as the first division. The debate on the second division began on February 14th but would be interrupted by a priority motion by Senator Robak to bracket the bill until February 14, 1997.¹¹²⁵ Senator Robak believed it would make better sense to wait on school finance matters until after the Legislature addressed the property tax issues facing the state. At this point in the session, the Revenue Committee had not yet advanced LB 1114 and LB 299, which would in fact address the property tax issue. Senator Bohlke spoke very briefly on the bracket motion and said simply that it would be “unconscionable” to the children and to the taxpayers to wait until the following year to

¹¹²² *Floor Transcripts, LB 1050 (1996)*, 14 February 1996, 11128-29.

¹¹²³ NEB. LEGIS. JOURNAL, 14 February 1996, 789.

¹¹²⁴ *Id.*

¹¹²⁵ *Id.*, 790.

discuss the school finance issues presented in LB 1050.¹¹²⁶ The bracket motion failed on a 4-27 vote, which was followed by a successful motion for adjournment for the day.¹¹²⁷

On the following day, February 15th, debate resumed on the second division, which called for a cap on the income tax rebate at the level generated in 1990-91 (about \$83 million). The item of discussion this day was an amendment to the committee amendments originally offered the day before by Senator Wickersham. The amendment was similar to several proposals offered by Wickersham during executive session, proposing an alternative method to capping the amount of the total rebate.¹¹²⁸

Under the Wickersham amendment, the rebate would be capped at a percentage (26.7%) of the total state aid appropriated by the Legislature each year.¹¹²⁹ Wickersham invoked the intent of LB 1059 by arguing that the income tax rebate was meant to be an accessible resource for school districts. The Legislature had dedicated 20% of the total income tax revenue to schools by virtue of LB 1059, which was ratified, in a sense, through the retention of the law at the 1990 General Election. Wickersham said LB 1050 would cap the rebate at an “arbitrary number,” perhaps forgiving the fact that his amendment also capped the amount at a seemingly arbitrary number.¹¹³⁰ “The advantage of the amendment that I’m offering is, of course, that it allows greater access to the resource than does the proposed committee amendment, and in addition, over time, will allow growth in the access to that resource,” said Wickersham.¹¹³¹ This, he said, would be consistent with the original intent of LB 1059.

The best argument in favor of the Wickersham proposal was most likely the flexibility that it offered rather than the arbitrary nature of the proposal offered under LB

¹¹²⁶ *Floor Transcripts, LB 1050 (1996)*, 14 February 1996, 11165.

¹¹²⁷ NEB. LEGIS. JOURNAL, 14 February 1996, 791.

¹¹²⁸ During executive session, Senator Wickersham offered a motion to cap the rebate at 26% of the total amount of state aid. This motion failed on a 4-3 vote. He later offered a second motion to cap the rebate at gradual, downward percentages (29%, 27%, 25%). This motion died for lack of a second. *Executive Session Report, LB 1050 (1996)*, 5-6 February 1996, 6-7, 9.

¹¹²⁹ NEB. LEGIS. JOURNAL, *Wickersham FA441 to FA438 (AM3077)*, 14 February 1996, 790.

¹¹³⁰ *Floor Transcripts, LB 1050 (1996)*, 15 February 1996, 11181.

¹¹³¹ *Id.*

1050. Senator Wickersham would make a valiant effort to convince his colleagues of the wisdom for his proposal over that suggested in the bill. Several other senators representing rural-area schools agreed with Wickersham's idea. "Since LB 1059 passed, I believe in 1990, and this formula has taken place, I think our school districts were promised they'd get their income tax back," said Senator Ed Schrock.¹¹³² "I think that's something we should honor," he said in support of the Wickersham amendment.¹¹³³ Senator Elaine Stuhr also supported the Wickersham amendment, and said:

We've been talking about equity, equity for children, for all children. As a mother, as a grandmother, as a former teacher I truly believe in equity for all children. But I have a great concern of what we're doing to the formula, so to speak, particularly concerned for those children in outstate Nebraska shall we say, those children that live in two-thirds part of the state. How do we define equity in education?¹¹³⁴

Stuhr said many small, rural schools were not able to offer the number and types of programs that larger, more urban school districts were able to offer.

There was no disputing the fact that LB 1050 proposed a dramatic departure from that originally passed under LB 1059. But even Senator Withem, the chief sponsor of LB 1059, saw no problem with deviating from the original intent of his own 1990 legislation. "My preference was, quite frankly, to come forward and indicate the rebate was something that we put into the formula and it just isn't working," Withem said during debate on February 14th.¹¹³⁵ "I would have liked to see us get rid of the rebate," he added, perhaps referring to his proposal in LB 1145 to merge all rebate funds into the total pot of equalization aid.¹¹³⁶ In fact, the pro-equalization advocates of the body considered the proposal contained in LB 1050 as a compromise in which non-equalization schools would continue to receive state aid in the form of income tax rebate, just not as much as before. The pro-equalization camp believed just about every dollar of state

¹¹³² Id., 14 February 1996, 11152.

¹¹³³ Id.

¹¹³⁴ Id., 11159.

¹¹³⁵ Id., 11149.

¹¹³⁶ Id.

appropriations to public education should be used for equalization aid. As stated by Senator Bohlke, “This debate is to keep our eyes on what is your philosophy on bringing more equity into the formula.”¹¹³⁷

The vote on the Wickersham amendment to the committee amendments was perhaps one of the more significant events of the entire debate on LB 1050. It was as much a philosophical policy decision as it was on the actual content of the amendment. Generally speaking, a vote against the amendment symbolized a strong pro-equalization stance. A vote in favor of the amendment did not necessarily symbolize an anti-equalization stance, but it did demonstrate a more moderate approach to the concept of equalization in the formula. Prior to the debate, Senator Chris Beutler summarized it best when he said to his colleagues:

I just want to emphasize to you that this is the heart of the matter, this is probably the most important amendment you’ll be asked to vote on, and your most important vote on this bill, other than the vote to advance or not to advance altogether. It involves a very significant chunk of money.¹¹³⁸

According to Senator Bohlke, the “significant chunk of money” mentioned by Beutler may mean more rebate funds to distribute to individual districts, but it would also, she said, amount to \$28 million less in equalization aid.¹¹³⁹

After a lengthy debate on the amendment, the question was called and a roll call vote requested by Senator Wickersham. The amendment failed on a 17-22 vote.¹¹⁴⁰

Table 56. Record Vote: Wickersham FA441 to Committee
AM3077 (Second division, FA438)

Voting in the affirmative, 17:

Abboud	Elmer	Kristensen	Schellpeper	Wehrbein
Bromm	Jensen	Matzke	Schmitt	Wickersham
Coordsen	Jones	Robak	Stuhr	Witek
Dierks	Klein			

¹¹³⁷ Id., 11146.

¹¹³⁸ Id., 15 February 1996, 11186.

¹¹³⁹ Id., 11183.

¹¹⁴⁰ NEB. LEGIS. JOURNAL, 15 February 1996, 813-14.

Table 56—*Continued**Voting in the negative, 22:*

Avery	Brashear	Hilgert	Maurstad	Schimek
Bernard-	Crosby	Hillman	Pedersen	Warner
Stevens	Engel	Janssen	Pirsch	Wesely
Beutler	Fisher	Landis	Preister	Withem
Bohlke	Hartnett	Lynch		

Present and not voting, 8:

Brown	Cudaback	Lindsay	Schrock	Vrtiska
Chambers	Hudkins	Robinson		

Excused and not voting, 2:

McKenzie	Will
----------	------

Source: NEB. LEGIS. JOURNAL, 15 February 1996, 813-14.

While Senator Wickersham failed at his first attempt to amend the income tax rebate portion of the committee amendments, he would immediately try again, and this time the spirit of compromise would avail itself on the debate of LB 1050 in a significant way. In his second attempt, Wickersham proposed to change the target fiscal year of the cap from 1990-91 to 1992-93.¹¹⁴¹ This would have the effect of increasing the total pool of available rebate funds each year from \$83 million, as proposed by LB 1050, to approximately \$102 million, as proposed by the Wickersham amendment. Wickersham's rationale for the proposal certainly had validity. He reminded his colleagues that the first full tax year for implementation of the income tax increase contained in LB 1059 was 1991. Since the rebate was calculated on income tax receipts that were one year in arrears from the year the funds were distributed, the more appropriate historical fiscal year to cap the income tax rebate would be 1992-93.

This time, Senator Wickersham would find unanimous support for his effort. The second Wickersham amendment was adopted by a 36-0 vote and was widely praised as an appropriate correction to LB 1050 if, in fact, the will of the body was to cap the income tax rebate.¹¹⁴² That is to say, the adoption of the Wickersham amendment would

¹¹⁴¹ NEB. LEGIS. JOURNAL, *Wickersham FA442 to FA438 (AM3077)*, 15 February 1996, 814.

¹¹⁴² *Id.*

serve to clarify in some legislators' minds the appropriate historical fiscal year to set the cap, but this would not necessarily translate into instant acceptance of the bill on the whole. Senator Wickersham, himself, would be among those who would work very hard to make the legislation as palatable to his way of thinking as possible, only to vote against the measure in the final analysis. But at this early stage of the legislative process, Wickersham had won a significant battle.

Prior to adoption of the Wickersham amendment, several senators asked for reassurance from Senator Bohlke that a new district-by-district printout would become available prior to second-round debate. By virtue of the Wickersham amendment, there would likely be some shifting of funds owed to districts due to the change in the income tax rebate provision. Bohlke assured her colleagues that a new printout would be forthcoming in time for Select File debate. In fact, throughout the legislative history of LB 1050, it became increasingly apparent that some legislators were basing their votes on the printouts, or "models" as the staff of the Nebraska Department of Education (NDE) might prefer to call them. Of course, the models submitted by NDE were just that, models. Some legislators may not have realized that the models represented best guesses by the department given the data available at that particular moment in time. In any event, some legislators would use the models to determine a quick ratio of winners versus losers within their own legislative districts.

The debate on the second division of the committee amendments would continue a short time after the adoption of the Wickersham amendment. Most of the conversation among legislators at this point was of a positive nature, no doubt due in large part to the efforts of Senator Wickersham to gain some conciliation from the staunch pro-equalization camp. Senator Bohlke would wisely attempt to capture the moment by emphasizing in her closing comments that a fair compromise had been reached on the income tax rebate. Said Bohlke:

Now you have always two pots of money. You have an equalization pot and you have an income tax rebate pot. What we have done is we have not given as much money over into the equalization pot, we have left more there in the income tax

rebate. It's a compromise, I believe, that a number of us have struck on the floor and a good, a good compromise.¹¹⁴³

The compromise would produce a cap on the income tax rebate at the 1992-93 appropriation level, and would determine the allocation of rebate funds to individual districts based on a statewide allocation percentage applied to the income tax liability of each district. The rebate would be capped at \$102,289,817 in 1996-97 and each year thereafter.¹¹⁴⁴ Without a cap, the rebate in 1996-97 would have been \$131,181,793.¹¹⁴⁵ Therefore, as per the intent of LB 1050, the difference of \$28,891,976 would be shifted to equalization aid.

For a slim majority of the body, the compromise was sufficient reason to adopt the second division of the committee amendments by a 25-8 vote.¹¹⁴⁶ Fifteen members of the Legislature chose not to vote on the second division, and it was likely not for a lack of opinion on the matter.¹¹⁴⁷ Some felt the compromise did not shift enough to equalization aid and others may have felt the compromise did not go far enough to help rural schools. In any event, Senator Bohlke had successfully navigated half, the major half, of the committee amendments through the first stage of legislative consideration.

The third division of the committee amendments, relating to transportation, did not stir the kind of controversy surrounding the first two divisions. It did, however, serve to inform members of the body about how transportation costs were computed, the problems associated with the existing process, and how LB 1050 would attempt to correct those problems. The description and explanation provided by Senator Bohlke perhaps clarified for some lawmakers how transportation costs were factored into the formula. Nevertheless, for at least one legislator, the explanation of the existing process along with the proposed change in LB 1050 did little more than highlight the rural-urban split on the school finance legislation.

¹¹⁴³ *Floor Transcripts, LB 1050 (1996)*, 15 February 1996, 11222.

¹¹⁴⁴ NEB. LEGIS. JOURNAL, *Wickersham FA442 to FA438 (AM3077)*, 15 February 1996, 814.

¹¹⁴⁵ *Fiscal Impact Statement, LB 1050 (1996)*, 31 January 1996, 1.

¹¹⁴⁶ NEB. LEGIS. JOURNAL, 15 February 1996, 814.

¹¹⁴⁷ *Id.*

The discussion began with Senator Bohlke's explanation that transportation costs were included in the tiered cost per student, and the tier structure applied only to equalization-qualified districts. The problem, Bohlke said, was that the process of determining tiered cost per student involved averaging all districts within a given tier. As a result, a school district with high transportation costs could be penalized through the averaging process while a district with low transportation costs could benefit from the process. The answer, under LB 1050, was to remove transportation costs prior to calculation of tiered cost per student, then re-add the transportation costs after the calculation. In doing so, however, the issue became a matter of cost containment and accountability. As Senator Bohlke asked rhetorically, "[W]hat would be the incentive to have them keep those costs under control?"¹¹⁴⁸

The answer, as contained in LB 1050, was to place a restriction on transportation costs for purposes of calculating equalization aid. The "transportation allowance" would be the lesser of the district's regular pupil transportation expenditures or the regular pupil transportation mileage multiplied by 400% of the state reimbursement rate.¹¹⁴⁹ The multiplying factor, 400%, was set by design since it was known that the actual multiplying factor, at least at the time, would have been about 475%.¹¹⁵⁰ The idea was to deliberately reduce the multiplying factor below what was known to be the actual figure in order to enforce some measure of cost containment. "And so that's the reason for the 400 percent," Bohlke said.¹¹⁵¹

The rural-urban split, with regard to the transportation component of the committee amendments, was inflamed when Senator Chris Beutler of Lincoln rose to grudgingly support the concept, but noted that some equalization districts would still be harmed by the proposal. Said Beutler:

¹¹⁴⁸ *Floor Transcripts, LB 1050 (1996)*, 15 February 1996, 11224.

¹¹⁴⁹ *Committee Statement, LB 1050 (1996)*, 2.

¹¹⁵⁰ *Floor Transcripts, LB 1050 (1996)*, 15 February 1996, 11224.

¹¹⁵¹ *Id.*

[I]t gives no weight to the increase of costs, particularly labor costs that are associated with bus routes where there are stop and start, stop and start, stop and start and small distances, it takes more time. And as you all know, stop and start type of operations are much more difficult on vehicles than are long mileage kinds of situations where most of the miles are highway miles and don't wear down your brakes and your transmission and all those parts of the vehicle that wear down much faster when you're in a high density bus route situation.¹¹⁵²

Beutler's comments were no doubt accurate with regard to urban circumstances. But his reference to rural roads and rural driving was not lost on Senator Kristensen of Minden, then chair of the Transportation Committee. "Most of our buses wind up going down gravel roads and mud and snow and it's extremely hard on those buses," Kristensen retorted, "And I would rather have your nice smooth streets and roads as compared to the gravel roads that ours have to travel upon."¹¹⁵³

Kristensen also clarified through a floor discussion with Senator Bohlke that neither the existing formula nor the proposal under LB 1050 would apply to districts that do not receive equalization aid. Kristensen then asked Bohlke to explain the rationale for this provision, to which Bohlke replied:

That because they are a school district that looks like they have more resources than they have needs, that yes, they may have a higher cost. But if we take money out of the equalization we're taking it from schools that are needier to help pay for a program to schools who have higher resources than needs. And it goes against equalization.¹¹⁵⁴

Bohlke's response was likely not a surprise to Kristensen, who may have asked the question more to support his own argument than to gain new knowledge about the formula. Essentially, his argument was that some consolidated school districts would be considered property rich and may therefore not receive equalization aid even though the districts would likely have high transportation costs. This, to Kristensen, amounted to penalizing certain districts for attempting to be efficient. "And the bottom line to this

¹¹⁵² Id., 11225.

¹¹⁵³ Id., 11225-26.

¹¹⁵⁴ Id., 11227.

discussion, at least in transportation area, is that the 1059 formula is more geared towards addressing needs of school districts rather than rewarding efficiencies,” he said.¹¹⁵⁵

On this particular issue, however, Kristensen stood mostly alone. Senator Wickersham, who skillfully crafted the compromise on the income tax rebate, rose to support the transportation element of the committee amendments. Said Wickersham:

I’m going to support this portion of the committee amendments because it does address what I think is an inequity and a problem in the current formula, and that is the way costs are calculated in the tiers and that you do have, in effect, people I who obtain an advantage because of other people’s high transportation costs.¹¹⁵⁶

Senators Jan McKenzie and Jim Cudaback, who represent rural-area schools, also rose to support the transportation component. Therefore, with the exception of the comments by Beutler and Kristensen, this part of the legislation simply did not generate the level of controversy as the first two parts. The third division was adopted by a 28-0 vote.¹¹⁵⁷

At this point in time, the Legislature had arrived at the fourth and final division of the committee amendments, which included all other provisions of the legislative package. However, before debate could begin, Speaker Withem asked for a further division of the fourth component in order to separate the provisions relating to reorganization, which included the monetary incentives to reorganize along with two programs for school employees affected by reorganization (the Retirement Incentive Plan and the Staff Development Assistance Program).¹¹⁵⁸ With the further division, there may have been some trepidation that yet another battle over issues related to reorganization would ensue. But this was not the case. Speaker Withem said he initially had “serious reservations” about the financial incentives for reorganization because it would draw funds away from equalization aid.¹¹⁵⁹ In fact, approximately \$3 million would be used for

¹¹⁵⁵ Id.

¹¹⁵⁶ Id., 11228.

¹¹⁵⁷ NEB. LEGIS. JOURNAL, 15 February 1996, 821.

¹¹⁵⁸ Id., FA440 (AM3077), 13 February 1996, 785.

¹¹⁵⁹ *Floor Transcripts, LB 1050 (1996)*, 15 February 1996, 11241

the reorganization incentives that would otherwise be used for equalization aid.¹¹⁶⁰ However, with the move under LB 1050 to shift more funds toward equalization, Withem was amenable to the idea of reorganization incentives. “Now that we are in the process of correcting some of those ... problems with equalization, I don’t have nearly those concerns about it,” he said.¹¹⁶¹

The incentive payments under LB 1050 were meant to encourage districts to pursue reorganization. “I think it sends a very positive message to those school districts who are struggling with the decision if this is the direction they would like to move,” said Senator Bohlke.¹¹⁶² Applications for incentive payments would be approved or rejected by the State Committee for the Reorganization of School Districts, which would then issue a preliminary approval or disapproval for incentive payments. In order to take advantage of the incentive payments, districts involved in a reorganization would need to apply between May 31, 1996 and August 2, 2001. The payments would be based upon a per pupil formula contained in the bill and the incentive funds would be paid to the reorganized district for a period of three years. The payments were not considered accountable receipts for purposes of calculating state aid. The total amount for incentive funds could not exceed 1% of the total amount designated for equalization aid (approximately \$3 to \$3.5 million per year).¹¹⁶³

The first part of the fourth division would also establish the Retirement Incentive Plan and Staff Development Assistance Plan for certificated employees in districts involved in school district reorganizations. Under this structure, within 15 days after receiving notification of a reduction-in-force due to the reorganization of school districts, employees may opt to retire under the Retirement Incentive Plan or resign and receive Staff Development Assistance. The plan benefits would be as follows:

¹¹⁶⁰ *Fiscal Impact Statement, LB 1050 (1996)*, 4 March 1996, 2.

¹¹⁶¹ *Floor Transcripts, LB 1050 (1996)*, 15 February 1996, 11241.

¹¹⁶² *Id.*, 11247.

¹¹⁶³ *Fiscal Impact Statement, LB 1050 (1996)*, 5 March 1996, 2.

<i>Plan</i>	<i>Benefits</i>
Retirement Incentive Plan	Lump sum - \$700 for each year of service with the district.
Staff Development Assistance	One year - a) 50% of annual salary to enroll and attend a Nebraska college or university; b) 25% of annual salary if not enrolled or attending a Nebraska state college or university. ¹¹⁶⁴

The costs for these plans were to be allocated among the reorganized school districts based upon the proportion of valuation each district receives. The costs were to be considered general fund operating expenses for purposes of state aid and schools could exceed their allowable growth rates to cover the cost of the benefits.¹¹⁶⁵

After a short discussion, mostly explanation of the provisions, the first part of the fourth division, relating to incentive payments and benefits for employees involved in a reorganization, was adopted on a 28-0 vote.¹¹⁶⁶ The second part of the fourth division of the committee amendments would be considered on February 20th and would contain all other provisions of LB 1050. Included within this component were provisions to:

- Distribute insurance premium tax funds as equalization aid rather than based on school census.¹¹⁶⁷ This would increase equalization aid by an estimated \$12 to \$13 million in 1996-97 and would shift aid to equalization districts from non-equalization districts.¹¹⁶⁸ Beginning in school year 1996-97, insurance premium tax funds would no longer be considered an accountable receipt for purposes of computing formula resources.¹¹⁶⁹
- Use the adjusted valuation from the prior year rather than the current school year for purposes of the state aid calculation.¹¹⁷⁰ A change in the valuation basis would shift aid between school districts eligible for equalization aid.¹¹⁷¹

¹¹⁶⁴ Id.

¹¹⁶⁵ Id.

¹¹⁶⁶ NEB. LEGIS. JOURNAL, 15 February 1996, 822.

¹¹⁶⁷ FA444 (AM3077) to LB 1050 (1996), printed separate, § 1, pp. 1-2.

¹¹⁶⁸ Fiscal Impact Statement, LB 1050 (1996), 5 March 1996, 2.

¹¹⁶⁹ FA444 (AM3077) to LB 1050 (1996), printed separate, § 19, pp. 51-53.

¹¹⁷⁰ Id., § 17, pp. 48-51.

¹¹⁷¹ Fiscal Impact Statement, LB 1050 (1996), 5 March 1996, 2.

- Delay the requirement for schools to provide alternative education for expelled students from January 1, 1997 to July 1, 1997.¹¹⁷²
- Delay a deadline date by one year for federal legislation to be passed relating to a settlement on federal impact aid. The date change would allow certain school districts that received less state aid in 1990-91 due to the inclusion of impact aid as a resource to qualify for additional aid. The deadline date was first set under LB 542 (1995), but federal legislation had not passed in time to meet the initial deadline.¹¹⁷³

Perhaps the most significant aspect of these provisions, at least as far as long-range policy, was the inclusion of insurance premium tax funds within the amount of equalization aid. This provision furthered one of the main goals of LB 1050 to increase the equalization component of the state aid formula. The second part of the fourth division was adopted without debate or discussion on a 25-2 vote.¹¹⁷⁴

With the adoption of all divisions of the committee amendments, the debate then turned to advancement of the bill itself. A number of senators rose to speak on the bill or one component or another. But the comments of three senators, in particular, helped to bring the meaning of LB 1050 into focus for the entire Legislature. First, Senator Wickersham rose to announce his opposition to the bill on the whole even though he had won a significant battle with regard to the income tax rebate. Said Wickersham:

I also will rise, at this time, to explain my vote on what is now LB 1050. Even though I believe that there are things that are entirely desirable and appropriate, even almost necessary, in the committee amendments to 1050, that is now the bill, I will not vote for it. I will not vote for 1050 because of the changes we are making in the income tax rebate, specifically. And even though I was the one that offered the amendment that puts it in the form that it's in now, I will not support that change in the policy of this state.¹¹⁷⁵

True to his word, Senator Wickersham would consistently vote against advancement and ultimately passage of the bill. Perhaps Wickersham also knew that any hope of further

¹¹⁷² *FA444 (AM3077) to LB 1050 (1996)*, printed separate, § 3, pp. 5-7.

¹¹⁷³ *Id.*, § 20, pp. 53-55.

¹¹⁷⁴ *NEB. LEGIS. JOURNAL*, 20 February 1996, 831.

¹¹⁷⁵ *Floor Transcripts, LB 1050 (1996)*, 20 February 1996, 11256.

concessions from the proponents of the bill would require someone to appear as the dragging anchor to its passage. But there was no question of his genuine dislike for some components of LB 1050.

On the other side of the political spectrum was Speaker Withem, who supported the bill, but believed it failed to go far enough. Said Withem:

It is, quite frankly, not what I would have liked to have seen in a bill. What I would liked to have seen in a bill would have been LB 1145 out here on the floor. I didn't get what I wanted totally, but that's part of our process. This bill, I support it because of one very simple reason. It enhances the sum of money that is distributed on the basis of our equalization formula.¹¹⁷⁶

Speaker Withem referred to his own bill, LB 1145, which represented a pure equalization approach to the state aid formula. While there was no doubt about Withem's sincerity about his beliefs on school finance, there may have been another strategy behind his remarks. As a skillful politician, Withem knew that a potentially powerful tactic would be to continue making LB 1050 appear as a compromise between those who favor a stronger equalization-oriented formula and those who do not. By keeping a bill like LB 1145 within the mix of discussion and debate, Withem effectively made LB 1050 look like the lesser of two unfavorable bills in the minds of some legislators.

In the middle of the political spectrum, but leaning toward the Withem camp, was Senator Ardyce Bohlke, Chair of the Education Committee. In her closing remarks prior to a vote on advancement, Bohlke reminded her colleagues of the success stories of the existing formula since passage of LB 1059 in 1990. She cited examples in which the existing formula had stabilized property tax levies among school districts and brought about more tax equity. She also reminded senators of the concept behind equalization aid. “[W]e need to realize that equalized school districts are school districts with more children and less property to get that funding,” she said.¹¹⁷⁷ Bohlke added:

How we determine if a school is nonequalized or equalized is you add up the resources and you add up the needs, and then if you are needier, if you have more

¹¹⁷⁶ Id., 11269.

¹¹⁷⁷ Id., 11276.

needs than resources, you are an equalized school district. Forty-eight percent of those in our state are equalized and they go from the very western border, all the way to the very eastern, north to south.¹¹⁷⁸

Equalization aid, she said, was not an urban-rural issue, but rather an issue of equity. It was not, she asserted, just the large schools like Lincoln and Omaha that received equalization aid. She named rural schools such as Crawford, Ponca, North Bend, Nickerson, Burwell, Tecumseh, and others that also received equalization aid. “[W]e are talking about school districts across the state,” she said.¹¹⁷⁹

In the end, her plea for advancement of LB 1050 as a “reasonable response”¹¹⁸⁰ to the issue of increasing equalization aid proved fruitful as the bill advanced on February 20th by a 29-2 vote.¹¹⁸¹ Eleven senators were present, not voting, and seven senators were absent at the time.¹¹⁸² Both the number of proponents and opponents would increase by the time of advancement on Select File, as opinions would become more pronounced.

With the changes made to LB 1050, particularly the income tax rebate, most lawmakers were anxiously awaiting the printout from NDE concerning projected state aid by individual district. On March 4th Senator Bohlke took a moment of personal privilege on the floor to announce the completion of the new state aid model and a special briefing scheduled the next day to review and respond to questions. The briefing was held on the morning of March 5th and attended by various senators, legislative aides, department staff, and lobbyists. As anticipated, the model demonstrated some shifting of funds from district to district. There were losers and there were winners. Some districts lost more state aid due to the changes on General File while others gained somewhat.

Second-round debate began on March 7, 1996 and would continue through three separate legislative days (concluding on March 22nd). Members of the Legislature had a few days to digest the new state aid model and the debate would now be narrowed to

¹¹⁷⁸ Id., 11277.

¹¹⁷⁹ Id., 11276-77.

¹¹⁸⁰ Id., 11276.

¹¹⁸¹ NEB. LEGIS. JOURNAL, 20 February 1996, 831.

¹¹⁸² Id.

specific concerns and issues based upon the revised version of the bill. Select File debate would be less complicated to the extent that each amendment stood on its own merits rather than as a related topic to a specific division of a larger amendment, as occurred on General File. Some of the amendments addressed on Select File were rehashed issues from the first stage of debate. Other amendments were new and fresh ideas on how to improve the state aid formula.

The first major Select File amendment addressed the enrollment option program, specifically the sibling rule under the program. The amendment was offered by Senator David Bernard-Stevens and would eliminate the policy that enrollment of siblings of option students receive automatic acceptance by the option district.¹¹⁸³ Bernard-Stevens argued that the existing law did not take into consideration whether the option district had sufficient classroom space to accept the sibling of the option student.

Some, like Senator Dave Maurstad of Beatrice and Senator Carol Pirsch of Omaha, argued against the amendment on the basis that students should be given access to any public school they wish to attend under the option program. Parents should be afforded the right to enroll their students where they wish to enroll them. “I’m concerned about choice for the people,” said Pirsch.¹¹⁸⁴ But Senator Bohlke supported the amendment and argued that just because a district admits one family member it “does not necessarily mean that the school should be obligated to every other student that would be coming from that family.”¹¹⁸⁵ The Bernard-Stevens amendment was adopted after a fairly lengthy debate on a 25-11 vote.¹¹⁸⁶ This issue would resurface in future sessions.

The second major amendment addressed on Select File directly concerned the school finance formula. The amendment was filed by Senator Wickersham and provided that the bulk of the HELP funds reallocated under LB 700 (1996) would count toward the

¹¹⁸³ *Id.*, *Bernard-Stevens AM3530*, 5 March 1996, 1044.

¹¹⁸⁴ *Floor Transcripts, LB 1050 (1996)*, 7 March 1996, 12359.

¹¹⁸⁵ *Id.*, 12353.

¹¹⁸⁶ *NEB. LEGIS. JOURNAL*, 7 March 1996, 1096-97.

45% aggregate funding goal for the school finance formula.¹¹⁸⁷ LB 700, which was awaiting a vote on Final Reading, was set to transfer \$6.9 million on an annual basis from the old HELP Fund to the three state define benefit retirement plans and the Omaha Public Schools (OPS) Retirement Plan.¹¹⁸⁸ One of the define benefit plans included the School Employees Retirement Plan, which, coupled with the OPS Plan, would consume the bulk of the HELP fund transfer (\$6.6 million).¹¹⁸⁹ It would be this figure that Senator Wickersham proposed to count toward the 45% state support goal. The Wickersham amendment did not stir any debate or controversy and was adopted by a 27-0 vote.¹¹⁹⁰

The third major amendment adopted during Select File debate may not have stirred too much controversy during floor discussion, but the concept embodied within the amendment would come back during debate on subsequent school finance legislation. The issue concerned the unique circumstances faced by students within school districts located in sparsely populated areas of the state. Filed by Speaker Withem of Papillion and Senator Jim Jones of Eddyville, the amendment derived from an unlikely duo on any subject related to school finance given their geographic differences.

The Withem-Jones amendment imposed legislative findings that the existing school finance formula “does not currently recognize the unique costs associated with funding a quality education program for students living in the sparsely populated areas of the state.”¹¹⁹¹ The amendment required the School Finance Review Committee, which monitored the school finance formula, to:

- (1) conduct a study of the unique costs associated with providing a quality education program for students living in sparsely populated areas in the state; and

¹¹⁸⁷ *Id.*, *Wickersham FA521*, 1107.

¹¹⁸⁸ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 700 (1996)*, prepared by Kate Morris, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 25 March 1996, 1.

¹¹⁸⁹ *Id.*

¹¹⁹⁰ NEB. LEGIS. JOURNAL, 7 March 1996, 1107.

¹¹⁹¹ *Id.*, *Withem-Jones AM4038*, 22 March 1996, 1451-52.

- (2) prepare a recommendation to the Legislature indicating how a “sparsity factor” should be structured for incorporation into the school finance formula.¹¹⁹²

The amendment required the School Finance Review Committee to present its recommendation to the Education Committee by December 15, 1996.¹¹⁹³

Speaker Withem admitted the nature of the amendment was a “rather significant departure” on his part.¹¹⁹⁴ His interests on matters related to school finance were typically associated with larger school district concerns. However, as he explained to his colleagues, the issue of sparsity had real consequences to certain schools:

[T]he state aid formula does not recognize legitimate extra costs for people that live in ... parts of our state that are sparsely populated. It’s tougher to have a school district in an area where you have few people per square mile than it is in parts of the state where there are lots of people per square mile. So we need to recognize that.¹¹⁹⁵

Withem stopped short of advocating large shifts of state aid to these school districts, but he did advocate something be done about the issue. And his colleagues agreed by adopting the amendment on a 29-0 vote.¹¹⁹⁶ The Legislature then advanced LB 1050 to Final Reading by a 33-11 vote.¹¹⁹⁷

Final-round consideration of the legislation took place on April 3, 1996. Senator Chris Abboud of Omaha would try unsuccessfully to bring the legislation back to Select File in order to amend the cap on available income tax rebate funds.¹¹⁹⁸ Senator Abboud said the amendment was an attempt to address the concerns promoted by tax activist Ed Jaksha, who sought a constitutional amendment to limit government spending and growth in tax rates. Abboud advocated raising the amount of income tax funds available to

¹¹⁹² Id.

¹¹⁹³ Id.

¹¹⁹⁴ *Floor Transcripts, LB 1050 (1996)*, 22 March 1996, 13681.

¹¹⁹⁵ Id., 13682.

¹¹⁹⁶ NEB. LEGIS. JOURNAL, 22 March 1996, 1451.

¹¹⁹⁷ Id., 1452.

¹¹⁹⁸ Id., *Abboud AM4348*, 2 April 1996, 1808.

schools in an effort to reduce local property tax burdens. The Abboud motion to return failed by a 19-25 vote.¹¹⁹⁹

Senator Bohlke planned wisely in advance of Final Reading consideration. A day prior to the final vote she had filed a motion, which if passed, would suspend the rules and end all further debate and consideration of other amendments and motions.¹²⁰⁰ The motion was available to her on the day of Final Reading, if needed. Shortly after Senator Abboud's failed attempt to return the bill for specific amendment, Bohlke's motion was taken up for consideration. "We have certainly spent a great deal of time on this issue already and I think it's time that we move on and get on with Final Reading," Bohlke said.¹²⁰¹ The motion passed on a 32-12 vote.¹²⁰² The body then proceeded immediately to take a final vote. LB 1050 passed with the emergency clause attached by a 36-11 vote.¹²⁰³

Table 57. Record Vote: LB 1050 (1996), Final Reading

Voting in the affirmative, 36:

Avery	Cudaback	Janssen	McKenzie	Stuhr
Bernard-	Elmer	Klein	Pedersen	Vrtiska
Stevens	Engel	Landis	Pirsch	Warner
Beutler	Fisher	Lindsay	Preister	Wehrbein
Bohlke	Hartnett	Lynch	Robinson	Wesely
Brashear	Hilgert	Matzke	Schellpeper	Witek
Chambers	Hillman	Maurstad	Schimek	Withem
Crosby	Hudkins			

Voting in the negative, 11:

Abboud	Coordsen	Jones	Robak	Schrock
Bromm	Jensen	Kristensen	Schmitt	Wickersham
Brown				

Excused and not voting, 2:

Dierks	Will
--------	------

Source: NEB. LEGIS. JOURNAL, 3 April 1996, 1841.

¹¹⁹⁹ Id., 3 April 1996, 1839-40.

¹²⁰⁰ Id., 2 April 1996, 1808.

¹²⁰¹ *Floor Transcripts, LB 1050 (1996)*, 3 April 1996, 15055.

¹²⁰² NEB. LEGIS. JOURNAL, 3 April 1996, 1840.

¹²⁰³ Id., 1841.

Table 58. Summary of Modifications to TEEOSA
as per LB 1050 (1996)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
10	79-3801	Act, how cited	Adds five new sections to TEEOSA.
11	79-3802	Legislative findings and intent	Clarifies that the 45% funding goal does not apply to specific districts, but rather to the statewide aggregate general fund operating expenditures.
12	79-3803	Terms, defined	<p>“Adjusted general fund operating expenditures” would equal general fund operating expenditures minus the district’s transportation allowance. Beginning in 1996-97, “adjusted valuation” means the adjusted valuation for the property tax year ending during the school year immediately preceding the school year in which the aid based upon that value is to be paid.</p> <p>“Formula students” is redefined to mean the sum of fall membership from the school year immediately preceding the school year in which the aid is to be paid, multiplied by the average ratio of average daily membership to fall membership for the most recently available complete data year and the two school years prior to the most recently available complete data year. Done to more accurately reflect average daily membership based on a three year average.</p> <p>“Regular route transportation” means the transportation of students on regularly scheduled daily routes to and from the attendance center.</p> <p>“Special education” is defined to mean specially designed kindergarten through grade twelve instruction and includes special education transportation.</p> <p>Transportation costs (as defined by “transportation allowance”) are no longer included in the tier structure that averages costs of similar-sized districts. Each district’s needs include the lesser of either (i) the actual transportation costs, or (ii) 400% of the state mileage reimbursement rate multiplied by miles traveled (excluding activity miles).</p>
13	79-3804	Income tax receipts; use and allocation for public school system	Sunsets the income tax provision after the 1995-96 school fiscal year.
14	[new sec.] codified 79-1005	Income tax receipts; disbursement; calculation	<p>Creates a new income tax provision effective beginning in the 1996-97 school fiscal year.</p> <p>Caps the income tax rebate at the 1992-93 appropriation level and determine the allocation of rebate funds to individual districts based on a statewide allocation percentage applied to the income tax liability of each district. The income tax rebate will be capped at \$102,289,817 (less \$16.9 million for option aid) in 1996-97 and thereafter.</p>

Table 58—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
15	79-3805	Tiered cost per student; general fund operating expenditures; calculations.	Sunset this provision after the 1995-96 school fiscal year.
16	[new sec.] codified 79-1007	Adjusted tiered cost per student; adjusted general fund operating expenditures; calculations	Recreates essentially the same tiered cost per student section as in 79-3805.
17	79-3806	Equalization aid; amount	<p>Reduces the effect of the minimum effort provisions on districts with very low valuations:</p> <p>The old minimum effort provisions prohibited districts from receiving equalization aid in amounts that would reduce their levy to less than 60% of the local effort rate. Because the previous year's cost data was used, the interaction between minimum effort and extremely low valuations caused some districts to lose aid, making it difficult to elevate spending and educational opportunities to the level of other districts in their tiers.</p> <p>Under LB 1050, qualified districts would be allowed to retain additional aid according to the following calculation: (60% of the local effort rate) x (40% of the average adjusted valuation per formula student - the adjusted valuation per formula student) x (the district's formula students).</p> <p>To qualify, districts would need to have an adjusted valuation per student of less than 40% of the average statewide adjusted valuation per student.</p> <p>If the general fund tax request were not equal to at least 90% of the yield from the local effort rate or the districts general fund operating expenditures were over 15% above the target budget level, the district would not qualify the next year.</p>
18	[new sec.] codified 79-1009	Option school districts; additional state aid; net option funding; calculation	The former provision, called "option hold harmless," was eliminated under LB 1050. Instead, each district's net option students are considered. The net option funding amount is included as an accountable receipt in determining equalization aid and the funds are provided to the district as part of the total state aid. Because it is possible for a district to have a net positive number of option students at one grade range (more students opting-in than opting-out) and a net negative number of option students at another grade range (more students opting-out than opting-in), each net amount (either positive or negative) is multiplied by the applicable tiered cost and the results are calculated.

Table 58—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
19	[new sec.] codified 79-1010	Incentives to reorganized districts; qualifications; requirements; calculations; payment	Provides for reorganization incentives for school district reorganizations that move students into lower cost tiers: 1. To qualify, the reorganization must occur between May 31, 1996 and August 2, 2001. The payments must be approved by the State Reorganization Committee. For approval, reorganization studies must have been completed dealing with efficiency, population, curriculum, facility, and community issues. The study must indicate that the plan will most likely result in more efficiency or greater educational opportunities. 2. The payments will be for three years and will be based on the number of students in the consolidating districts and the number of tiers moved. The incentive schedule is in the bill and is based on the differences in average costs for the tiers in the 1994-95 school year. 3. Payment will be made from the Tax Equity and Educational Opportunities Fund prior to equalization and will not consume more than 1% of the appropriation. Payments will not be included as resources for equalization purposes.
20	79-3806.01	Reorganized districts; state aid; amount	Maintains the existing reorganization incentive payment system in addition to that created in section 19 of LB 1050.
21	79-3807	Unadjusted need; computation	Sunsets this provision after the 1995-96 school fiscal year.
22	[new sec.] codified 79-1014	Adjusted need; computation	For the calculation of state aid to be paid for school fiscal year 1996-97 and each school fiscal year thereafter, using each district's adjusted tiered cost per student, adjusted need for each district would be computed by first multiplying the number of formula students in each grade grouping by each district's corresponding adjusted tiered cost per student in each grade grouping. The sum of the products plus the district's transportation allowance would equal the district's total formula need.
23	79-3808	District formula resources; local effort rate; determination	Prior to LB 1050, the method was to use adjusted valuation from the year in which aid was to be paid. Under LB 1050, the source year for the adjusted valuation represents the year prior to the year in which aid is to be paid.
24	79-3809	Adjusted valuation; how established; objections; filing; appeal; notice; injunction prohibited	Prior to LB 1050, the adjusted valuation used to calculate aid was for the property tax year ending during the school year in which aid is to be paid. The property tax year was the same as the calendar year. The school year was from July 1 to June 30. LB 1050 moved the adjusted valuation back one year, so adjusted valuation used to calculate aid is for the property tax year ending during the school year immediately preceding the school year in which aid is to be paid.

Table 58—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
24	79-3809	Adjusted valuation; how established; objections; filing; appeal; notice; injunction prohibited <i>Continued</i>	Prior to LB 1050, the Property Tax Administrator was required to certify adjusted valuations to the NDE by June 1st. LB 1050 moved that date to July 1st, clarified that the certification was for the current year's valuations, and required the Property Tax Administrator to notify each district of its adjusted valuations on or before the new date.
25	79-3810	District formula resources; income tax funds allocation	Harmonizes language and provisions.
26	79-3811	District formula resources; other receipts included	Removes insurance premium tax fund dollars from individual districts' accountable receipts.
27	79-3811.01	Federal impact aid entitlements; how treated	Changes a date for the Impact Aid Settlement. In 1995, LB 542 was adopted in response to a potential settlement regarding federal impact aid. If certain federal legislation was enacted by October 1, 1995, NDE would have made payments to school districts which received less state aid for the 1990-91 school year due to the inclusion of federal impact aid entitlements in the calculation of district formula resources. Under LB 1050, the October 1, 1995 date for enactment of federal legislation was changed to November 1, 1996.
28	79-3811.02	Aid allocation adjustments; department; duties	Harmonizes language and provisions.
29	79-3812	School District Income Tax Fund; Tax Equity and Educational Opportunities Fund; created; investment	Harmonizes language and provisions.
30	79-3813	Distribution of income tax receipts and state aid; effect on budget	Harmonizes language and provisions.
31	79-3817	Applicable allowable growth percentages; determination	Beginning in 1996-97, NDE will determine a target budget level for each district by multiplying the average daily membership for the most recently available complete data year of each district in each grade range by the adjusted tiered cost per student for each grade grouping. The sum of such products and the district's transportation allowance would equal each district's target budget level.

Table 58—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
32	79-3819	Applicable allowable growth rates; district may exceed; situations enumerated	Upon approval by the State Board of Education, a district may exceed the applicable allowable budget growth rate by the amount the costs of the Retirement Incentive Plan and Staff Development Assistance exceed the district's applicable allowable growth rate.
40	79-3822	Department; provide data to Governor; Governor; duties	Modifies the requirement upon NDE to annually provide data to the Governor to enable him/her to prepare the necessary budget legislation. NDE must provide such data to establish a level of appropriation that will provide financial support from all state sources, including the former HELP funds (as transferred by LB 700) to districts equal to 45% of the estimated statewide aggregate general fund operating expenditures for elementary and secondary public education for the ensuing school year.

Sources: Legislative Bill 1050, in *Laws of Nebraska, Ninety-Fourth Legislature, Second Session, 1996*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 10-32, 40, pp. 7-26, 28-29 (1121-40, 1142-43); Committee on Education, *Committee Statement, LB 1050 (1996)*, Nebraska Legislature, 94th Leg., 2nd Sess. 1996, 1-7.

Other Legislation Amending TEEOSA in 1996

LB 700 (1996) - Retirement Legislation

Legislative Bill 700 (1996) implemented several benefit enhancements for the three define benefit public employee retirement systems, but also marked a turning point in the long-standing issue of state sponsored supplemental pay for public school teachers. Originally introduced in the 1995 Session, the bill was sponsored by Senator Bob Wickersham, who, at the time, served as chair of the Legislature's Nebraska Retirement Systems Committee. The public hearing was held on February 2, 1995 and the bill was advanced to General File, but floor debate would not commence until the 1996 Session pending completion of an actuarial study on the measure.

The focus of the 1995 version of the bill was a 50% purchasing power cost-of-living-adjustment (COLA) for the three define benefit public employees retirement systems.¹²⁰⁴ The state define benefit plans include the School Employees Retirement

¹²⁰⁴ Legislative Bill 700, *Provide for maintaining the purchasing power of retirement benefits*, sponsored by Sen. Bob Wickersham, Nebraska Legislature, 94th Leg., 1st Sess., 1995, title first read 19 January 1995, §§ 1-8, 10-12, pp. 2-16, 18-20.

System, the State Patrol Retirement System, and the Judges Retirement System. The idea was that the COLA would be activated automatically when the value of each member's retirement benefit dropped below 50% (as measured by the Consumer Price Index).¹²⁰⁵ The bill would also contain a one-time, ad hoc, COLA for existing retirees under the School Employees Retirement System.¹²⁰⁶

To offset the funding requirements for the benefit enhancements, LB 700 proposed to dissolve the Help Education Lead to Prosperity (HELP) Act¹²⁰⁷ and divert the appropriations to the three defined benefit plans.¹²⁰⁸ Part of the appropriation would also be awarded to the Omaha Public Schools (OPS) Retirement System to be used as deemed necessary by the OPS Retirement System Board of Trustees.

The proposal to eliminate the HELP Act came at the request, or at least acquiescence, of the Nebraska State Education Association (NSEA), which originally promoted the creation and maintenance of the Act since the passage of LB 89 (1989). The concept behind the HELP Act was to provide state sponsored supplemental pay to Nebraska's teachers with a total annual appropriation of \$20 million. This amount was gradually reduced due to fiscal concerns until, by 1995, the appropriation was no more than \$6.9 million.¹²⁰⁹ By this time, the average annual payout to an individual teacher was \$174 before taxes.¹²¹⁰ This was hardly a major increase in compensation. However, by using the HELP funds within the retirement plan, the NSEA hoped to reap a greater overall benefit for its members. "This allows us to get a good benefit from those moneys and maintains the state's commitment to teacher compensation in a somewhat different way," said NSEA President Craig Christiansen.¹²¹¹

¹²⁰⁵ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 700 (1995)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 31 January 1995, 1.

¹²⁰⁶ LB 700 (1995), § 9, pp. 16-18.

¹²⁰⁷ NEB. REV. STAT. §§ 79-3501 - 3510 (Cum. Supp. 1989).

¹²⁰⁸ The General Fund appropriation diversion would be contained in the Appropriation (A) bill to LB 700.

¹²⁰⁹ Paul Hammel, "Teacher-Salary-Law Funds May Be Diverted," *Omaha World-Herald*, 3 February 1995, 9.

¹²¹⁰ *Id.*

¹²¹¹ *Id.*

The idea to repeal the HELP Act in exchange for retirement benefit enhancements was supported by 85% of teachers according to an internal NSEA survey.¹²¹² Of course, under the provisions of LB 700, the HELP funds would benefit not just teachers but all school employees, as well as members of the Judges' and State Patrol Retirement Plans. It was a generous offer on the part of NSEA, especially if the Legislature was willing to continue the annual appropriations even when the original goal of the HELP Act had been repealed. This would be an item of contention not only during the debate on LB 700, but also in subsequent years, particularly in tough budget situations.

As LB 700 evolved through private negotiations, and based upon the completed actuarial study, the concept of a 50% purchasing power COLA would fall away in favor of a fixed annual COLA. In addition, several other benefit enhancements would be proposed for incorporation into the bill. By the time the bill was debated on General File, on January 9, 1996, Senator Wickersham would successfully propose a comprehensive amendment to replace the original version of the bill with a different set of provisions.¹²¹³

Under the Wickersham amendment, the bill would be comprised of five major components with most of the provisions pertaining to the School Employees Plan. First, the bill would provide a cost-of-living-adjustment (COLA) for plan members who retire after the effective date of the bill (for all three defined benefit retirement plans).¹²¹⁴ The COLA would begin for each retiree in the sixth year of his or her retirement at a rate of .3% per year. Second, the bill would increase the monthly formula annuity factor in the School Employees Retirement System from 1.73% of final average salary to 1.8%.¹²¹⁵ The factor increase would be applicable to those employees with at least a half-year service after July 1, 1995 and who were employed on the effective date of the act. Third, the bill would provide a one-time, ad hoc, 3% COLA for existing retirees under the

¹²¹² Id.

¹²¹³ NEB. LEGIS. JOURNAL, *Wickersham-Crosby AM2734*, printed separate, 5 January 1996, 264.

¹²¹⁴ *Wickersham-Crosby AM2734*, §§ 3, 8, 14, pp. 6-7, 13-14, 24-25.

¹²¹⁵ Id., § 9, pp. 14-15.

School Employees Retirement System once sufficient funds were accumulated under the system to effectuate the ad hoc COLA.¹²¹⁶

The fourth part of the bill established a “floor” employee contribution rate under the School Employees Retirement System at 7.35% of compensation for FY1996-97 with the idea that the rate could be increased but not decreased in future years.¹²¹⁷ In this way, the School Employees Plan would steadily accumulate an actuarial reserve that would provide stability to the plan and would also be available to finance future benefit enhancement legislation. The employer contribution rate would remain affixed in statute at 101% of the employee contribution rate (i.e., 7.35% x 101% = 7.42%).¹²¹⁸ At the time LB 700 was introduced, the employee contribution rate was set at 7.15% (7.22% employer rate).¹²¹⁹ This particular provision was one of the more controversial aspects of the Wickersham amendment, at least among some school officials, since it would mean both less take-home pay for school employees (as a result of an increased employee contribution rate) and a higher cost to school districts due to the increased employer contribution rate. The fiscal nature of the controversy was sufficient to cause the issue to be revisited prior to final passage of the bill.

The fifth major component of the bill was the aforementioned repeal of the HELP Act coupled with the redirection of the HELP funds to finance the COLA for future retirees.¹²²⁰ LB 700A (1996), the appropriation bill to LB 700, divided the \$6.9 million appropriation among the three defined benefit plans and the OPS plan according to total membership and retirement ratios. The School Employees Plan would receive the bulk of the appropriation at \$5,639,235 per year (assuming the appropriation was renewed from year to year). The Judges’ Plan would receive \$72,244 per year and the State Patrol Plan would receive \$210,220 per year. The OPS Plan would receive \$973,301 from the

¹²¹⁶ Id., § 11, pp. 20-23.

¹²¹⁷ Id., § 10, pp. 18-19.

¹²¹⁸ *Fiscal Impact Statement, LB 700 (1996)*, 25 March 1996, 1-2.

¹²¹⁹ Id.

¹²²⁰ LB 700 (1995), § 18, p. 25.

former HELP funds, but these funds could be used for any purpose deemed appropriate by its Board of Trustees.¹²²¹

The Wickersham amendment was adopted by a 28-2 vote after a relatively short General File debate.¹²²² The only outspoken critic of the proposal was Senator Kate Witek of Omaha, a member of the Retirement Committee, who represented the sole vote against advancement of the bill in committee.¹²²³ Witek argued that it was inappropriate to eliminate the HELP fund and then simply “roll it over” into a different use under the retirement system.¹²²⁴ She also expressed concern for making a political and financial commitment to teachers in the amount of \$6.9 million per year for purposes of retirement benefits. If the HELP Act was repealed, Witek argued, then the corresponding funding should also cease to exist. However, her concerns were not shared by many of her colleagues, and the bill was advanced to second-round debate on a 27-2 vote.¹²²⁵

A final component to the bill, not actually a part of the Wickersham amendment, had nothing to do with retirement benefits, but certainly had an impact on the school finance formula. The genesis of this provision derived from testimony offered by the Nebraska Association of School Boards (NASB) during the public hearing in 1995. NASB lobbyist, Martha Fricke, noted that the original bill repealed the HELP Act but continued to hold school districts accountable for funds received under the HELP Act. This, she asserted, seemed somewhat out of place since the intent and purpose of the HELP Act would be eliminated, but the funding for the act would continue to exist. How would or should this impact the state aid formula? The answer was to remove HELP receipts from the list of district resources. Since the Wickersham amendment failed to

¹²²¹ *Fiscal Impact Statement, LB 700 (1996)*, 25 March 1996, 1.

¹²²² NEB. LEGIS. JOURNAL, 9 January 1996, 358.

¹²²³ Committee on Retirement, *Committee Statement, LB 700 (1995)*, Nebraska Legislature, 94th Leg., 1st Sess., 1995, 1.

¹²²⁴ Legislative Records Historian, *Floor Transcripts, LB 700 (1996)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 9 January 1996, 9704.

¹²²⁵ NEB. LEGIS. JOURNAL, 9 January 1996, 358.

include this important provision, it was incorporated into the Enrollment and Review (E&R) amendments, which were adopted prior to advancement on Select File.¹²²⁶

LB 700 would advance on Select File without amendment or debate by a voice vote on January 25th, but would then be shelved until later in the 1996 Session.¹²²⁷ This is not a particularly unusual maneuver especially for a bill that would carry a significant fiscal impact such as LB 700. The Legislature typically holds off final votes on bills that carry a General Fund appropriation until the body is sure how the budget picture will look toward the end of a session.

On the 49th day of the 60-day session, March 25, 1996, LB 700 appeared on the Final Reading agenda. However, rather than seeking a final vote, Senator Wickersham sought instead a motion to return the bill to Select File for a specific amendment. The amendment represented perhaps the last major item of controversy surrounding LB 700: the proposed “floor” employee contribution rate.

As noted earlier, the concept behind the floor contribution rate was to help build an adequate reserve for purposes of plan stability and use for future benefit enhancements. The only rate that appears in statute is the employee contribution rate. The employer rate is calculated, as per statute, at 101% of the employee rate. Under LB 700, as per the Wickersham amendment adopted on General File, the employee rate was set at 7.35%, thereby creating an employer rate of 7.42%. However, after further review and consultation with interested parties, Senator Wickersham elected to reduce the employee rate to 7.25%.¹²²⁸ As explained by Wickersham:

[W]ith the consent of all the parties concerned...we are recommending to you that the floor rate of contributions be set in LB 700 at 7.25 percent. And I would again call your attention to the fact that this is a floor rate, that I do not know if the rate in the next fiscal year will be higher, but this is a floor rate that we’re placing in the System, with the expectation that over time we will be able to smooth out contributions to the system. And there also does, quite frankly, exist

¹²²⁶ Id., *ER AM7169*, 18 January 1996, 515-20.

¹²²⁷ Id., 25 January 1996, 612.

¹²²⁸ Id., *Wickersham AM3934*, 20 March 1996, 1356.

the potential for building some excess in reserves in the system over time, even at the 7.25 percentage contribution rate for employees.¹²²⁹

Wickersham said the lower rate was supported by an actuarial study, in which the state actuary suggested at least a 7.23% employee rate to provide adequate funding for the benefit enhancements contained in LB 700.¹²³⁰ Reducing the proposed rate from 7.35% to 7.25%, Wickersham said, would save both school employees and employers approximately \$1.5 million per year.¹²³¹ After a short discussion, the Wickersham motion to return was passed and the amendment was adopted, both by unanimous votes.¹²³²

On April 3rd, LB 700 once again appeared on the Final Reading agenda. The bill would be passed with the emergency clause attached by a decisive 42-1 vote with Senator Witek casting the lone dissenting vote.¹²³³ The “A” bill to LB 700 passed on a 41-1 vote.¹²³⁴ Governor Nelson would sign the bill into law on April 9, 1996.¹²³⁵

Table 59. Summary of Modifications to TEEOSA
as per LB 700 (1996)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
12	79-3811	District formula resources; other receipts included	With the repeal of the HELP Act, LB 700 removed HELP fund receipts from the state aid formula under formula resources.

Source: Legislative Bill 700, in *Laws of Nebraska, Ninety-Fourth Legislature, Second Session, 1996*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 12, pp. 8-9 (265-66).

LB 900 - Recodification of Chapter 79

Legislative Bill 900 (1996) represented, at the time, a long over due reorganization, or recodification, of the laws pertaining to public education in Nebraska. The bulk

¹²²⁹ *Floor Transcripts, LB 700 (1996)*, 25 March 1996, 13969.

¹²³⁰ *Id.*

¹²³¹ *Id.*, 13968.

¹²³² *NEB. LEGIS. JOURNAL*, 25 March 1996, 1509.

¹²³³ *Id.*, 3 April 1996, 1831-32.

¹²³⁴ *Id.*, 1832-33.

¹²³⁵ *Id.*, 9 April 1996, 1920.

of all laws relevant to public schools are found in Chapter 79 of the Nebraska Revised Statutes, the code that houses all laws passed and approved via the legislative process. Over the years, from legislative session to legislative session, Chapter 79 became increasingly fragmented as successive revisions and new laws were codified within an outdated framework of articles and sections.

Schools administrators and school attorneys, in particular, were well aware of the disarray that had befallen the education statutes. In fact, the Nebraska Council of School Administrators (NCSA) was one of the first organizations to approach Senator Ardyce Bohlke, then chair of the Education Committee, to seek a recodification effort. Bohlke, also aware of the situation, sought approval from the Legislature's Executive Board in 1995 to contract with an individual or firm for this very purpose. With approval granted, Larry Scherer, a former legal counsel to the Education Committee, was awarded the contract to formulate a proposal for reorganization of the education statutes without making substantive changes to the law itself.

The contract commenced February 1, 1995, and, with the assistance of Mary Fischer, from the Office of Revisor of Statutes, and Tammy Barry, legal counsel for the Education Committee, the work was completed in time for the 1996 Session. The body of work was incorporated into LB 900, which was introduced by Senator Bohlke and prioritized by the Education Committee.¹²³⁶ And, due to the immense effort involved in publishing such a work, the bill was placed on the unofficial legislative fast track with the help of Speaker Ron Withem, himself a former chair of the Education Committee.

According to Scherer, the "theme of the restructuring" effort was to identify various sections of education law that had a "common subject" and generally place them in a logical sequential order.¹²³⁷ Some sections were divided and some were joined together. The order of clauses and sentences within various sections were rearranged for purposes of clarity. In some cases, new language was added to certain sections to clarify

¹²³⁶ Legislative Bill 900, *Transfer, combine and eliminate sections relating to education*, sponsored by Sen. Ardyce Bohlke, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, title first read 3 January 1996.

¹²³⁷ Committee on Education, *Hearing Transcripts, LB 900 (1996)*, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 16 January 1996, 3.

meaning and intent. But there was not, Scherer cautioned, a heavy emphasis on combining or unifying individual sections of law. This, he said, would have the effect, or potential effect, of creating substantive changes to the meaning of the existing law, and this was not within the scope of the recodification effort. Mary Fischer of the Revisor's Office performed much of the bill drafting for LB 900 and said the effort included an update of "archaic grammar, punctuation, and usage to bring it up to the type of drafting that the Bill Drafter's Office uses now."¹²³⁸ The major interest of the work, she said, was to avoid making substantive changes in the meaning of the law.

The final result was the consolidation of forty articles into just seventeen. The Tax Equity and Educational Opportunities Support Act (TEEOSA) was moved from Article 38 to Article 10, where it resides today. In fact, all finance and school budget-oriented provisions were moved to Article 10 and then further divided into sub-articles for easy reference. The sub-articles included: (a) TEEOSA, (b) school funds, (c) school taxation, (d) school budgets and accounting, and (e) school facilities.

LB 900 was advanced from committee by a unanimous vote on the same day as the public hearing on January 16, 1996.¹²³⁹ Speaker Withem then placed the bill on a special order list of bills for General File debate two days later to expedite the process. The act of special ordering LB 900 did not sit well with Senator David Bernard-Stevens, a member of the Education Committee, who felt the bill was not important enough to receive such attention. "[T]his bill is not a crisis bill, yet it has been special ordered today," Bernard-Stevens said, "When you special order something, you assume that it is going to have a major importance to the state that we have to do it."¹²⁴⁰

The attack was perhaps less directed at LB 900, which he supported, and more directed at Speaker Withem's decision to hold this bill above others in setting the special order agenda. Withem responded by noting the committee priority designation given to

¹²³⁸ *Id.*, 4.

¹²³⁹ Committee on Education, *Executive Session Report, LB 900 (1996)*, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 16 January 1996, 2.

¹²⁴⁰ Legislative Records Historian, *Floor Transcripts, LB 900 (1996)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 18 January 1996, 10000.

LB 900 and also the fact that the bill was very similar in nature to revisor bills, which are bills offered by the Revisor of Statutes each year to make technical corrections in existing law. But it was Senator Bohlke who said it best during the short discussion by noting that it took Bernard-Stevens longer to complain about the agenda than the bill would have taken to advance. “[C]ertainly in the five minutes that Senator Bernard-Stevens took explaining his objection, we probably could have gotten this done and passed,” she said.¹²⁴¹

Senator Bernard-Stevens alluded in his complaint that Withem had perhaps over-exercised his power to set the daily agenda. “The Speaker has the power now to take any bill he wants and special order it, whether it’s important or not,” he said.¹²⁴² In truth, however, Withem, like Bohlke, was attempting to expedite the bill for issues of practicality and respect for those whose work would just begin by the passage of LB 900. In particular, the Office of the Revisor of Statutes would need time to assimilate what amounted to an entirely new chapter of law into the Nebraska Revised Statutes.

After the initial excitement on General File, LB 900 breezed through the legislative process and passed on February 27, 1996 by a 39-0 vote.¹²⁴³ The bill was signed into law two days later.¹²⁴⁴

Table 60. Tax Equity and Educational Opportunities Support Act as Re-codified by LB 900 (1996); with New Sections Added by LB 1050 (1996)

<i>Bill/Section</i>	<i>Old Statute Citation</i>	<i>New Statute Citation</i>	<i>New Catchline</i>
LB 900, §652	79-3801	79-1001	Act, how cited
LB 900, §653	79-3802	79-1002	Legislative findings and intent
LB 900, §654	79-3803	79-1003	Terms, defined
LB 900, §655	79-3804	79-1004	Income tax receipts; use and allocation for public school system
LB 1050, §14		79-1005	Income tax receipts; disbursement; calculation

¹²⁴¹ Id., 10002.

¹²⁴² Id., 10001.

¹²⁴³ NEB. LEGIS. JOURNAL, 27 February 1996, 936.

¹²⁴⁴ Id., 4 March 1996, 999.

Table 60—Continued

<i>Bill/Section</i>	<i>Old Statute Citation</i>	<i>New Statute Citation</i>	<i>New Catchline</i>
LB 900, §656	79-3805	79-1006	Tiered cost per student; general fund operating expenditures; calculations
LB 1050, §16		79-1007	Adjusted tiered cost per student; adjusted general fund operating expenditures; calculations
LB 900, §657	79-3806	79-1008	Equalization aid; amount
LB 1050, §18		79-1009	Option school districts; additional state aid; net option funding; calculation
LB 1050, §19		79-1010	Incentives to reorganized districts; qualifications; requirements; calculation; payment
LB 900, §658	79-3806.01	79-1011	Reorganized districts; state aid; amount
LB 900, §659	79-3806.02	79-1012	Reorganized districts; applicability of section
LB 900, §660	79-3807	79-1013	Unadjusted need; computation
LB 1050, §22		79-1014	Adjusted need; calculation
LB 900, §661	79-3808	79-1015	District formula resources; local effort rate; determination
LB 900, §662	79-3809	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; injunction prohibited
LB 900, §663	79-3810	79-1017	District formula resources; income tax funds allocation
LB 900, §664	79-3811	79-1018	District formula resources; other receipts included
LB 900, §665	79-3811.01	79-1019	Federal impact aid entitlements; how treated
LB 900, §666	79-3811.02	79-1020	Aid allocation adjustments; department; duties
LB 900, §667	79-3812	79-1021	School District Income Tax Fund; Tax Equity and Educational Opportunities Fund; created; investment
LB 900, §668	79-3813	79-1022	Distribution of income tax receipts and state aid; effect on budget
LB 900, §669	79-3814	79-1023	General fund budget of expenditures; limitations; Legislature; duties
LB 900, §670	79-3815	79-1024	Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect
LB 900, §671	79-3816	79-1025	Basic allowable growth rates; allowable growth range
LB 900, §672	79-3817	79-1026	Applicable allowable growth percentages; determination
LB 900, §673	79-3818	79-1027	Budget; restrictions
LB 900, §674	79-3819	79-1028	Applicable allowable growth rates; district may exceed; situations enumerated
LB 900, §675	79-3820	79-1029	Applicable allowable growth percentage; district may exceed; vote required
LB 900, §676	79-3821	79-1030	Unused budget authority; carried forward
LB 900, §677	79-3822	79-1031	Department; provide data to Governor; Governor; duties
LB 900, §678	79-3823	79-1032	School Finance Review Committee; created; members; duties
LB 900, §679	79-3824	79-1033	State aid; payments; reports; use; requirements; failure to submit reports; effect; early payments

Sources: Legislative Bill 900, in *Laws of Nebraska, Ninety-Fourth Legislature, Second Session, 1996*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 652-79; Legislative Bill 1050, in *Laws of Nebraska, Ninety-Fourth Legislature, Second Session, 1996*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 14, 16, 18-19, 22.

LB 934 (1996) - Agricultural Land Valuation Advisory Board

Legislative Bill 934 (1996) represented exactly what its chief sponsor claimed it was, “a very simple bill.”¹²⁴⁵ The bill was introduced by Senator Bob Wickersham of Harrison and was referred to the Revenue Committee for disposition, a committee on which Wickersham served as a member. The purpose of the bill was to eliminate the Agricultural Land Valuation Advisory Board, originally created by LB 271 in 1985.¹²⁴⁶

The eight-member panel was appointed by the Governor and had a variety of functions, including to: (1) review the agricultural land valuation manual developed by the Department of Revenue; (2) review the data sources used by the Department of Revenue; (3) review the values for agricultural land and horticultural land developed by the Department of Revenue for implementation in the agricultural land valuation manual; (4) make written recommendations to the Tax Commissioner as to improvements or refinements in the data used in developing and updating the agricultural land valuation manual; and (5) submit various reports to the Tax Commissioner and make recommendations to the Legislature concerning improvements in the method of valuing agricultural land and horticultural land.¹²⁴⁷

The problem, according to Phil Richmond of the Department of Revenue, was that “the approach to valuing ag land in the state has changed over the years since the creation of this board.”¹²⁴⁸ Richmond said the past practice of using the income capacity approach to valuing agricultural land had faded away since the creation of the board, which left the board with very little responsibility. Mona Moje, then a member of the board, agreed with Richmond and also the objective to eliminate the board. Moje said that legislation passed in 1994 (LB 902) essentially made the board obsolete. The 1994 legislation created eight regional panels, called Agricultural and Horticultural Land Valuation Boards, for the purpose of overseeing county assessments and reporting to the

¹²⁴⁵ Committee on Revenue, *Hearing Transcripts, LB 934 (1996)*, Nebraska Legislature, 94th Leg., 2nd Sess., 1996, 17 January 1996, 2.

¹²⁴⁶ NEB. REV. STAT. §§ 77-1366 - 1367 (Cum. Supp. 1985).

¹²⁴⁷ *Id.*

¹²⁴⁸ *Hearing Transcripts, LB 934 (1996)*, 17 January 1996, 3.

State Board of Equalization. Moje testified that these regional boards “will be more effective” than the state board on which she served.¹²⁴⁹ “As it is right now, the Ag Land Advisory Board is not serving any purpose at this time,” Moje said, “The Ag Land Board met in February of 1995 and we were unable to have a quorum to take any action at that time.”¹²⁵⁰ Moje said the board had met on December 20, 1995 to approve a resolution for dissolution of the board and to seek legislation to accomplish that mission.¹²⁵¹

The board was mentioned, through statutory reference, in one section of the Tax Equity and Educational Opportunities Support Act. The section at issue related to the process of using adjusted valuation for purposes of calculating state aid, including agricultural land at 80% of market value. If the board was to be eliminated as per LB 934, the language in the affected state aid law had to reflect the change in statutory citation. But such a change would not have any substantive impact on the process outlined in the state aid formula.

LB 934 was advanced by unanimous votes throughout the legislative process and passed by a 42-0 vote on March 11, 1996.¹²⁵²

Table 61. Summary of Modifications to TEEOSA
as per LB 934 (1996)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
5	79-3809	Adjusted valuation; adjustment factors established	With the elimination of the Agricultural Land Valuation Advisory Board as per LB 934, this section was amended to harmonize appropriate statutory references in relation to establishing adjusted valuation for agricultural land.

Source: Legislative Bill 934, in *Laws of Nebraska, Ninety-Fourth Legislature, Second Session, 1996*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 5, pp. 2-3 (633-34).

¹²⁴⁹ *Id.*, 4.

¹²⁵⁰ *Id.*

¹²⁵¹ *Id.*, 3.

¹²⁵² NEB. LEGIS. JOURNAL, 11 March 1996, 1137-38.

D. 1996 General Election: Initiatives 411-412

By the end of the 1995 Session, the Nebraska Legislature had at best flirted with the idea of creating levy limitations for schools and other local governments. LR 93CA, a constitutional amendment offered by Senator Jerome Warner, was introduced late in the 1995 Session but was never debated on the floor. While LR 93CA did not pass, it did serve as the genesis of LB 1114, which passed in 1996 and would implement statutory levy limits on all local governments. Under LB 1114, school districts would exist under a \$1.10 levy lid beginning in 1998 and the lid would then tighten to \$1.00 in 2001.¹²⁵³

In 1995 there was a sort of political tug-of-war going on between the Legislature and various outside groups and organizations on the issue of property tax relief. Tax activists Stan Dobrovlny of Atkinson and Ed Jaksha of Omaha were hard at work on petition drives to stem government spending and tax collection. Neither would meet minimum signature requirements in time for the 1996 General Election. However, the citizen-based efforts did lead Senator Warner to introduce LR 93CA (1995), perhaps in an effort to demonstrate that the Legislature was intent to do something. And the Legislature would do something, but not until 1996, and by then another movement had already organized and prepared to take on the age-old issue of property tax relief.

The movement called itself the Citizens for Responsible Tax Policy, a coalition of various organizations, including the Nebraska State Education Association (NSEA) and the Nebraska Farm Bureau Federation. In fact, the coalition at first included other member organizations, including the Nebraska Council of School Administrators and the Nebraska Association of School Boards, among others. These groups would eventually withdraw from the coalition leaving essentially the NSEA and Farm Bureau as the main groups within the movement.

Nineteenth Century author Charles Dudley Warner is credited as saying, “Politics makes strange bedfellows.”¹²⁵⁴ Some people in 1996 believed the adage was appropriate

¹²⁵³ LB 1114, Session Laws, 1996, § 1, p. 1 (1245).

¹²⁵⁴ Thinkexist contributors, “Politics makes strange bedfellows,” *Thinkexist.com*, http://en.thinkexist.com/quotation/politics_makes_strange/166727.html, accessed 8 February 2005.

with regard to a petition movement jointly lead by the teachers' labor organization and one of the state's major agriculture-oriented organizations. "For years, teachers have been pitted against farmers," said Karen Kilgarin, NSEA spokeswoman, "In this case, farmers and teachers have common concerns and common interests."¹²⁵⁵ In truth, both organizations desired lasting property tax relief in Nebraska and both believed strongly in public education. But neither organization was apparently satisfied with the outcome of the 1996 Session and the passage of LB 1114. The NSEA, in particular, was concerned that replacement revenue from the state would not be forthcoming, or sufficiently forthcoming, to compensate for the local revenue lost due to the statutory levy lids imposed under LB 1114. "[W]e are not willing to dismantle public schools in the process of reforming property taxes," said Jim Griess, NSEA Executive Director.¹²⁵⁶

The NSEA certainly had an ally in the Farm Bureau, but the bulk of the funding to promote the petition drive would derive from the teachers' organization itself. The Farm Bureau's involvement presented a more broad-based appeal to the petition effort and suggested that it was not merely an education-oriented effort. So what exactly did NSEA and the Farm Bureau propose?

The initiative petition proposed a fairly lengthy amendment to the Nebraska Constitution that would:

- Make "quality education" a fundamental constitutional right of each person;
- Make "thorough and efficient education" of all persons between the ages of 5 and 21 in the common schools the "paramount duty" of the state;
- Authorize the Legislature to provide for the education of other persons in state institutions;
- Direct the Legislature to establish a school finance system that provides for "thorough education" in "efficiently operated public schools";
- Require that for 1998-99 each school district would receive at least as much per pupil finding as in 1997-98 [hold harmless clause];

¹²⁵⁵ Leslie Boellstorff, "Tax, Education Ballot Issues A Pair, Ad Says," *Omaha World-Herald*, 18 September 1996, 20.

¹²⁵⁶ Jim Griess, "Taking the bull by the horns; The festering property tax dilemma will come to a head in '96; NSEA may play pivotal role in outcome," *NSEA Voice*, 1995-96 Member Services edition.

- Create constitutional property tax levy limits for various governmental subdivisions, including school districts, which could be exceeded by a majority vote of the voters;
- Authorize the Legislature to prescribe the means to determine the fair market value of real property for property tax purposes; and
- Provide that the value of real property for property tax purposes may not exceed 80% of its fair market value for agricultural and horticultural land, or 100% of its fair market value for other real property.¹²⁵⁷

The amendment proposed a combined property tax levy cap in cities and villages at \$1.80 per \$100 of assessed valuation beginning in 1998. For rural areas, the levy cap would be \$1.30 per \$100 of assessed valuation. The maximum levy for school districts would be constitutionally set a 90¢ per \$100. The amendment authorized the Legislature to establish the levy limit for all other political subdivisions so long as the total authorized levy did not exceed the constitutional total levy cap.¹²⁵⁸

The concept of constitutionally based levy limits certainly was nothing new. County governments in Nebraska have existed under a constitutional levy limit since the adoption of an amendment to the State Constitution in 1920 through the 1919-20 Constitutional Convention.¹²⁵⁹ As amended in 1992, the provision states:

County authorities shall never assess taxes the aggregate of which shall exceed fifty cents per one hundred dollars of taxable value as determined by the assessment rolls, except for the payment of indebtedness existing at the adoption hereof, unless authorized by a vote of the people of the county.¹²⁶⁰

Senator Warner's LR 93CA (1995) also proposed to amend the Nebraska Constitution with a maximum total levy of \$2.50 per \$100. School Districts would have existed under a \$1.00 levy cap under LR 93CA.¹²⁶¹

¹²⁵⁷ Ballot language from the 1996 General Election, 5 November 1996.

¹²⁵⁸ Id.

¹²⁵⁹ NEB. BLUE BOOK, 2004-05 ed., 251-52.

¹²⁶⁰ NEB. CONST., art. VIII, § 5.

¹²⁶¹ LR 93CA (1995), 1.

However, part of the reason the Legislature abandoned the constitutional amendment approach to levy limits was that, once adopted by the people, it would be difficult to adjust the prescribed limits as necessary due to changing economic times. This same argument would serve as rationale for some representative organizations to withdraw from the Citizens for Responsible Tax Policy coalition, and also used by opponents of the amendment in order to dissuade people from voting for it. Proponents of the amendment were attracted to the notion that the proposed constitutional amendment would result in dramatic property tax relief. Craig Christiansen, NSEA President and co-chair of the coalition, believed the proposed amendment would reduce by \$400 million the existing annual collection of \$1.4 billion in property taxes statewide.¹²⁶² Opponents agreed that it would cause property tax relief. It would also cause dramatic funding shifts and increases in state taxes.

Levy limits aside, the other provisions of the amendment appeared at first blush to be highly pro-education. And who among advocates of public education could argue with that? The amendment proposed to make “quality education” a fundamental constitutional right of each person. A fundamental right equates to the rights a person has according to the Constitution, and often refers to natural human rights, such as the right to privacy and fair treatment under the criminal justice system. The amendment would make “thorough and efficient education” of all persons between the ages of 5 and 21 in the common schools the “paramount duty” of the state. A similar clause can be found in the Constitution of the State of Washington:

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.¹²⁶³

The NSEA/Farm Bureau amendment would also direct the Legislature to establish a school finance system that provides for “thorough education” in “efficiently operated public schools.”

¹²⁶² Bill Hord, “Groups Join To Try to Cut Property Tax Education, Ag Interests Plan Petition,” *Omaha World-Herald*, 14 September 1995, 13.sf.

¹²⁶³ WASH. CONST. art. IX, § 1.

But what did all this actually mean? What does “quality education” mean and how does one know if it has been achieved? What does “thorough and efficient education” mean? What are “efficiently operated public schools”? The proponents of the amendment may have had some idea about the meaning of these provisions, but many of its opponents were less sure. Many school administrators and school board members, for example, were hesitant about the contents of the amendment because, in part, they were not positive about the affect of the provisions on public education. It sounded good, but what were the actual consequences of the amendment and who would make those determinations?

Some feared the answer to be lawyers, judges, and the judicial system in general. “When you put it in the Constitution, the Legislature is not going to define what that is,” said Phil Young, a leader of the opposition movement, “The court is going to define it.”¹²⁶⁴ For others, the fear was less oriented to judicial control as legislative control if the amendment became part of the Constitution. In October 1996, the Nebraska Council of School Administrators invited William Thro, Colorado Assistant Attorney General, to present a constitutional law seminar for school officials. Representatives of the NSEA were also in attendance. Thro was considered an expert on school finance lawsuits for the National Association of Attorneys General. Thro, himself, did not have an opinion about whether the amendment should or should not be adopted. He offered both pro and con arguments to the amendment.

Thro believed that if voters adopted the amendment, then Nebraska would possess the nation’s strongest constitutional public education clause. At the time, the Nebraska Constitution merely provided that, “The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years.”¹²⁶⁵ Thro said about 15 states, including Nebraska, had similar clauses with relatively general provisions for public education. Thro anticipated significant

¹²⁶⁴ Stephen Buttry, “Expert: Education Clause Strongest in U.S. if OK’d,” *Omaha World-Herald*, 13 October 1996, 2A.

¹²⁶⁵ NEB. CONST. art. VII, § 1.

consequences under the proposed amendment, some of which were good and others perhaps not so good. “You’re making a fundamental change that may have some severe ramifications down the line,” Thro said, “You’re going to have the state providing more and more money and, as a consequence, exercising more and more control.”¹²⁶⁶

Of course, by October 1996 the NSEA/Farm Bureau petition campaign had successfully advanced to a higher level. On September 12, 1996, Secretary of State Scott Moore officially announced that the petition movement had garnered about 103,000 valid signatures, only about 4,000 more than the minimum number required.¹²⁶⁷ For petition organizers, that was the *good* news. The *bad* news actually preceded the good news when Lancaster County District Judge Jeffre Chevront upheld Attorney General Don Stenberg’s decision to split the proposal into two separate constitutional amendments. Judge Chevront wrote:

The proposed amendment creating a new fundamental constitutional right to a “quality education” does not have a natural and necessary connection with the proposed amendment concerning property taxes so as to constitute a single proposition. Nor are the two amendments part of one general subject, since the petition amends two distinct sections of the Nebraska Constitution concerning two distinct subjects, and the creation of a new constitutional right to a quality education has far-reaching implications unrelated to property taxes.¹²⁶⁸

Attorney General Stenberg believed the entire contents of the proposal within one amendment would violate a clause in the Nebraska Constitution, which states, “Initiative measures shall contain only one subject.”¹²⁶⁹ The NSEA and Farm Bureau appealed the decision to the Nebraska Supreme Court, but were unsuccessful.

Naturally, the decision to divide the revenue and education provisions of the measure meant more work on the part of the Citizens for Responsible Tax Policy to successfully promote both amendments. It simply would not do to have one pass and one

¹²⁶⁶ Buttry, “Expert: Education Clause Strongest in U.S. if OK’d,” 2A.

¹²⁶⁷ Robert Dorr, “Casino Petition Drive Falls Shy, Moore Says Secretary of State Expects Lawsuits Over Ballot Spot November Ballot Issues,” *Omaha World-Herald*, 13 September 1996, 1.

¹²⁶⁸ “Ruling Is Emphatic: Split the Amendment,” *Omaha World-Herald*, 5 September 1996, 24.

¹²⁶⁹ NEB. CONST. art. III, § 2.

not, as far as NSEA and the Farm Bureau were concerned, although in reality the provisions were severable and either provision could have survived without the other. Secretary of State Moore officially named the education component of the amendment as Initiative 411 and the revenue component as Initiative 412.

Table 62. Nebraska Constitutional Amendments
November 5, 1996 General Election

<i>No.</i>	<i>Origin</i>	<i>Subject</i>	<i>For</i>	<i>Against</i>	<i>Voting</i>
1	LR 24CA (1995)	Remove the restriction that pari-mutuel wagering on horse races be conducted within licensed racetrack enclosures	236,600	388,462 *****	625,062
2	LR 27CA (1996)	Authorize state senators to participate in employee benefit programs in which other state officers can participate	194,662	389,637 *****	584,299
3	LR 292CA (1996)	Provide for mergers/consolidations of counties or other local governments; allow Legislature to provide for reasonable differences in tax rates within and outside municipalities and on different classes of property	268,418	301,064 *****	569,482
409	Initiative Petition	Instruct Nebraska's members of Congress and state legislators to support a U.S. constitutional amendment limiting terms of members of Congress	345,071 *****	246,665	591,736
410	Initiative Petition	Provide that the number of signatures needed to place initiative and referendum proposals on the ballot be based on the number of votes cast for governor in the most recent general election	242,687	330,112 *****	572,799
411	Initiative Petition	Make "quality education" a fundamental constitutional right of each person; provide that the "thorough and efficient education" of all people ages 5 to 21 in the common schools shall be the "paramount duty" of the state	146,426	506,246 *****	652,672
412	Initiative Petition	Create property tax levy limits for governmental subdivisions; authorize Legislature to prescribe means to determine fair market value of real property for property tax purposes; require Legislature to establish standards of efficiency for delivery of local governmental services	167,204	490,113 *****	657,317

Source: Secretary of State Scott Moore, comp., *Official Report of the State Board of State Canvassers of the State of Nebraska, General Election, November 5, 1996* (Lincoln, Nebr.: Office of Sec'y of State).

NSEA and the Farm Bureau collectively spent at least \$908,049 in its campaign to pass Initiatives 411 and 412, as reported to the Nebraska Accountability and Disclosure Commission. Randy Moody, campaign manager for the initiative campaign, reported

that about \$240,000 had been spent in payment of petition circulators and for other expenses to qualify the two issues for the ballot.¹²⁷⁰ The Coalition to Prevent Tax Increases, a group of businesses opposed to the initiatives, reported spending \$737,801 in its campaign to derail the amendments.¹²⁷¹ Many among the business sector feared the initiatives would, if passed, cause major increases in sales and/or income taxes in order to pay for the inevitable shift from local to state funding sources. Other education groups and representative groups of political subdivisions also aligned themselves against 411 and 412, although these groups did not expend anywhere near the amounts as the business community. Even the State Board of Education stood in opposition to the amendments and officially announced its stance on October 11, 1996.

The division among educators and education groups was plainly evident to any casual observer. If the education community were to be considered a family, then this particular period of time was not one of the finer moments in familial history. The NSEA had reason to feel betrayed by fellow education entities, but for many it was not a failure to recognize the good intentions of the teachers' association so much as concern about the many variables and questions left to the imagination. The dysfunctional relationship among education groups was readily broadcast and printed in the media as proof that even educators could not agree on the merits of the two amendments.

In addition to what it labeled as misleading information about its petition drive and the resulting two amendments, the NSEA was not very pleased with state leaders, both appointed and elected. In the May 1996 edition of the *NSEA Voice*, Executive Director Jim Griess reacted to the decision of the State Board of Education to enlist its assistance in developing the levy limitations contained under LB 1114 (1996). The State Board believed it would be in the best interests of education to see levy limits appear in statute rather than in the Constitution. "Is Rome burning?" Griess asked rhetorically:

In mid-March, the State Board of Education did a curious thing. The board sent a letter to Sen. Jerome Warner, chairman of the Legislature's Revenue Committee, "applauding" the Legislature's proposed legislative remedy to the state's property

¹²⁷⁰ Paul Hammel, "Spending on Initiatives Nears Record," *Omaha World-Herald*, 8 January 1997, 17sf.

¹²⁷¹ *Id.*

tax problem. The letter was curious because the board is the state's steward of public education. And if Nebraska's schools were all nestled among the seven hills of Rome, the Legislature's plan might as well be the flames ignited by Nero.¹²⁷²

Griess believed the levy lids under LB 1114 (1996) coupled with the spending lids under LB 299 (1996) would be devastating to education and to children.

After months of hard fought campaigning, the final word from the voters was fairly distinct. No. Both Initiative 411 (education provisions) and Initiative 412 (revenue provisions) were defeated at the November 5, 1996 General Election by 3-1 margins. Owing perhaps to the highly advertised campaign, more voters participating in the election cast an opinion on 411 and 412 than the other pending amendments, including Initiative 409 (term limits). Initiative 409 required Nebraska's members of Congress and state legislators to support a U.S. constitutional amendment limiting terms of members of Congress. Initiative 409 had the distinction of being the only proposed constitutional amendment to be approved by the voters at the 1996 General Election.

Table 63. Canvas Report: Initiatives 411 And 412 (1996)

County	Initiative 411				Initiative 412			
	For	%	Against	%	For	%	Against	%
Adams	2,725	23.18%	9,030	76.82%	2,991	25.64%	8,676	74.36%
Antelope	517	15.90%	2,734	84.10%	710	21.99%	2,519	78.01%
Arthur	27	11.44%	209	88.56%	41	17.30%	196	82.70%
Banner	70	17.81%	323	82.19%	92	23.59%	298	76.41%
Blaine	77	21.39%	283	78.61%	114	31.93%	243	68.07%
Boone	674	24.44%	2,084	75.56%	831	30.16%	1,924	69.84%
Box Butte	1,091	23.13%	3,626	76.87%	1,148	24.74%	3,493	75.26%
Boyd	251	20.66%	964	79.34%	304	25.35%	895	74.65%
Brown	333	19.59%	1,367	80.41%	386	23.04%	1,289	76.96%
Buffalo	3,272	21.42%	12,003	78.58%	3,716	24.65%	11,362	75.35%
Burt	769	23.51%	2,502	76.49%	916	28.21%	2,331	71.79%
Butler	649	18.57%	2,845	81.43%	858	24.69%	2,617	75.31%
Cass	2,141	23.38%	7,017	76.62%	2,795	30.64%	6,327	69.36%
Cedar	766	19.20%	3,224	80.80%	1,034	26.10%	2,928	73.90%
Chase	299	16.95%	1,465	83.05%	410	23.52%	1,333	76.48%
Cherry	669	25.06%	2,001	74.94%	872	32.73%	1,792	67.27%
Cheyenne	1,028	27.16%	2,757	72.84%	1,092	29.02%	2,671	70.98%
Clay	545	16.91%	2,678	83.09%	637	19.90%	2,564	80.10%
Colfax	727	21.46%	2,661	78.54%	854	25.34%	2,516	74.66%

¹²⁷² Jim Griess, "Is Rome burning? And has the State Board of Education fanned the flames by giving support to lid and levy cap legislation?" *The NSEA Voice*, May 1996, 6.

Table 63—Continued

County	Initiative 411				Initiative 412			
	For	%	Against	%	For	%	Against	%
Comig	737	19.02%	3,138	80.98%	958	25.07%	2,864	74.93%
Custer	1,176	22.84%	3,973	77.16%	1,569	30.63%	3,554	69.37%
Dakota	1,914	33.41%	3,814	66.59%	2,003	35.23%	3,683	64.77%
Dawes	937	29.20%	2,272	70.80%	1,013	31.89%	2,164	68.11%
Dawson	2,166	28.05%	5,555	71.95%	2,641	34.39%	5,038	65.61%
Deuel	254	26.38%	709	73.62%	298	31.24%	656	68.76%
Dixon	725	25.67%	2,099	74.33%	755	28.19%	1,923	71.81%
Dodge	3,330	23.60%	10,778	76.40%	3,706	26.38%	10,342	73.62%
Douglas	39,186	22.54%	134,698	77.46%	41,527	24.14%	130,520	75.86%
Dundy	285	28.59%	712	71.41%	324	32.86%	662	67.14%
Fillmore	612	20.30%	2,403	79.70%	791	26.44%	2,201	73.56%
Franklin	404	24.75%	1,228	75.25%	491	30.29%	1,130	69.71%
Frontier	336	25.36%	989	74.64%	429	32.11%	907	67.89%
Furnas	597	24.40%	1,850	75.60%	700	29.22%	1,696	70.78%
Gage	2,412	25.94%	6,885	74.06%	2,789	30.18%	6,452	69.82%
Garden	271	21.77%	974	78.23%	369	29.85%	867	70.15%
Garfield	257	27.75%	669	72.25%	281	30.38%	644	69.62%
Gosper	238	24.36%	739	75.64%	296	30.55%	673	69.45%
Grant	87	22.54%	299	77.46%	110	28.72%	273	71.28%
Greeley	277	22.67%	945	77.33%	376	31.02%	836	68.98%
Hall	4,221	22.76%	14,322	77.24%	4,890	26.60%	13,491	73.40%
Hamilton	890	21.74%	3,204	78.26%	1,055	25.87%	3,023	74.13%
Harlan	456	25.84%	1,309	74.16%	576	33.01%	1,169	66.99%
Hayes	90	16.30%	462	83.70%	145	26.51%	402	73.49%
Hitchcock	382	25.48%	1,117	74.52%	460	30.61%	1,043	69.39%
Holt	959	18.93%	4,108	81.07%	1,160	23.03%	3,877	76.97%
Hooker	84	17.57%	394	82.43%	82	17.56%	385	82.44%
Howard	607	24.52%	1,869	75.48%	685	27.54%	1,802	72.46%
Jefferson	1,049	27.18%	2,810	72.82%	1,287	33.59%	2,544	66.41%
Johnson	549	27.35%	1,458	72.65%	689	34.23%	1,324	65.77%
Kearney	673	22.90%	2,266	77.10%	854	29.09%	2,082	70.91%
Keith	742	19.48%	3,067	80.52%	819	21.47%	2,995	78.53%
Keys Paha	212	42.48%	287	57.52%	258	52.23%	236	47.77%
Kimball	426	24.68%	1,300	75.32%	475	27.68%	1,241	72.32%
Knox	926	25.12%	2,761	74.88%	1,047	28.63%	2,610	71.37%
Lancaster	20,841	21.80%	74,767	78.20%	23,439	24.70%	71,468	75.30%
Lincoln	2,812	19.62%	11,517	80.38%	3,562	25.06%	10,651	74.94%
Logan	75	17.32%	358	82.68%	105	24.31%	327	75.69%
Loup	79	25.08%	236	74.92%	99	32.35%	207	67.65%
Madison	2,087	16.97%	10,210	83.03%	2,436	19.97%	9,762	80.03%
McPherson	24	7.62%	291	92.38%	67	21.54%	244	78.46%
Merrick	852	25.34%	2,510	74.66%	982	29.37%	2,361	70.63%
Morrill	374	18.02%	1,701	81.98%	459	22.14%	1,614	77.86%
Nance	461	29.59%	1,097	70.41%	530	34.42%	1,010	65.58%
Nemaha	848	24.40%	2,628	75.60%	1,044	30.15%	2,419	69.85%
Nuckolls	525	22.30%	1,829	77.70%	603	25.73%	1,741	74.27%
Otoe	1,526	24.40%	4,729	75.60%	1,784	28.65%	4,442	71.35%
Pawnee	409	27.79%	1,063	72.21%	495	33.63%	977	66.37%
Perkins	247	16.76%	1,227	83.24%	400	26.90%	1,087	73.10%
Phelps	882	19.80%	3,573	80.20%	1,180	26.57%	3,261	73.43%
Pierce	492	17.26%	2,359	82.74%	738	25.14%	2,197	74.86%

Table 63—Continued

County	Initiative 411				Initiative 412			
	For	%	Against	%	For	%	Against	%
Platte	2,267	19.11%	9,596	80.89%	2,641	22.41%	9,146	77.59%
Polk	427	17.32%	2,038	82.68%	529	21.37%	1,947	78.63%
Red Willow	1,108	22.91%	3,728	77.09%	1,204	25.03%	3,607	74.97%
Richardson	1,123	28.29%	2,847	71.71%	1,169	29.85%	2,747	70.15%
Rock	183	21.16%	682	78.84%	251	29.32%	605	70.68%
Saline	1,164	24.16%	3,654	75.84%	1,367	28.42%	3,443	71.58%
Sarpy	8,321	21.53%	30,328	78.47%	9,681	20.04%	38,623	79.96%
Saunders	1,903	22.76%	6,459	77.24%	2,366	28.46%	5,948	71.54%
Scotts Bluff	3,068	23.70%	9,877	76.30%	3,177	24.78%	9,642	75.22%
Seward	1,443	22.04%	5,104	77.96%	1,702	26.16%	4,803	73.84%
Sheridan	630	24.55%	1,936	75.45%	753	29.46%	1,803	70.54%
Sherman	468	29.51%	1,118	70.49%	561	35.28%	1,029	64.72%
Sioux	183	24.14%	575	75.86%	218	29.58%	519	70.42%
Stanton	453	19.19%	1,907	80.81%	601	25.63%	1,744	74.37%
Thayer	845	29.64%	2,006	70.36%	1,048	36.76%	1,803	63.24%
Thomas	94	22.98%	315	77.02%	119	29.75%	281	70.25%
Thurston	659	33.62%	1,301	66.38%	649	33.18%	1,307	66.82%
Valley	485	21.74%	1,746	78.26%	624	27.80%	1,621	72.20%
Washington	1,527	20.80%	5,816	79.20%	2,044	28.02%	5,252	71.98%
Wayne	765	21.88%	2,731	78.12%	847	24.34%	2,633	75.66%
Webster	451	23.79%	1,445	76.21%	547	28.97%	1,341	71.03%
Wheeler	95	23.93%	302	76.07%	115	29.56%	274	70.44%
York	1,133	17.33%	5,404	82.67%	1,359	21.56%	4,944	78.44%
TOTAL	146,426	22.43%	506,246	77.57%	167,204	25.44%	490,113	74.56%

Source: Secretary of State Scott Moore, comp., *Official Report of the State Board of State Canvassers of the State of Nebraska, General Election, November 5, 1996* (Lincoln, Nebr.: Office of Sec'y of State).

E. Review

Governor Ben Nelson launched a variety of initiatives in the 1995 Session, but for those involved in public education two bills would stand out above the rest. LB 613 (1995) would reduce existing spending lids for local governments by 1%. The measure eliminated the sunset clause on the zero percent lid provision, which required an initial 75% affirmative vote in order to access the normal spending lid provisions. Changed the base spending lid from 4% to 3% and lowered the growth range from 4-6.5% to 3-5.5%. LB 742 (1995) capped appropriations for special education services. Between the two bills, only LB 613 would directly modify the school finance formula, in terms of amending the TEEOSA itself. But both bills would directly impact the public school finance system on the whole, and both bills would lead to further changes in years to come.

Also in 1995, the Legislature passed LB 490 (1995) to create the Tax Equalization and Review Commission, a body comprised of three appointed members (a fourth member would be added in 2002). The commission would have the power and duty to hear and determine appeals of decisions of county boards of equalization concerning the equalization of real property, the granting or denying of tax exempt status for real or personal property, and other decisions of local boards. LB 490 would also empower the commission to hear and determine appeals of various decisions of the Property Tax Administrator, a newly created position. The companion piece to LB 490 was LR 3CA, a constitutional amendment to eliminate the Board of Equalization and replace it with the TERC.

LB 542 was passed in 1995 related to federal impact aid. The measure required back payment of state aid to those districts that were denied certain amounts of aid for the 1990-91 school year. The back payments were contingent upon the passage of corresponding federal legislation by October 1, 1995. A provision was added under LB 542 to ensure that the Department of Education would actually make the back payments to applicable districts once the legislative and legal entanglements surround the impact aid issue were resolved.

LB 840, passed in 1995, represented a significant policy change in that, for the first time, financial incentives for reorganization would be built into the school finance formula. The measure provided a phased-in formula to distribute state aid to reorganized school districts. In the base year of reorganization, state aid would be calculated so the reorganized district receives the greater of 100% of the state aid the districts involved in the reorganization would have received in the prior year or the amount the reorganized district would be entitled to receive. The guaranteed percentage decreases to 66% in the second year and 33% in the third year. The total amount of aid distributed to reorganized districts under the incentive program was limited to the amount of hold-harmless aid distributed in 1994-95. This limited the additional aid to reorganized districts under the bill to \$2.9 million.

The 1996 Session produced some of the most important legislation in the history of the State of Nebraska, its local governments, and its taxpayers. By the end of the session, school districts, educational service units, and all other political subdivisions, would be faced with statutory property tax levy limitations, and taxpayers would be given the impression that their property tax bills would be reduced.

LB 1114 (1996) imposed levy limitations for school districts such that, for FY1998-99 through FY2000-01, school districts and multiple-district school systems would be limited to a maximum \$1.10 general and special combined levy authority. For FY2001-02 and all future fiscal years, the school levy limit is \$1.00. ESUs were reduced to a 1.5¢ levy authority effective FY1998-99 and beyond. Levy exclusions were provided to school districts for: (1) amounts levied to pay for sums agreed to be paid by a district to certificated employees in exchange for voluntary termination of employment (early retirement); (2) amounts levied to pay for special building funds and sinking funds established for projects commenced prior to April 1, 1996 for construction, expansion, or alteration of school district buildings; (3) amounts levied for judgments against a district to the extent such judgment will not be paid by liability insurance; (4) amounts levied for preexisting lease-purchase contracts approved prior to July 1, 1998; and (5) amounts levied for bonded indebtedness.

LB 299 (1996) imposed stringent spending limitations on school districts in order to prepare them for the reduced revenue sources upon the implementation of the levy limits. The measure imposed a 2% lid, plus growth in student population, for FY1996-97, and a 0% lid, plus student growth, for FY1997-98. Lid exclusions to the temporary spending limits included: (1) Expenditures for special education; (2) budgeted expenditures for capital improvements financed by the proceeds from a bond issue, appropriations from a sinking fund, or any other means; (3) expenditures to all retire bonded indebtedness; (4) expenditures in support of a service which becomes the subject of an interlocal cooperation agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or an independent joint entity for two fiscal years beginning with the first budget adopted after the agreement or

modification is signed; (5) expenditures to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency under the Emergency Management Act; (6) expenditures to pay for judgments, except orders from the CIR, obtained against a school district which require or obligate a school district to pay such judgment, to the extent such judgment is not paid by district liability insurance; and (7) expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment.

In 1996, the Legislature passed LB 1050 (1996), the most comprehensive and substantively important pieces of legislation concerning the school finance formula since the implementation of the Tax Equity and Educational Opportunities Support Act in 1990. It would mark some major policy changes in relation to the original formula, and would become a precursor to more significant changes a year later. It would cause divisions among rural and urban interests, and heavily equalized schools versus non-equalized schools. It would also represent one of the more contested legislative battles of the 1996 Session.

LB 1050 capped the income tax rebate at the 1992-93 appropriation level and proposed to determine the allocation of rebate funds to individual districts based on a statewide allocation percentage applied to the income tax liability of each district. The income tax rebate would be capped at \$102,289,817 (less \$16.9 million for option aid) in 1996-97 and thereafter.

LB 1050 reduced the effect of the minimum effort provisions on districts with very low valuations. The old minimum effort provisions prohibited districts from receiving equalization aid in amounts that would reduce their levy to less than 60% of the local effort rate. Because the previous year's cost data was used, the interaction between minimum effort and extremely low valuations caused some districts to lose aid, making it difficult to elevate spending and educational opportunities to the level of other districts in their tiers. Under LB 1050, qualified districts would be allowed to retain additional aid according to the following calculation: $(60\% \text{ of the local effort rate}) \times (40\% \text{ of the average adjusted valuation per formula student} - \text{the adjusted valuation per formula}$

student) x (the district's formula students). To qualify, districts would need to have an adjusted valuation per student of less than 40% of the average statewide adjusted valuation per student. If the general fund tax request were not equal to at least 90% of the yield from the local effort rate or the districts general fund operating expenditures were over 15% above the target budget level, the district would not qualify the next year.

Under LB 1050, the option hold harmless provisions were eliminated and replaced with a net option system. The measure also provided for reorganization incentives for school district reorganizations that move students into lower cost tiers. LB 1050 changed the method used to adjust valuation. Under LB 1050, the source year for LB 1050 moved the adjusted valuation back one year, so adjusted valuation used to calculate aid is for the property tax year ending during the school year immediately preceding the school year in which aid is to be paid.

At the 1996 General Election, Nebraska voters rejected two initiative measures proposed by the Nebraska State Education Association and the Nebraska Farm Bureau. Initiative 411 proposed to make "quality education" a fundamental constitutional right of each person, make "thorough and efficient education" of all persons between the ages of 5 and 21 in the common schools the "paramount duty" of the state, and directed the Legislature to establish a school finance system that provides for "thorough education" in "efficiently operated public schools." Initiative 412 proposed to create constitutional property tax levy limits for various governmental subdivisions, including school districts, which could be exceeded by a majority vote of the voters.

Both Initiative 411 (education provisions) and Initiative 412 (revenue provisions) were defeated at the November 5, 1996 General Election by 3-1 margins.