

Comprehensive Modifications to TEEOSA, 1997

A. Introduction

If the number “1059” evokes mental images to those involved in education and school finance, then “806” would likely have the same affect. The former, of course, referring to LB 1059 (1990) and the inception of the existing school finance system. The latter, referring to LB 806 (1997), served as the single most comprehensive modification legislation to TEEOSA since 1990. In fact, the changes and additions to the formula under LB 806 (1997) far exceeded the ramifications of those made under LB 1050 just one year earlier. Perhaps not unlike some marriages, Nebraska’s school finance formula was suffering from the proverbial seven-year itch. It was time, some believed, for radical change in the finance structure of public schools.

It may be said that the 1997 Session, in large part, was a continuation of the work the Legislature completed in the 1996 Session, particularly as it related to the levy limitations imposed under LB 1114 (1996). The Revenue Committee found itself reacting to a number of technical and substantive issues relevant to the 1996 property tax relief package. The committee also took what it considered to be the next step in property tax reform by forwarding to the Legislature an entirely new system for taxing motor vehicles. The Revenue Committee also grappled with the issue of a permanent income tax rate reduction but ultimately recommended a temporary rate decrease.

The 1997 Session was long and tedious for lawmakers, addressing the very intricate issues of school finance and taxes, among others. It also was the final session for Senator Jerome Warner, who passed away on April 22, 1997.

B. LB 806

Bill Introduction

Legislative Bill 806 was introduced on January 22, 1997 by Senator Ardyce Bohlke, chair of the Education Committee, along with several other members of the committee. By the end of the 1997 Session, LB 806 would be regarded as the most sweeping, comprehensive modification to TEEOSA since its inception in 1990. In fact,

only a few provisions of the original act would remain in place after the passage of LB 806, which would also impact school organization, county superintendents, and ESUs.

As originally introduced, LB 806 proposed to change the school finance formula to provide state aid based upon *local system* calculations, rather than individual districts.¹²⁷³ State aid for local systems would be distributed based upon the weighted formula membership attributable to the system from each district. A mechanism would be provided for distributing proceeds from the levy within affiliated systems and Class I/Class VI systems based upon weighted formula membership when there was no agreement to the contrary.¹²⁷⁴ The tier structure created under LB 1059 (1990) would be replaced with *cost groupings* based upon *sparsity* and membership weighting factors.¹²⁷⁵ A new hold harmless provision would guarantee districts 85% of the aid received in the previous year, but state aid would be reduced for districts that had a levy 10% or more below the levy limit.¹²⁷⁶ However, the basic formula remained in tact (i.e., needs minus resources equals state aid).

The stated goal within LB 1059 (1990) to provide 45% of school funding through state financial assistance would be eliminated in favor of a general goal to provide “sufficient” funding to schools.¹²⁷⁷ The 45% goal had never once been met since implementation of the new formula, something school officials had repeatedly reminded legislators over the past few years. Therefore, as proposed by LB 806, the Legislature would have the general goal for its school finance system to, “Provide state support from all sources of state funding sufficient to support the statewide aggregate general fund operating expenditures for Nebraska elementary and secondary public education that cannot be met by local resources.”¹²⁷⁸

¹²⁷³ Legislative Bill 806, *Change and eliminate provisions relating to school reorganization plans and state aid*, sponsored by Education Committee, Nebraska Legislature, 95th Leg., 1st Sess., 1997, title first read 22 January 1997, *passim*.

¹²⁷⁴ *Id.*, § 1, p. 2.

¹²⁷⁵ *Id.*, § 11, p. 33.

¹²⁷⁶ *Id.*, § 13, pp. 37-38.

¹²⁷⁷ *Id.*, § 5, p. 16.

¹²⁷⁸ *Id.*

One of the major changes in the bill had to do with the calculation of needs. The tier structure would be replaced with three cost groupings, standard, sparse, and very sparse.¹²⁷⁹ Under the new scheme, the Department of Education would calculate the “adjusted formula membership” for each local system by multiplying the formula students in each grade range by corresponding weighting factors. The weighting factors were *lighter* for kindergarten students and *heaviest* for high school students under the principle that high school students generally cost more to educate than kindergarten students. The sum of all weighted students from each grade range equaled the weighted formula students for each local system.¹²⁸⁰

The weighted formula students for each local system would then be “adjusted” or increased if the local system qualified under any of three separate “factors.” The Indian-land factor would apply to those local systems that received federal funds and have students enrolled who reside on Indian land. The limited English proficiency factor would apply to those local systems that report students with limited English proficiency. The poverty factor would apply to those local systems in which there are students who qualify for free lunches or free milk.¹²⁸¹

The Department of Education would then place each local system within one of three cost groupings for purposes of calculating needs. The very sparse cost grouping would apply to those local systems that had:

- Less than 0.5 students per square mile in the county where the high school is located;
- Less than 1.0 formula students per square mile in the local system; and
- More than 1.5 miles between the high school and the next closest high school on paved roads.¹²⁸²

The sparse cost grouping would apply to those local systems that had:

¹²⁷⁹ Id., § 11, p. 33.

¹²⁸⁰ Id., § 10, pp. 31-32.

¹²⁸¹ Id., p. 32.

¹²⁸² Id., § 11, p. 33.

- Less than 2.0 formula students per square mile in the county where the high school is located;
- Less than 1.0 formula student per square mile in the local system; and
- More than 10 miles between the high school and the next closest high school on paved roads.¹²⁸³

Finally, the standard cost grouping, wherein the majority of all local systems would be placed, applied to all local systems that did not qualify for either the sparse or very sparse cost groupings.¹²⁸⁴

The Department of Education would then average the formula cost per student in each cost grouping by dividing the total adjusted general fund operating expenditures for all local systems within the cost grouping by the total weighted formula membership for all local systems within the cost grouping. Each local system's formula need would then be equal to the product of the local system's adjusted formula membership multiplied by the average formula cost per student in the local system's cost grouping plus the applicable transportation allowance.¹²⁸⁵

One of the major concerns about the formula focused on the "spiking" of state aid from one year to another. There were often major swings in the amount of aid a district received from year to year and this made budgeting very difficult for some school districts. Accordingly, LB 806 implemented a new hold harmless provision, which ensured that a local system would not receive an amount of state aid that was less than 85% of the amount of aid certified in the preceding school fiscal year.¹²⁸⁶

Many of the changes made under LB 1050 (1996) would remain in tact except that such provisions would apply to local systems rather than individual districts. For instance, LB 806 would maintain net option funding for enrollment option students, except that payments would be disbursed directly to each district while counting them as

¹²⁸³ Id.

¹²⁸⁴ Id.

¹²⁸⁵ Id., § 11, pp. 33-34.

¹²⁸⁶ Id., § 13, p. 38.

a formula resource for the local system.¹²⁸⁷ The bill would also impose a minimum levy provision equal to 90% of the maximum levy allowed by law.¹²⁸⁸

Public Hearing for LB 806

The public hearing for LB 806 was held on February 10, 1997 before the Education Committee. The bill was one of eight bills to be heard that day concerning changes to the school finance formula. But only one of the eight, LB 806, had the advantage of being sponsored by a majority of the Education Committee (Senators Bohlke, Beutler, McKenzie, Suttle, and Warner). This is not to say that the bill represented a sure thing for advancement. In fact, several senators who co-sponsored LB 806 also introduced other bills to change the state aid formula.¹²⁸⁹ All such proposals were heard in one afternoon in front of a packed hearing room at the State Capitol.

In her opening remarks, Senator Bohlke referred to LB 806 as a response to the passage of LB 1114 in 1996. She believed the levy limitations, which at that time were about a year away from implementation, necessarily required a re-evaluation of the method by which state aid was calculated and distributed. If school districts were to be limited in the amount of local funds generated through property taxes, then the only other major source of funding would be that of state financial assistance. And with a greater dependence upon state resources, the distribution system became even more important to those school districts. But the apparent need to change the formula in response to the levy lids also created an opportunity to re-examine the entire formula, including some of the original goals set forth in 1990.

Senator Bohlke laid out the background of the legislation, which involved a series of public hearings and meetings held across the state during the interim period. She noted that several provisions in the bill were direct responses to concerns she heard from

¹²⁸⁷ Id., § 14, p. 40.

¹²⁸⁸ Id., § 13, p. 38.

¹²⁸⁹ LB 542 (Beutler) Change provisions for calculation of adjusted tiered cost per student under the Tax Equity and Educational Opportunities Support Act; LB 672 (Warner) Change and eliminate provisions for calculation and disbursement of state aid to schools; and LB 680 (Beutler) Change provisions for calculation of state aid to schools.

school officials during the interim study. By December 1996, Senator Bohlke had several options for legislation in the following session. She asked the Department of Education to run the proposals through their computer system in order to prepare printouts for review.¹²⁹⁰ The proposals were the subject of a series of meetings held December 16-20, 1996 in Lincoln.¹²⁹¹ Senator Bohlke attended several of the meetings to hear additional comments about the proposals.

As Senator Bohlke outlined during the hearing, the bill would create weighting factors for certain students that added extra budgetary considerations. The bill would attempt to give special attention to sparsely populated areas of the state, and it would also attempt to control what school administrators called “spiking” in state aid. The spiking occurred when state aid amounts dropped (or increased) dramatically from year to year. Spiking, it was believed, made it difficult for school boards to formulate a budget when they did not know what to expect in the next year’s state aid.

Table 64. Major Components of LB 806 (1997) as Introduced

Local Systems	State aid would be based on a local system calculations rather than individual districts. Each local system would have a primary high school district, which meant Class I (elementary only) districts would become part of a local system.
Cost Groupings	The use of tiers to establish cost-per-student were eliminated in favor of three cost groupings: standard, sparse, very sparse.
Factors	Weighting factors would be used to qualify additional aid for local systems with Indian land, students with limited English proficiency, and students classified as coming from poverty circumstances.
Hold Harmless	A local system would not receive state aid that is less than 85% of the amount of aid certified in the preceding school fiscal year.

¹²⁹⁰ Paul Goodsell, “Aid Plans May Add to Squeeze on School Districts,” *Omaha World-Herald*, 26 December 1996, 9sf.

¹²⁹¹ Michael O’Connor, “Property-Tax Lids Topic of Meetings,” *Omaha World-Herald*, 16 December 1997, 11sf.

Table 64—*Continued*

Intent Language	The original intent language under existing law to achieve a 45% state funding level was modified to create the intent of providing state funding sufficient to support general fund operating expenditures that cannot be met by local resources.
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Source: Committee of Education, *Committee Statement, LB 806 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 1-5.

The public hearing for LB 806 was particularly interesting in that no one appeared in opposition to the bill. The proponent testimony was, on the whole, very positive toward the legislation although some proponent testifiers issued a certain level of guarded support until more printouts were produced by the Department of Education. The other interesting characteristic of the testimony was that all proponent testifiers represented larger, urban school districts. There was neutral testimony from three rural area school districts and, consistent with the nature of neutral testimony, they had both positive and negative things to say about the bill.

The first proponent testifier also was the testifier who seemed to have the most to say and received the most questions from members of the Education Committee. Norbert Schuerman, Superintendent at Omaha Public Schools, began his testimony by stating, “I am here today to testify in favor of LB 806 which, among many changes, proposes to alter the current LB 1059 state aid formula by eliminating its multiple tiers and changing the structure to three cost groups, the very sparse, sparse, and, standard.”¹²⁹² He said at the outset that his district was aware, and apparently supported, the idea of using one tier for purposes of calculating cost-per-student for the vast majority of all local systems. This would be a major departure for OPS since the old formula placed the metropolitan district in its own tier given its unique characteristics. Schuerman explained:

One of the effects of this proposed change, obviously, is the elimination of the current tier occupied by the School District of Omaha. For this reason, it may come as a bit of a surprise to some of you that OPS is testifying in the affirmative. It was not a hasty decision. However, if it is the intent of LB 806 to fully

¹²⁹² Committee on Education, *Hearing Transcripts, LB 806 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 10 February 1997, 9.

recognize the state's at-risk and English as a Second Language (ESL) students, as cost factors in the formula, the current need for OPS to be in a separate tier is greatly lessened.¹²⁹³

Schuerman appeared to hinge his district's support of the bill on its ability to address the issues most important to the district, which would include weighted factors for students at-risk or having specialized educational needs.

The support of the state's largest school district appeared to be of importance to several members of the committee. On cross examination, Senator Chris Beutler of Lincoln asked for clarification that OPS would support the bill if the legislation included the weighting factors addressed by Schuerman. Once again, the superintendent was optimistic but guarded. Said Schuerman:

[C]onceptually, at least, it would appear to me and appear to us in Omaha, that there is ... that this is a step in the right direction. Whether it's necessarily adequate is another question, but I would think that the lawmakers need to consider how this bill would affect other school districts also.¹²⁹⁴

Schuerman said he would withhold final judgment of the legislation until the printouts were forthcoming from the Department of Education.

Also appearing in support of the bill was Fremont Superintendent, Reg Nolin, who represented the Greater Nebraska School Association (GNSA). At the time, the GNSA included mostly larger districts and had as its mission the support of legislative proposals that enhanced the equalization concepts of the state aid formula. Nolin agreed with Schuerman that LB 806 appeared to be the right direction. "[W]e think this is the beginning of a good framework for a future for Nebraska schools," said Nolin.¹²⁹⁵

Another member of the GNSA, Steve Joel, Superintendent at Beatrice Public Schools, also appeared at the hearing in support of the bill. He applauded the Education Committee for addressing the issues important to schools like the one he represented. Joel was particularly complimentary about the hold harmless provision to prevent

¹²⁹³ Id., 10.

¹²⁹⁴ Id., 15.

¹²⁹⁵ Id., 20.

dramatic decreases in state aid. “There isn’t any doubt that there’s a greater need to do something with the inconsistencies brought on by LB 1059,” Joel said, “That yo-yo effect that Senator Bohlke was referring to in her opening statements is very real.”¹²⁹⁶ Joel also cast support for the weighting factors for ESL students and poverty students.

Bill Pile, Superintendent at Leyton Public Schools, testified along with the other proponent testifiers, but his testimony was officially listed as neutral.¹²⁹⁷ Pile characterized Leyton as a consolidated district that embodied the communities of Dalton and Gurley, consisted of approximately 540 square miles, and had a student body of approximately 270 students.¹²⁹⁸ Under the original provisions of the bill, Pile said, his district would be classified as a sparse district, but in his estimation it probably should be classified as a very sparse district due to its geographical circumstances. Nevertheless, there were components of the legislation that appealed to him. “I don’t know what to say regarding support or ... or opposition to 806,” Pile stated, “If things are factored out and fairness is included with the various factors, I most certainly can support it.”¹²⁹⁹

Al Inzerello, representing Westside Community Schools in Omaha, testified in support of LB 806. At the same time, however, Inzerello questioned whether some of the weighting factors were sufficiently correlated to actual costs. The bill proposed to add a weighting factor of 25% for each limited English proficiency student and 25% for each student qualified for free lunches or free milk programs (the poverty factor).¹³⁰⁰ For some districts, Inzerello said, this factor would likely be sufficient to cover additional costs of providing an education, but for other districts it may not. Said Inzerello:

Is .25 enough? May be, it may be too much. Then again, it may not be nearly enough, depending on the degree to which a given school district has committed

¹²⁹⁶ *Id.*, 25-26.

¹²⁹⁷ Committee on Education, *Committee Statement, LB 806 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 1.

¹²⁹⁸ *Hearing Transcripts, LB 806 (1997)*, 30.

¹²⁹⁹ *Id.*, 32.

¹³⁰⁰ LB 806 (1997), § 10, p. 32.

resources toward those efforts, and there's the dilemma that I know that is very difficult for you, because the programs, the actual program to address these concerns seems to me should be looked at.¹³⁰¹

While the costs would vary depending upon the programs offered by each individual school district, LB 806 established a uniform amount of additional state aid by virtue of the number of students classified under each weighting factor.

The State Board of Education, represented by Dennis Pool, testified in a neutral capacity. Two of the overriding concerns, Pool testified, were the “identification of sparsity and remoteness in Nebraska school districts,” and a school finance formula that provides more “consistency, predictability, and dependability.”¹³⁰² Pool echoed previous testimony concerning the weighting factors and whether they were sufficient to cover actual additional costs to educate those particular students. Pool also raised concerns about the hold harmless provision contained in the legislation. LB 806 proposed to assure school districts of at least 85% of the state aid it received from the previous year.¹³⁰³ Pool believed the hold harmless provision may create a “disequalizing” effect within the formula because it may deprive some districts of state aid in order to meet the funding requirements of others.¹³⁰⁴ In other words, it will take funds used in the equalization process to fund the hold-harmless provision.

Table 65. Public Hearing Testifiers, LB 806 (1997), February 10, 1997

Proponents	Senator Ardyce Bohlke.....	Introducer
	Steve Joel	Beatrice Public Schools
	Al Inzerello	Westside Public Schools
	Cliff Dale	Lincoln Public Schools
Proponents	Reg Nolin.....	Greater NE Schools Assn.
Opponents	None	

¹³⁰¹ *Hearing Transcripts, LB 806 (1997)*, 37.

¹³⁰² *Id.*, 40.

¹³⁰³ LB 806 (1997), § 13, p. 38.

¹³⁰⁴ *Hearing Transcripts, LB 806 (1997)*, 41.

Table 65—Continued

Neutral	Dennis Pool.....	Department of Education
	Bill Pile	Leyton Public Schools
	Sandra K. Rosenboom	Crete Public Schools
	Joyce Huffman	Farnam Public Schools

Source: Committee of Education, *Committee Statement, LB 806 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 1.

The members of the Education Committee met several times in executive session to discuss the disposition of LB 806. By this time, Senator Warner was very ill. To make the closed session more comfortable for him, the committee met in a room at the Cornhusker Hotel in Lincoln, just a few blocks away from the State Capitol.

On March 25, 1997, the committee voted unanimously (8-0) to advance LB 806 to General File with committee amendments attached.¹³⁰⁵ The amendments, in essence, replaced the original provisions of LB 806.¹³⁰⁶ The amendments embodied much of the original bill relating to school finance and also contained several major changes affecting school district organization and educational service units. The amendments proposed that, beginning in 1998-99, only high school districts would have the authority to levy property taxes and collect state aid. The existing freeholding provisions were expanded to allow the transfer of land out of districts with a pupil-to-certificated-staff ratio that was less than 10 to 1 if the high school in the district was within 15 miles of another high school.¹³⁰⁷ Core services for educational service units would be outlined and a mechanism was provided for funding the core services.¹³⁰⁸ Reorganization procedures were to be streamlined.¹³⁰⁹ And, perhaps most shocking of all, Class I districts would be

¹³⁰⁵ Committee on Education, *Executive Session Report, LB 806 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 25 March 1997, 2.

¹³⁰⁶ NEB. LEGIS. JOURNAL, *Com AM1205*, printed separate, 9 April 1997, 1444.

¹³⁰⁷ Committee Amendments, *AM1205 to LB 806 (1997)*, § 20, pp. 30-33.

¹³⁰⁸ *Id.*, § 53, pp. 99-102.

¹³⁰⁹ *Id.*, §§ 4-19, pp. 12-30.

required to join with a single Class VI district, merge with a single K-12 district, or dissolve.¹³¹⁰ The mandatory consolidation issue was once again on the table.

Floor Debate and Passage of LB 806

The debate and passage of LB 806 was historic for many reasons most of which were not lost on the legislators who were a part of the debate. The first stage of debate alone took five separate legislative days to finally arrive at a vote for advancement. In normal circumstances, a bill, even a controversial bill, may take one or two days of debate before a vote for initial advancement. In all, LB 806 required eight legislative days of tedious, often contentious, debate before arriving at a final vote for passage. Ninety-six amendments, including the committee amendments, were considered, although the bulk of these amendments were withdrawn before a vote could be taken. The legislation also survived several attempts to bracket, which, if successful, would have essentially killed the bill for the remainder of the session.

The debate on LB 806 may also be remembered for extraordinary leadership and legislative strategy, both on the part of proponents and opponents. Senator Ardyce Bohlke, in particular, provided guidance throughout the legislative process. She accomplished what many legislators find very difficult in that she largely achieved her own political goals with regard to the state aid formula while at the same time embracing and, to some degree, accommodating the detractors of the legislation. She was willing to compromise just enough to keep the bill moving forward without necessarily giving away major objectives of her legislation. Also noteworthy was the assistance and support of Speaker Ron Withem who designated LB 806 as a Speaker Major Proposal, thereby giving the legislation the ultimate priority status.¹³¹¹ The designation also gave him the authority to determine the order in which amendments would be considered and, accordingly, some limited control over the debate process itself. It certainly did not hurt Senator Bohlke's cause that Speaker Withem, a proponent of her bill, was the chief architect of the original state aid formula, which she proposed to change under LB 806.

¹³¹⁰ Id., § 22, pp. 36-40.

¹³¹¹ NEB. LEGIS. JOURNAL, 10 April 1997, 1462.

The backdrop and impetus behind LB 806 was the passage of legislation in the previous session to impose levy limitations on school districts and other political subdivisions. Senator Bohlke would remind her colleagues throughout the debate that her bill to change the formula was a direct result of the passage of LB 1114 (1996). In her opening remarks on the first day of General File debate, Senator Bohlke said:

The Education Committee began working on the contents of LB 806 shortly after the passage of 1114. It was apparent that a majority of senators, in voting for 1114, voted for a drastic change in the way we fund our schools, and how our schools are organized. ... A number of options were considered, and in the end, we determined that the provisions of 806, as presented, solved the greatest number of problems resulting from 1114.¹³¹²

But not all agreed on the urgency to pass sweeping changes in the formula during the 1997 Session. Some of the opponents of the bill argued that the levy limitations under LB 1114 simply did not necessitate a rewrite of the state aid formula.

Although never spoken aloud (on microphone) on the floor of the Legislature, some alleged that LB 806 had deeper motivations, including a political resolution to the long-standing issue over consolidation of Class I (elementary only) school districts. In truth, the original version of LB 806, as introduced, did not contain any provisions related to the reorganization of school districts, which would explain why Class I representatives failed to appear at the public hearing. Yet, as the bill emerged for first-round debate, the committee amendments proposed to merge Class I districts that were in whole affiliated with a single high school district effective August 1, 1998.¹³¹³ The amendments proposed that all other Class Is must choose a single high school district with which to merge at the 1998 primary election.¹³¹⁴ The amendments also outlined procedures for the high school district of each local system to close attendance centers, which would naturally entail the potential closing of former Class I attendance centers.¹³¹⁵ Therefore, it could be argued

¹³¹² Legislative Records Historian, *Floor Transcripts, LB 806 (1997)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 22 April 1997, 4779.

¹³¹³ Committee Amendments, *AM1205 to LB 806 (1997)*, § 22, pp. 36-40.

¹³¹⁴ *Id.*

¹³¹⁵ *Id.*

that between the time the bill was introduced and subsequently advanced from committee, LB 806 had grown in both content and intent. And controversy.

General File Debate

First-round debate on LB 806 began on the morning of Tuesday, April 22, 1997 (the 62nd day of the 90-day session), and would continue throughout the remainder of the day. (April 22, 1997 would also be remembered as the day Senator Jerome Warner passed away after a long illness.) Senator Bohlke, as chair of the Education Committee, opened on the bill with comments about the legislation having direct links to the levy limitations passed by the Legislature under LB 1114 (1996). She briefly discussed some of the changes to the formula and gradually moved back to the issue she knew would produce the most controversy: the merger of Class I districts. “LB 1114 set the stage and makes necessary the reorganization of Class I schools,” said Bohlke, “I promise you there is no one on the Education Committee that looked forward to tackling reorganization in addition to a new funding formula, but we had no choice.”¹³¹⁶

The lack of choice, to which Senator Bohlke referred, apparently related once again to the levy limitations that were soon to take effect. Said Bohlke:

[M]ay I remind you that 1114 never promised us a rose garden, and as we work through this, let us keep our efforts directed at the promise we made to the citizens of this state last session: One, to provide real and lasting property tax relief; two, to protect the quality of education we want for our children; and, three, to achieve more cost-efficient school systems. Ours is a very difficult task, but in the end the challenge is to have a plan that directs dollars to a majority of schools with not only the greatest need, but also the most students.¹³¹⁷

The consequence of the levy limitations, she believed, was the need to reorganize school districts so that Class I districts were merged with high school districts. In this way, the levy limitations would have a more uniform impact on all local school systems.

Senator Bohlke was correct in her memory of the debate that preceded the passage of LB 1114 a year earlier. In 1996, the Legislature, lead by Senator Warner,

¹³¹⁶ *Floor Transcripts, LB 806 (1997)*, 22 April 1997, 4780.

¹³¹⁷ *Id.*, 4781.

believed local governments, including school districts, needed to find ways in which to become more efficient. Warner may or may not have had school reorganization in mind when he urged more efficiency in 1996. But he certainly wanted school boards, in fact all local governments, to search within their individual operations to identify unnecessary expenses and programs. It should be noted, however, that Senator Warner, as a member of the Education Committee in 1997, was a part of the unanimous vote to advance LB 806 out of committee.¹³¹⁸ Senator Bohlke and others took the *search for efficiencies* to a systemic level in 1997 and advocated the consolidation of Class I districts with high school districts. And Warner, who was battling cancer at the time, appeared to be in agreement with the direction of the legislation.¹³¹⁹ “(LB) 806 is where the rubber hits the road from 1114,” Bohlke said in opening remarks, “We have the responsibility to bring closure to the process we began last session.”¹³²⁰

Division of the Committee Amendments

Senator Bob Wickersham had arranged prior to the start of floor debate to have the committee amendments (AM1205) divided by topic in order to facilitate an orderly discussion.¹³²¹ Any senator can make such a request of a bill or amendment, and, in the case of LB 806, this was certainly appropriate considering the magnitude and scope of the issues to be addressed. Upon such a request, assuming the issue is divisible by determination of the presiding officer, the Clerk of the Legislature will typically confer with the chief sponsor of the legislation to arrive at a fair division of the sections and topics. In this case, Senator Bohlke was aware of the request by Senator Wickersham and had agreed to the suggested division. Under this arrangement, the failure of any one division would not necessarily sink the remainder of the components or the bill itself.

¹³¹⁸ *Executive Session Report, LB 806 (1997)*, 3.

¹³¹⁹ Senator Warner’s health began to deteriorate even prior to the commencement of the 1997 Session. He monitored the activities of the Legislature from his home and made as many personal visits to the Capitol as he could. He was present in executive session on the day the Education Committee voted to advance LB 806, but he did not take part in the actual floor debate of the bill.

¹³²⁰ *Floor Transcripts, LB 806 (1997)*, 22 April 1997, 4782.

¹³²¹ NEB. LEGIS. JOURNAL, 22 April 1997, 1641.

The parties agreed to divide the committee amendments into five parts. Each part or division was then assigned a floor amendment (FA) number, as illustrated in the following table. The first division would contain all sections within the committee amendments related to the merger of Class I districts with high school districts. The second division related to school reorganization procedures. The third division related to freeholding and the transfer of property to another school district. The fourth division contained all the major changes to the school finance formula itself. The fifth division related to the organization and services of educational service units.¹³²²

Table 66. Division of Committee Amendments, LB 806 (1997)

<i>Division</i>	<i>Amendment Sections</i>	<i>Description</i>
1 st Div. FA189	§§ 2-3, 22-23	The first division related to Class I districts and how these districts would be merged into a high school district. Under the proposed changes, only a high school district may levy property taxes.
2 nd Div. FA190	§§ 4-19, 21	The second division related to school reorganization procedures, which would be changed to allow county reorganization committees more authority to approve or disapprove reorganization proposals.
3 rd Div. FA191	§ 20	The third division relates to freeholding and would change the qualifications of freeholders in a district to transfer their property to another district.
4 th Div. FA192	§§ 1, 24-50, 59-61	The fourth division contained changes to the formula itself. <ul style="list-style-type: none"> • State aid would be allotted to local systems rather than individual districts, except for net option funding and consolidation incentives. • The existing tier structure would be eliminated in favor of three cost groupings (very sparse, sparse, and standard). • The new method of calculating aid would be based on adjusted formula membership for each local system and further weighted by three demographic factors (Indian-Land, Limited English Proficiency, and Poverty). • A hold harmless provision would be added to prevent major swings in state aid to local systems.
5 th Div. FA193	§§ 51-58	The fifth division relates to the organization of educational service units and to the core services they provide. A mechanism was provided for funding core services.

Source: NEB. LEGIS. JOURNAL, 22 April 1997, 1642; 28 April 1997, 1684, 1697, 1710; 15 May 1997, 2017.

¹³²² Id.

The chief sponsor of the legislation is given the opportunity to choose the order in which the divisions are addressed by the body. Senator Bohlke chose to take on the most controversial division first rather than last, and this meant a renewal of the age-old debate on Class I schools.

In order to understand the magnitude of the committee amendments to LB 806, it is worth emphasizing that the legislation, as introduced, did not contain a mandate for the merger of Class I districts. Instead, the original version of the bill merely provided a system for the distribution of property tax receipts between Class I districts and high school districts in light of the levy limitations.¹³²³ The idea of merging Class I districts was not part of the discussions during the public hearing for LB 806, a time when parties normally have an opportunity to offer their public comments on a legislative proposal.

The addition of the merger component coupled with the projected shift of state aid away from many rural K-12 districts caused a strong protest among small school supporters. “Rural people need to unite to defeat this most dangerous bill,” said Errol Wells of Elba, head of the Friends of Rural Education (FRED), a group representing small, rural school districts in Nebraska.¹³²⁴ Wells’ comments came just a few days before debate on LB 806 commenced, and he was not alone.

A contingent of organizations and school districts had organized to lobby against the legislation, included among them was the Nebraska Rural Community Schools Association (NRCSA), which had collected \$47,000 to hire an out-of-state consultant to review statistical printouts produced by the Department of Education.¹³²⁵ Ten schools from the Niobrara Valley Conference in northeastern Nebraska formed the “Save Our School” coalition for the purpose of lobbying against LB 806. The Nebraska Farm

¹³²³ The original version of LB 806 provided that, unless there is a written agreement between the school districts within a local system regarding the distribution of property tax receipts, the proceeds from the levy would be distributed to the school districts proportionately based on the weighted formula membership attributable to each district for the most recent certification of state aid under the school finance formula. Each district would then adjust its budget based on such anticipated revenue. LB 806 (1997), § 1, p. 2.

¹³²⁴ Leslie Boellstorff, “Battle Lines Draw Over School Funding Urban Districts See Consolidation as Efficiency; Rural Districts See It as Extinction,” *Omaha World-Herald*, 20 April 1997, 1b.

¹³²⁵ *Id.*

Bureau Federation joined the fight against the legislation due largely to the anticipated impact on property tax collections. The Farm Bureau believed rural schools losing state aid under LB 806 would have no choice but to increase property tax levies to raise revenue, and the brunt of this tax collection would fall upon the agricultural community.

All the while opponents of the bill organized to defeat it, the proponents were quick to fire back in its defense. “It’s very much an efficiencies issue,” said Speaker Withem.¹³²⁶ “The fact is, many small towns have chosen for years not to make their school systems more efficient,” Withem said, adding, “The current state-aid formula props those up by taking dollars from efficient districts and sending them to inefficient districts.”¹³²⁷ Similar to the opponents of LB 806, the proponents also organized to provide lobbying assistance, particularly from the larger, more populated school districts. The Greater Nebraska Schools Association (GNSA) was among those organizations promoting the legislation. “People say they want efficiency,” said Lane Plugge, Superintendent at Grand Island Public Schools, a member district of the GNSA.¹³²⁸ “Here’s a bill that rewards efficient school districts,” Plugge added.¹³²⁹

Debate on 1st Division: Merger of Class I Districts

The first division of the committee amendments to LB 806 was unquestionably the most controversial of all the components to the legislation. This component of the legislation proposed that Class I districts, which are in whole affiliated with a single high school district, would merge with that high school district effective August 1, 1998. All other Class I districts must choose a single high school district with which to merge at the primary election in 1998 based on a plurality vote, as long as one high school district receives at least 25% of the vote. If a single high school district does not receive at least 25% of the vote, the Class I district would dissolve and the territory will be attached to a high school district or districts, as proposed by the applicable county superintendent. All mergers and dissolutions of Class I districts would be effective August 1, 1998.

¹³²⁶ Id.

¹³²⁷ Id.

¹³²⁸ Id.

¹³²⁹ Id.

Beginning with the 1998-99 school year, only high school districts would have the authority to levy property taxes and receive state aid under the school finance formula.¹³³⁰

In 1997 more than half of the 656 public school districts were Class I districts.¹³³¹ Most of the Class I districts were affiliated with a K-12 district or multiple K-12 districts. However, some of the Class I districts were affiliated or a part of Class VI (high school only) districts. Under LB 806, the Class VI district would have the sole power to levy property taxes as any other high school district. The Class I districts within the jurisdiction of a Class VI district would then receive funding from the high school district “as the Class VI board determines to be appropriate” beginning on August 1, 1998.¹³³² State aid would be distributed only to the Class VI district, which would then distribute applicable aid to the associated Class I districts. The only exception would be net option funding and consolidation incentive funds, which would be distributed by the state directly to the Class I district.¹³³³

One of the ultimate goals of the committee amendments was to give the high school district (either a K-12 district or a Class VI district) the sole authority to dissolve or otherwise close a Class I district. Once the required merger process concluded on August 1, 1998, the former Class I districts would be called “subdistricts” of the high school district.¹³³⁴ The residents of each subdistrict would continue to elect a school board for the subdistrict, just as before. The residents of the subdistrict would also become legal voters of the high school district and, therefore, have a voice in the election of high school board. The board of the subdistrict would have all the same powers and duties except that: (1) the high school board would determine the amount of funding available to the subdistrict from levy proceeds and state aid received under the school

¹³³⁰ Committee Amendments to LB 806 (1997), *FA189 (AM1205)*, first division, § 22, pp. 36-38.

¹³³¹ NEB. BLUE BOOK, 2002-03 ed., 945.

¹³³² Committee Amendments to LB 806 (1997), *FA189 (AM1205)*, first division, § 22, p. 36.

¹³³³ *Id.*

¹³³⁴ *Id.*, pp. 36-38.

finance formula; and (2) the subdistrict may not reorganize into another district without the approval of the high school district board.¹³³⁵

The committee amendments provided for a phase-in of total control by the high school district board over the disposition of each subdistrict within its jurisdiction. Between August 1, 1997 and July 31, 2003, high school district boards may change the boundaries or close the attendance center of a subdistrict only if it had less than ten resident students or if it had a higher grade range cost per student than the district as a whole for the same grade ranges. To take such steps, the high school board must approve the action by a two-thirds majority vote after a public hearing was held on the matter. The action would not require the consent of the subdistrict board.¹³³⁶ In the same period of time, the boards of the subdistrict and high school district may also jointly change the boundaries or close the subdistrict attendance center by passage of identical resolutions by simple majority votes of each board.¹³³⁷

Beginning August 1, 2003, the amendments provided that high school boards may change the boundaries or close the attendance center of any subdistrict if two-thirds of the members of the school board of the high school district vote in favor of the action after a public hearing on the matter. Consent from the subdistrict board would not be required.¹³³⁸ Lastly, the amendments provided that when an attendance center was closed or, in the alternative, upon the expiration of ten years after the date of the merger, the subdistrict operating the attendance center would automatically dissolve by operation of law without further action on the part of the high school district.¹³³⁹

“No change is not an option”

Senator Bohlke made some of her best arguments concerning the merger of Class I districts in her opening remarks on the first day of debate (April 22nd). As she would do often throughout the debate on LB 806, Senator Bohlke reminded her colleagues that the

¹³³⁵ Id., p. 38.

¹³³⁶ Id., p. 38.

¹³³⁷ Id., pp. 38-39.

¹³³⁸ Id., p. 39.

¹³³⁹ Id.

die had been cast with the passage of LB 1114 (1996) to provide levy limitations. The Legislature had embarked on a mission to require political subdivisions, particularly schools, to become more efficient. LB 806, in her mind, was simply the next step to achieve that goal. Said Bohlke:

Both subjects, school finance and school reorganization, create controversy and a number of fears, both real and unreal. Those who fight for status quo fail to understand that *no change is not an option*. ... It is true that the new formula will cause rural schools that are small by choice to make decisions regarding their future, but we purposely allowed those decisions to be decided at the local level. They may choose to merge, reduce costs, or, by a vote of the people, remain open and continue to spend at their current level. ... But that leads us back to 1114. Why did a majority of us vote for it? We stated over and over again that it was time for schools to become more efficient. It is no surprise that many still believe that to be a worthy goal, just as long as it has no consequences for schools in their district.¹³⁴⁰

Senator Bohlke was well aware of the stiff opposition that lay ahead for the proposal to merge Class I districts, but she also made it clear to her colleagues that something absolutely had to be done with regard to school organization. “LB 1114 set the stage and makes necessary the reorganization of Class I schools,” she said.¹³⁴¹

No one, not even most opponents of the legislation, could argue that something had to be done about Class I districts in terms of how the levy limitations would be applied. There would also need to be some sort of established method to determine the budget authority of each Class I district. Aside these items of agreement, however, some opponents of the bill failed to see why this necessitated the consolidation of Class I districts unless, of course, it was not so much necessary as politically expedient. By merging and eventually eliminating Class I districts, it would meet the political objectives of some members of the Legislature. But how could this be viewed as a triumph? How could forcing the closure of a community’s school be seen as a good thing?

The answer was not likely as sinister as some Class I supporters may have believed. The answer was not likely because proponents of consolidation had some

¹³⁴⁰ *Floor Transcript, LB 806 (1997)*, 22 April 1997, 4779.

¹³⁴¹ *Id.*, 4780.

hidden agenda against small communities. The answer, at least as promoted on the floor of the Legislature, had everything to do with efficient schools versus inefficient schools. It had to do with limited resources available to fund public education and the determination of how best to use those resources. As explained by Senator Bohlke:

The question we must keep before us is, how do we gain efficiencies unless we establish a statewide average per pupil cost? The same for every student across the state, unless you live in a sparsely populated area, or have numbers of students living in poverty or coming to school with limited English proficiency, how can a statewide average be so unfair? ... Plainly and simply that is the main goal of 806, to distribute proportionately to schools the limited tax dollars we have based on need. For years, the basic principle of Nebraska school finance has been to measure a school's needs and resources. If needs have out measured resources, a district has received equalization aid.¹³⁴²

And Senator Bohlke made no apologies for the fact that the bulk of equalization aid funds went to larger school districts that lack the property tax resources and require additional support from the state. This is, after all, the idea behind an equalization-based formula.

Opponents of consolidation would argue that efficiency is subjective. Some rural schools may be high in per pupil cost, but also provide quality educational opportunities for students who would otherwise have to travel excessively to and from another school system. Senator Wickersham believed the question was far more complicated than whether schools were efficient or inefficient. "Efficiency is not the entire issue in school finance," Wickersham said, "You need to know why they're inefficient and whether they are providing necessary educational opportunities to children."¹³⁴³

No matter what the rationale and no matter what the circumstances, there are few political issues as controversial as school consolidation. It is often viewed as a clear rural-urban split among politicians and political agendas. Consequently, early in first day of debate on the first division of the committee amendments Senator Bohlke began to realize that this one component could place the entire bill in jeopardy based upon political attitudes. The body debated several amendments to the first division that day and the

¹³⁴² Id., 4780.

¹³⁴³ Boellstorff, "Battle Lines Draw Over School Funding Urban Districts," 20 April 1997, 1b.

following day, April 23rd, some of which with the intent to chip away at minor or major planks of the consolidation issue. Senator Jim Jones of Eddyville, for instance, fought unsuccessfully to amend the first division so that residents of a Class I district must first be given an opportunity to vote to close their school before such closure took place.¹³⁴⁴ The Class I patrons would essentially retain ultimate local control and veto power over the merger issue. Senator Jim Cudaback of Riverdale also fought unsuccessfully to delay the timeframe by which high school districts would have unrestricted authority to close a Class I district from 2003 to 2008.¹³⁴⁵

The amendments offered by Senators Jones and Cudaback may have been viewed as either delaying the inevitable or otherwise frustrating the purpose of the legislation to address a legitimate problem. But the last amendment discussed during debate on April 23rd was certainly of a different variety and, in fact, raised some interesting issues. The amendment was offered by Senator Curt Bromm of Wahoo, a member of the Education Committee, who, it must be remembered, voted along with his colleagues to advance LB 806 from committee. The issue brought forward under the Bromm amendment was discussed by members of the committee in executive session, but at the time, Senator Bromm would later say, he did not have a remedy for the problem. He subsequently filed his amendment just prior to the start of floor debate.

The focus of the problem related to those Class I districts that were affiliated with multiple high school districts. Many of these affiliation agreements involved tedious negotiations between all parties concerned. Senator Bromm, in private practice as an attorney, was personally involved in the formation of some of the affiliation agreements. And even though affiliation contracts are legally binding upon all parties, LB 806 proposed to essentially disregard these contracts and force the selection of just one high school district for purposes of merger. This may be relatively simple in concept, but it might also lead to some hard feelings among taxpayers, as Senator Bromm explained:

¹³⁴⁴ NEB. LEGIS. JOURNAL, *Jones AM1574*, 17 April 1997, 1602.

¹³⁴⁵ *Id.*, *Cudaback AM1617*, 1602.

A lot of those [affiliation] contracts have provisions that we will have to undo, if we pass 806, because those contracts said, in many cases, more than 50 percent of the time, if this district ever dissolves, this is where the land is going to go. Now stop and think about this for a minute. Based on that, districts have had bond issues for elementary schools. If those bond issues passed, those affiliated districts that were attached to that district that had the bond issue became obligated to pay part of the levy to pay the levy for the bond issue for the elementary school. Now comes 806 and we say, well, now because of the problem with distribution of state aid, we want you to reaffiliate, and we don't want any of this checkerboarding, so we want you all to go one place or another.¹³⁴⁶

Under an affiliation agreement with multiple high schools, the residents of the Class I district must by election choose one high school district or another under the committee amendments to LB 806. After the election, taxpayers could potentially find themselves paying the levy on a bond issue for a school district in which they no longer reside.

Aside the obvious problems about prior bond issues passed either by the Class I district or the elected high school district, there were problems relevant to the budget process for the Class I district. Of course, this was one of the major purposes of LB 806 in the first place, to establish a method by which Class I district budgets would be set. And, given the time for reflection on the issue, Senator Bromm arrived at a slightly different solution to the problem than that proposed under the committee amendments.

Senator Bromm's amendment proposed to leave affiliation agreements in tact, which would thereby avoid the consolidation issue altogether. "I would prefer that we leave the consolidation issue to another day and another time," Bromm said during the debate.¹³⁴⁷ But in the case of budget setting, the Bromm amendment proposed to have the high school district, containing the largest amount of the Class I district's assessed valuation, approve the budget for the Class I district.¹³⁴⁸ A stipulation would be placed on the high school district to approve a budget for each Class I district that was at least equal to the average cost per student for the high school district in the grade ranges served by

¹³⁴⁶ *Floor Transcripts, LB 806 (1997)*, 23 April 1997, 4969.

¹³⁴⁷ *Id.*, 4899.

¹³⁴⁸ NEB. LEGIS. JOURNAL, *Bromm AM1652*, 21 April 1997, 1614.

the Class I district multiplied by the preceding school year's fall membership for the Class I district. Senator Bromm was aware that Class I districts typically spend well beyond the average cost per student in larger school districts. He was aware that this potentially meant the slow strangulation of Class I districts, but it was, he felt, a preferable approach over outright consolidation. And, under the Bromm amendment, Class I districts would retain their identity and authority in all other aspects of school operation except the budget setting process.

Senator Bohlke participated in the debate of the Bromm amendment and expressed reservations about the proposal. Nevertheless, she offered to work with Senator Bromm on the issue. The hint of compromise on the first division was in the air prior to adjournment on April 23rd.

Before resumption of debate on April 28th, various proponents and opponents of the first division of the committee amendments met and discussed alternatives on the issue of the Class I budget process. As disclosed by Senator Bohlke, a weekend meeting was held between Senators Bromm, Wickersham, McKenzie and herself to arrive at a compromise solution.

Under the compromise amendment to the first division, the idea of mandatory consolidation of Class I districts would fall away. This was a particularly major concession for some lawmakers who had advocated consolidation in past years. It also was a major victory for those who supported Class I districts. The amendment would:

- Clarify that Class I districts do not have the authority to exceed the levy limitations;
- Permit Class I districts to retain their affiliation agreements, if applicable; and
- For Class I districts with affiliation agreements, designate the Class II, III, IV, V, or VI school district with the greatest share of the Class I district's assessed valuation as the "primary" high school district.¹³⁴⁹

The amendment further provided a detailed process by which Class I budgets would be established beginning with the 1998-99 school year.

¹³⁴⁹ NEB. LEGIS. JOURNAL, *Bohlke-Bromm-Wickersham AM1754 to FA189*, 28 April 1997, 1702-06.

Under the compromise amendment, if the primary high school district is a Class VI (high school only) district, the Class I district's budget would be prepared and adopted by the school board of the Class VI district. This provision would later be amended to provide a somewhat more elaborate scheme. If the primary high school district was not a Class VI district, the Class I district's budget would be calculated by the Department of Education. The department would utilize the newly created budget formula contained in the amendment, but it essentially boiled down to an averaging system as follows. If, for example, the cost per pupil of the Class I district was \$8,000 and the cost per pupil in the primary high school district for the same grade range was \$6,000, then the budgeted amount awarded to the Class I district would be the average of the two figures (in this case \$7,000). Over a period of years, or so the theory was established, the Class I district's cost per student would slowly move closer and closer to that of the primary high school for the same grade range. "I think that all along I have said that it's a question of costs and bringing costs down," Bohlke said in support of the amendment.¹³⁵⁰

The compromise amendment to the first division also provided for a process by which a Class I district may request to exceed the awarded budget amount. In so doing, the Class I must submit the request to all school boards of the affiliated high school districts. The request to exceed the budgeted amount must be approved by high school districts with a combined territory comprising at least two-thirds of the assessed valuation of the Class I district. The high school district containing the largest percentage of the Class I district's valuation must be one of the high school districts that approve the Class I request. All this must be done by a set timeframe outlined in the amendment.¹³⁵¹

The amendment was offered by Senators Bromm, Bohlke, and Wickersham in order to signify to the body that a legitimate compromise was on the table. The ensuing debate on April 28th was much less argumentative and more in the lines of understanding or attempts to understand exactly how this proposed budget process would work. Speaker Withem, who had his share of consolidation debates in the past, rose to offer his

¹³⁵⁰ *Floor Transcripts, LB 806 (1997)*, 28 April 1997, 5103.

¹³⁵¹ NEB. LEGIS. JOURNAL, *Bohlke-Bromm-Wickersham AM1754 to FA189*, 28 April 1997, 1702-06.

tentative support for the amendment, provided the opponents understand the ramifications. Said Withem:

I'm probably going to vote for the amendment, because that's a concession I'm willing to make. But I don't want people to say, later on, that, gosh, nothing has been changed in this bill, it still beats up on certain segments of our state, because this is a major change from where LB 806 ... is heading right now, if this amendment is not adopted.¹³⁵²

His admonishment did not go unnoticed, but neither would it prevent later attacks on the legislation on the grounds that the bill unfairly treated rural schools.

Senator Bob Wickersham, who helped shape the compromise, said the language of the amendment did not exactly match the discussion among the parties over the weekend, but he felt it did move the legislation in an acceptable direction:

It does, quite frankly, in my opinion, have some difficulties. And whether we're able to resolve those today, or tomorrow, or on Select File, or at which phase that occurs, there are certainly things that need to be clarified or understood as they appear in the amendment. Some of them are, quite frankly, beyond the concept that I discussed with Senator Bromm, and Senator Bohlke, and Senator McKenzie, yesterday afternoon.¹³⁵³

The Class I budget process would, in fact, be amended in the next stage of debate to clarify some of the mechanical aspects of the process, but the concept promoted in the compromise amendment would remain in tact.

After a lengthy debate, stretching over three separate legislative days, the Legislature voted 28-0 to adopt the compromise amendment to the first division.¹³⁵⁴ A series of pending amendments were then withdrawn by their respective sponsors since the body had obviously found an acceptable resolution to the issue of Class I districts. The first division of the committee amendments was adopted by a unanimous 29-0 vote.¹³⁵⁵

¹³⁵² *Floor Transcripts, LB 806 (1997)*, 28 April 1997, 5087.

¹³⁵³ *Id.*, 5114.

¹³⁵⁴ *NEB. LEGIS. JOURNAL*, 28 April 1997, 1706.

¹³⁵⁵ *Id.*, 1710.

Following the lengthy debate on the first division, Senator Bohlke and other proponents of the bill should have felt good about the progress of the legislation. They did not achieve mandatory consolidation of Class I districts, but then this was never a part of the original bill in the first place. The objective in the original bill was to devise a system to handle Class I budgets and to somehow force high spending districts to reduce their spending. At least in theory, this objective was met during the debate on the first division of the committee amendments. Similarly, proponents of Class I schools should have felt relieved that another consolidation bullet had been dodged. But they must also have realized that the political squeeze was on, and the fate of many Class I districts would remain tenuous at best.

Second Division: Streamline Reorganization Process

The second division of the committee amendments would proceed much quicker in comparison to the first division. While the first division required three separate session days, the second would require less than one hour of debate time. The second division lacked the controversy of the first, but certainly not the complication.

The second division incorporated those provisions of the committee amendments relevant to school reorganization procedures. These provisions were actually a part of a bill sponsored by Senator Janssen of Nickerson and referred to the Education Committee. The bill, LB 563, was introduced in an effort to streamline the existing reorganization process and provide a more efficient system for all parties concerned.¹³⁵⁶ The Education Committee opted to merge the legislation into the committee amendments to LB 806.¹³⁵⁷

The inclusion of Senator Janssen's legislation was certainly in line with the overall objectives of LB 806, which appeared, in part, to promote cost efficiencies through school reorganization. This also was in keeping with the legislation passed by the Legislature that immediately preceded the introduction of LB 1059 (1990). In 1988 the Legislature passed LB 940 to create the commission that ultimately recommended the

¹³⁵⁶ Legislative Bill 563, *Change and eliminate provisions relating to the petition and election methods of school district reorganization*, sponsored by Sen. Ray Janssen, Nebraska Legislature, 95th Leg., 1st Sess., 1997, title first read 21 January 1997.

¹³⁵⁷ *Executive Session Report, LB 806 (1997)*, 1.

school finance formula contained in LB 1059. Another important component of LB 940 (1988) was to encourage school districts to examine organizational alternatives. The intent language established in 1988 with regard to school reorganization is still in effect today, and states: “It is the intent of the Legislature to encourage an orderly and appropriate reorganization of school districts.”¹³⁵⁸

It was the “orderly” aspect of school reorganization that Senator Janssen attempted to improve in 1997. The Nebraska Reorganization of School Districts Act had been in place since 1949, but the laws had not been modified in any appreciable way since 1963. The existing procedures were extraordinarily tedious to follow and understand, and also expensive to implement since it required a sizable outlay in attorney fees by those districts wishing to reorganize. During the opening remarks on the second division, Senator Janssen related a recent account of a Class VI school and several affiliated Class I districts that spent nearly \$50,000 in attorney fees only to watch the reorganization effort fail on election day.¹³⁵⁹ Ironically, it was the very attorney involved in that failed reorganization that brought the idea of streamlining the process to Senator Janssen’s attention.

By definition, the reorganization of school districts means the formation of new school districts, the alteration of boundaries of established districts, the affiliation of districts, and the dissolution or reorganization of established districts.¹³⁶⁰ At the time, the reorganization process in Nebraska offered two alternatives for review and approval of a proposal. The first alternative was by election (of voters from all districts involved in the reorganization), and the second alternative was by petition (initiated by a citizen, a group of citizens, or by the school boards involved in the reorganization).

Both procedures required numerous steps, including a series of approvals by county and state reorganization committees, a series of public hearings, and innumerable meetings between the parties to refine the proposal. If one adds the dynamics of multiple

¹³⁵⁸ NEB. REV. STAT., § 79-401. Originally codified NEB. REV. STAT. § 79-426.27 (Cum. Supp. 1988).

¹³⁵⁹ *Floor Transcripts, LB 806 (1997)*, 28 April 1997, 5014-15.

¹³⁶⁰ NEB. REV. STAT., § 79-434 (1996).

school districts (e.g., multiple Class I districts) and multiple counties involved in the reorganization, the process became even more complicated and cumbersome. In fact, Senator Janssen passed around several charts that demonstrated the tediousness of the process at both the public hearing for LB 563 (1997) and during floor debate of LB 806. Many legislators were amazed to discover the complexity and redundancy of the existing reorganization process.

The changes proposed by Senator Janssen, as incorporated into the committee amendments, would make changes in both the petition and election methods of school reorganization. For instance, the legislation clarified that when the districts affected by the reorganization were in two or more counties, only the special committee, and not the county committees, would need to hold the public hearings, and also review and approve/disapprove the plan of reorganization.¹³⁶¹ The legislation also would require that county committees annually appoint three of its members to be the representatives on any special committees to hear and approve reorganization.¹³⁶² Other specific changes to the petition and election methods are outlined in the following table.

Table 67. Proposed Changes to the Reorganization Process under Second Division to the Committee Amendments, LB 806 (1997)

Petition Method:

- Clarifies that when a petition to reorganize is submitted to the county committee for review, the county committee may hold one or more public hearings while reviewing and approving or disapproving the proposal before submitting it to the state reorganization committee.
- Changes the procedure so that after the state committee makes their decision on approving or disapproving the proposal, they would no longer make recommendations to the county committee or return the proposal to the county committee. Rather, they would certify their approval to the county superintendent and return the proposal to the superintendent. Then, the superintendent would hold the petition for ten days following the receipt of the returned proposal from the state committee to allow time for names to be added or withdrawn. If there is a bond election in conjunction with the petition, the superintendent will hold the petition until the bond election is held. If

¹³⁶¹ Committee Amendments to LB 806 (1997), *FA190 (AM1205)*, second division, § 4, pp. 12-17.

¹³⁶² *Id.*, § 10, pp. 21-23.

Table 67—*Continued*

the bond election is unsuccessful, no further action on the petition would be required. Signatures would still be added or withdrawn from the petition. Following the end of the holding period, the superintendent would have 15 days to hold the hearing and determine whether there are sufficient valid signatures on the petition.

- Changes the petition procedures so that a petition to change boundaries or create a new school district from other districts could be initiated and accepted by the board of education of any Class I, II, III, IV, V, or VI district.
- Requires that the petition for the reorganization contain a separate statement as to whether the reorganization is contingent upon the success of a bond election held in conjunction with the reorganization.

Election Method:

- Clarifies that plans for the reorganization of school districts can originate in the county committee or can be prepared by the school board of any district affected by the plan.
- States that plans of reorganization shall include a separate statement as to whether the reorganization is contingent upon the success of a bond election held in conjunction with the reorganization.
- Changes the procedure used in the election method by requiring the state reorganization committee to approve or disapprove the plan. Removes the process of the state reorganization committee making recommendations and the conferences between the state and county committees. It would then bypass final approval by the county committee. If the state committee disapproves the plan, it would be considered a disapproved plan and returned to the county committee or special committee as a disapproved plan, and would not be submitted to a special election. If the state committee approves the plan and the plan has already been approved by the county or special committee, then it is designated as the final approved plan and will be returned to the county superintendent of schools to be submitted to a vote as provided.
- Changes the provisions regarding voting on the plan so that school districts of the same class vote as one unit on the plan. It also states that when the reorganization is contingent upon the success of a bond election for the construction of a K-6 or K-8 facility, then all the Class I districts shall vote as one unit in the bond election.

Source: Committee amendments to LB 806 (1997), *FA190 (AM1205)*, second division, §§ 4-19, 21, pp. 12-30, 33-36.

Following the introductory remarks by Senators Bohlke and Janssen on the second division of the committee amendments, the ensuing dialogue was more discussion than debate. On April 28, 1997, whether he liked it or not, Senator Janssen was the

designated authority on school reorganization procedures. Even the attorneys within the body were somewhat humbled by the complication of the existing system. In fact, there was sufficient complication in the system to cause Senator Bob Wickersham, an attorney by profession, to remark:

It does seem to me that what Senator Janssen has done, with a considerable amount of work and more than enough verbiage to keep every lawyer in the body happy, is to streamline the process, which may or may not make the lawyers happy. But in any event, what Senator Janssen has done and what is now incorporated in the committee amendments, I do support because we do have an interest in making sure that the process is a workable process, and that it provides the right kinds of opportunities for the local decision-makers to go forward in an orderly fashion and to achieve whatever results they desire and agree upon.¹³⁶³

Wickersham hastened to add that, even with the changes, the system was somewhat daunting, but improved nevertheless.

Within an hour the discussion on the second division was complete. With absolutely no effort to amend, the body adopted the second division of the committee amendments by a 27-0 vote.¹³⁶⁴

Third Division: Freeholding

Immediately after the adoption of the second division on April 28th, the body took up debate on the third division, relating to “freeholding.” Generally, the practice of freeholding involves the detachment of a tract or tracts of land within one school district and simultaneous attachment of the same tract or tracts of land to another school district by request of a person or persons having legal control over the land. Prior to 1997, the qualifying factors and requirements for freeholding were as follows:

- The land had to be currently located within a Class II or Class III district (i.e., a district offering kindergarten through grade twelve instruction), which, for at least two consecutive years, (i) had less than 25 students in grades 9-12, and (ii) is located within 15 miles of another high school on a “reasonably improved” highway; and

¹³⁶³ *Floor Transcripts, LB 806 (1997)*, 28 April 1997, 5021.

¹³⁶⁴ NEB. LEGIS. JOURNAL, 28 April 1997, 1685.

- The land had to be re-located or attached within an accredited Class II or Class III district in the same county or an adjoining county.¹³⁶⁵

If the initial qualifications were met, the freeholder may petition a special board consisting of the county superintendent, county clerk, and county treasurer, asking to have the land set off from the existing school district and attached to the other district.

The petition must (i) state the reasons for the freehold petition, (ii) demonstrate legal ownership or control of the property, and (iii) show proof that the petition was approved by a majority of the members of the school board to which the land was sought to be attached. After a public hearing on the matter, the board may vote to change the boundaries of the school districts so as to set off the land described in the petition and attach it to the other school district.¹³⁶⁶

Under the committee amendments to LB 806, the existing law would be amended to allow freeholders in a Class II or III district to transfer their property to a district contiguous to the property (i) if the district had a student-to-certificated-staff ratio of less than ten to one and (ii) if the high school was within 15 miles on a “maintained” road or highway of another high school. With these changes, transfers of property based on a high school student count must also be to another district that was contiguous to the tracts of land being transferred. For purposes of determining whether land was contiguous, all petitions currently being considered would be considered as a whole. The restriction of these provisions to the second consecutive year was also removed under the committee amendments to LB 806.¹³⁶⁷

The freeholding provisions were actually introduced as a separate bill, LB 716, in the 1997 Session by Senator Bohlke. (Similar bills had been brought before the Education Committee in past years.) The provisions of LB 716 were then merged into the committee amendments to LB 806. As Senator Bohlke explained during floor debate, the freeholding issue was brought to her attention by farmers who felt they had little or no

¹³⁶⁵ NEB. REV. STAT. § 79-458 (1996).

¹³⁶⁶ *Id.*

¹³⁶⁷ *Committee Statement, LB 806 (1997)*, 8.

say in what they considered to be excessively high spending patterns of their high school district. And, although they provide the bulk of property tax revenue, they believed they were “held captive” by the non-rural residents of the school district.¹³⁶⁸ Bohlke insisted the committee amendments would prevent further “checkerboarding” of school district territory and would merely allow a farmer or rancher to freehold land that is contiguous to another district.¹³⁶⁹ She also noted that, in light of the levy limitations under LB 1114 (1996), a farmer or rancher should have the right to “vote with their feet” if the residents of the district, who are mainly non-rural, opt to exceed the levy cap (i.e., via a vote to override the levy limit).¹³⁷⁰

The principle critic to the third division was Senator Curt Bromm, who believed the proposed change could actually hurt rural schools. “This section of the bill is pretty critical, I think, to some of the smaller districts especially,” Bromm said.¹³⁷¹ But his concerns were not necessarily critical of changing the existing law so much as *how* the law should be changed. For instance, Bromm supported the existing stipulation that no freeholding petition may be granted unless the low student population circumstances of the school district exist for at least two years. He did not, however, favor the proposal in the committee amendments that replaced the student population criteria with a criteria based upon the ten to one student-to-certificated-staff ratio. Said Bromm:

[Y]ou can have an aberration or you can have an event happen that causes the district, temporarily, to meet one of these criteria. You might have a situation where you have a pupil to staff ratio of less than 10 to 1 on a very temporary basis. Maybe you’re in the process of reducing your staff to economize, to come under \$1.10, and while you’re reducing the staff ... that takes time.¹³⁷²

Nevertheless, Senator Bromm did support the idea of using the levy cap as a trigger, of sorts, to permit freeholding, if qualified.

¹³⁶⁸ *Floor Transcripts, LB 806 (1997)*, 28 April 1997, 5035.

¹³⁶⁹ *Id.*

¹³⁷⁰ *Id.*

¹³⁷¹ *Id.*

¹³⁷² *Id.*, 5036.

Senator Bromm favored the idea of a farmer or rancher voting with his/her feet, as stated by Senator Bohlke, if the voters of the school district vote to exceed the levy limits. In such cases, the farmer or rancher, who pays a greater proportion in property taxes and who meets certain other criteria, may opt to attach their land to another district. Accordingly, Senator Bromm, along with Senators McKenzie and Wickersham, jointly filed a compromise on the issue of freeholding.

The Bromm-McKenzie-Wickersham amendment would qualify freeholding if the following criteria were met:

- The Class II or Class III district has less than 25 students in grades 9-12 for at least two consecutive years and the high school is located within 15 miles of another high school on a “maintained” highway or road; and
- The district has voted to exceed the maximum levy for any fiscal year beginning on or after 1998-99.¹³⁷³

The idea proposed under the committee amendments, to use the criteria of a ten to one student-to-certificated-staff ratio, would be deleted under the compromise amendment. The emphasis on the criteria for freeholding, Bromm, McKenzie, and Wickersham felt, should be on the impact of the levy limitations for those who paid the most to support schools. “I have school districts in my legislative district where 15 percent of the taxpayers pay 80 percent of the taxes for the school district,” Senator McKenzie said in support of the amendment.¹³⁷⁴ Senator Cap Dierks of Ewing agreed. “We have a large number of landowners which surround the towns that are paying a disproportionate share of the support for the district because of the property tax issue,” he said.¹³⁷⁵

The compromise amendment seemed to have considerable support among legislators, but there were still a few loose ends, as Senator Beutler would point out to Senator Bromm. The two legislators had been discussing the amendment off microphone when Senator Beutler noted that the 25 student count criteria currently in law and

¹³⁷³ NEB. LEGIS. JOURNAL, *Bromm-McKenzie-Wickersham AM1755 to FA191*, 28 April 1997, 1698.

¹³⁷⁴ *Floor Transcripts, LB 806 (1997)*, 28 April 1997, 5046.

¹³⁷⁵ *Id.*, 5047.

retained by the Bromm amendment actually applies to only one existing district, an Indian land school. However, the existing freeholding statute prohibited freeholding when the districts involved were located on Indian land. In essence, the student population criteria would need to be increased in order to have any potential applicability. Secondly, Senators Beutler and Bromm discovered that the language in the compromise amendment was unclear as to what criteria the “two consecutive year” requirement applied. In fact, it was meant to apply only to the student population criteria.

After discovering the errors, Senator Bromm told his colleagues that he would rather have the compromise amendment adopted as it currently stands and then come back to the issue on second-round debate. The Bromm-McKenzie-Wickersham amendment was adopted by a solid 30-1 vote.¹³⁷⁶ The third division of the committee amendments was then adopted as amended by a 27-0 vote.¹³⁷⁷ The first three divisions were adopted by unanimous votes, but the unanimity of the body was about to end as they took up the more complicated issues surrounding the state aid formula itself.

Fourth Division – State Aid Formula

In her opening remarks, Senator Bohlke referred to the fourth division as “the real heart of the bill” since it incorporated all the major changes to the state aid formula.¹³⁷⁸ The basic formula concept of needs minus resources equal equalization aid would remain in tact. However, the formula would be changed to distribute state aid based upon local systems, rather than individual districts. This would create 270 local systems from the 680 school districts in existence at the time. Class I districts, which comprised the majority of school districts, would become part of a local system.

Under the committee amendments, the state aid distribution system, in place since 1990, would be phased out after the 1997-98 school year. Beginning with 1998-99, only high school districts would have the authority to levy property taxes and collect state aid. The tier structure would be replaced with membership adjustment factors and cost

¹³⁷⁶ NEB. LEGIS. JOURNAL, 28 April 1997, 1698.

¹³⁷⁷ Id., 1699.

¹³⁷⁸ *Floor Transcripts, LB 806 (1997)*, 28 April 1997, 5139.

groupings based on sparsity to determine formula needs. A new special education allowance equal to the accountable special education receipts would be added and modeled after the existing transportation allowance. A new hold harmless provision would be added to prevent wide swings in state aid to individual districts. Districts would be guaranteed 85% of the aid received in the previous year minus the amount that could be generated from increases in adjusted valuation. Aid would be reduced for districts that have levies 10% below the levy limit.¹³⁷⁹

Table 68. Proposed Changes to the State Aid Formula under Fourth Division, Committee Amendments to LB 806 (1997)

- *Level of State Funding:* The existing intent language, in place since 1990, to provide 45% state funding for the general fund operating expenditures of schools would be modified to provide state funding “sufficient to support” general fund operating expenditures “which cannot be met by local resources.”
- *Weighted Formula Membership:* The new method of calculating aid is based on adjusted formula membership wherein the formula students in each grade range for each local system would be multiplied by corresponding weighting factors to calculate the weighted formula students for each grade range. The weighting factors would be:
 - 0.5 for kindergarten;
 - 1.0 for grades 1-6, including full day kindergarten;
 - 1.2 for grades 7-8; and
 - 1.4 for grades 9-12.
- *Demographic Factors:* Three “demographic” factors would be added to the weighted formula students for each local system. The demographic factors included an “Indian-Land Factor” equal to 0.25 times the average daily attendance of students who reside on Indian land, a “Limited English Proficiency Factor” equal to 0.25 times the formula students with limited English proficiency, and a “Poverty Factor” equal to the formula students qualified for free lunches or free milk multiplied by a corresponding number (the number gradually increases in relation to the percentage of poverty students).
- *Cost Groupings:* The tier structure would be eliminated. Local systems would be divided into three “cost groupings” based on the sparsity of the local system and determined by various criteria. The cost groupings would be labeled as “Very Sparse,” “Sparse,” and “Standard.” Most local systems would fall in the standard cost grouping.

¹³⁷⁹ Committee Amendments to LB 806 (1997), *FA192 (AM1205)*, fourth division, §§ 1, 24-50, 59-61, pp. 1-10, 40-96, 104-05.

Table 68—Continued

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- *Cost Per Student:* The department will calculate the average formula cost per student in each cost grouping by dividing the total estimated adjusted general fund operating expenditures for all local systems in the cost grouping by the total adjusted formula membership for all local systems in the cost grouping. The total estimated adjusted general fund operating expenditures for all local systems in the cost grouping is equal to the total adjusted general fund operating expenditures for all local systems in the cost grouping multiplied by a cost growth factor. The cost growth factor would be calculated using such data as the total formula students, average daily membership, allowable growth rates for the year of state aid distribution and the prior year, and additional growth rate allowed by action of the local board.
 - *Formula Need:* Each local system's formula need would be equal to the sum of the local system's transportation allowance, special education allowance, and the product of the local system's adjusted formula membership multiplied by the average formula cost per student in the local system's cost grouping.
 - *Stabilization Factor:* A new hold harmless provision, called a "stabilization factor," would provide that each local system would receive equalization aid in the amount that the total formula need exceeds total formula resources. However, a local system would not receive state aid that is less than 85% of the amount of aid certified in the preceding school fiscal year minus the amount that the maximum levy could generate from any increase in adjusted valuation, unless the system has a levy that is less than 90% of the maximum levy (the minimum levy adjustment).
 - *Minimum Levy Adjustment:* A "minimum levy adjustment" would be made for any district that has a levy less than 90% of the maximum levy in the calendar year when aid is certified. The adjustment would be calculated by subtracting the system levy from 90% of the maximum levy and multiplying the result by the adjusted valuation divided by 100. The adjustment would be added to each local system's formula resources. If the adjustment is greater than or equal to the income tax rebate, the system would not receive the rebate. If the adjustment is less than the income tax rebate, the system would receive the difference between the rebate and the adjustment in rebate funds.
 - *Net Option Funding:* Net option funding would be distributed directly to each district within the local system and would be based on the lesser of: (i) the average of the cost grouping cost per student; or (ii) the option district's cost grouping cost per student multiplied by the weighting factor for the appropriate grade range.
 - *Consolidation Incentive Payments:* Similar to net option funding, all consolidation incentive payments, if applicable, would be distributed directly to individual districts within the local system.
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Source: Committee Amendments to LB 806 (1997), FA192 (AM1205), fourth division, §§ 1, 24-50, 59-61, pp. 1-10, 40-96, 104-05.

Debate on the fourth division began late in the day on April 28th. The body had devoted nearly the entire day to debate on LB 806 and the body had become somewhat weary. Perhaps this was not the best time to begin debate on the most complicated, if not controversial, components of the legislation. In addition to the consolidation component, it was school finance component that many of the smaller, rural K-12 districts opposed since it would cause the redistribution of state aid to larger, urban K-12 districts. Most of the debate on the fourth division would clearly pit rural against urban interests, both within the body and among those lobbying entities representing school districts.

Income Factor

The first amendment to the committee amendments had been the focus of debates in past years. The object of the debate was the extent to which, or whether, income should be used in the state aid formula. The problem, as some argued, was that property taxes provide the bulk of local funding for schools and that total property valuation within a district indicated the overall wealth of the district. These same individuals would argue that ownership of property does not necessarily indicate wealth, and many property owners, particularly farmers, actually have very low income. They nevertheless bear a disproportionate burden to pay property taxes and support local schools.

The sponsor of the amendment was Senator Jennie Robak, who had introduced a bill earlier in the session on the very same issue (LB 93). The Education Committee, having jurisdiction over LB 93, had not taken action on the bill. Interestingly, Robak had introduced a similar bill, LB 349, in the 1995 Session. The 1995 version of the legislation was advanced from the Education Committee to General File, but did not advance any further. Following the 1996 Session, the issue became the subject of an interim study resolution for further review by the Education Committee. Following this study, some were inclined to leave the issue alone for one reason or another, while others, including Senator Robak, chose to pursue it further.

Specifically, the Robak amendment would implement a “district income factor” in the state aid formula.¹³⁸⁰ The factor would be based upon state adjusted gross income and

¹³⁸⁰ NEB. LEGIS. JOURNAL, *Robak AM1380*, 10 April 1997, 1460-61.

would incorporate a “district income ratio” to determine the level of income of each school district in comparison to total state income.¹³⁸¹ An equation would be used to arrive at the district income factor for each school district utilizing the district income ratio. Finally, each district’s applicable income factor would be multiplied by the district’s adjusted valuation, which would then be used in the calculation of state aid.¹³⁸²

In her opening comments, Robak presented a brief historical account of LB 1059 (1990) and its original intent to allocate income tax receipts to each district. She believed her amendment would actually further the original goals of LB 1059. “An income factor helps to even the playing field by broadening the definition of a school system’s wealth as it applies to the districts ability to pay for its educational needs,” Robak said.¹³⁸³ She also noted that the amendment had the endorsement of the Center for Rural Affairs, an advocacy group with increasingly provocative views on school finance issues.

The Center for Rural Affairs was certainly not the only vocal group on the issue of income as a part of the formula, nor generally on the plight of the rural community in relation to tax burden. As Robak explained:

And you couldn’t help but heard the plea from those in the halls in your offices this week, just because one owns a large amount of land, that land does not necessarily provide or produce enough income to offset the property tax bill. In a nutshell this amendment would shift more local effort to wealthier districts resulting in a lower property tax levy for the less prosperous district.¹³⁸⁴

Senator Robak was not alone in her viewpoint. Senator Curt Bromm also supported the amendment and became Robak’s key ally during the debate. “The property tax and wealth of a district should not be measured only by value of property, but rather there should be some income factor,” Bromm said.¹³⁸⁵

¹³⁸¹ Id.

¹³⁸² Id.

¹³⁸³ *Floor Transcripts, LB 806 (1997)*, 28 April 1997, 5143.

¹³⁸⁴ Id.

¹³⁸⁵ Id., 5145.

Senator Bromm quoted from a research document prepared by the Center for Rural Affairs that illustrated a disproportionate tax burden on individual taxpayers in different school districts. “It presents an interesting set of facts,” Bromm said, adding “The property tax burdens within school districts range from 2 percent of income to 20 percent of income, in some districts.”¹³⁸⁶ The data demonstrated that, on average, school districts with low per capita income have a disproportionately higher per capita property tax burden. Similarly, those districts with the highest per capita income have the lowest property tax burden to fund public education. “Now something tells you that something is awry there when you have those districts with the greatest income bearing the lowest property tax burdens,” Bromm said.¹³⁸⁷

Senator Bob Wickersham also entered the debate at least from an academic perspective. Ultimately, he would vote against the Robak amendment. Senator Wickersham said the heart of the issue was the “capacity to pay” for public education:

Traditionally, we are calculating that capacity to pay based on the valuation of property in a district, assuming, assuming that without any real basis in fact that having valuation in a district should indeed be equated with capacity to pay. ... Literally, the best measure of capacity to pay that we have is the income tax, because it is a progressive tax, it is dependent on how much you have available to pay the tax. But we’ve always found it difficult to find a way to incorporate that in any school aid formulas.¹³⁸⁸

Wickersham reminded his colleagues that it was for this reason that he opposed the capping of income tax rebate funds in 1996 during the debate on LB 1050. He predicted there would be future attempts to reduce the influence of income within the formula and a continued move against those like himself who believed “the capacity to pay in your district should be tied more closely to ... your income.”¹³⁸⁹

Speaker Ron Withem was among those vocally opposed to the Robak amendment. Speaker Withem called attention to a study conducted by the Department of

¹³⁸⁶ Id.

¹³⁸⁷ Id.

¹³⁸⁸ Id., 5150.

¹³⁸⁹ Id., 5151.

Revenue during the prior interim period. The study was done in conjunction with the interim study filed by Senator Robak on the issue of an income factor within the state aid formula. The department examined the correlation between total net taxable income in a school district and the adjusted valuation of the district. The department found what Speaker Withem called an “almost perfect” correlation of .99 for K-12 districts.¹³⁹⁰ For Class I and Class VI districts, the correlation was found to be .69. Withem admitted the Class I and Class VI correlation was not as strong, but it was still a positive indicator in favor of the existing school finance system.

Senator Wickersham immediately countered Withem’s remarks by noting that the data in the department’s report did not provide a correlation between income and property valuation according to property classification. “In other words, if you divided the property in a district up into agricultural property, commercial property and residential property ... and you also divided the income in the district on that same basis ... then you do not find such a high relationship,” Wickersham said.¹³⁹¹ Without this data, he insisted, the analysis was incomplete.

The debate on the Robak amendment brought forward some very interesting discussion, both on the pro and con side of the issue. But it may have been Senator Dave Landis who had the strongest argument against the amendment. Said Landis:

The difficulty of sticking an income tax formula in this system is that it says the wealth of a district is property taxes and income that they receive, but the community can only access one of those two income streams which is the property tax. It’s only when you can access property taxes and income taxes that putting the income tax formula or factor into the mix makes sense.¹³⁹²

Landis would later explain that the property tax is determined at the local level, which thereby provides local control over the tax. Even the soon to be implemented levy limitations provide ultimate control in the hands of the local electorate, with the ability to override the levy limit. The income tax rate, on the other hand, is set at the state level.

¹³⁹⁰ Id., 5171.

¹³⁹¹ Id., 5173.

¹³⁹² Id., 5183.

Senator Landis noted that the Revenue Committee, on which he served as a member, was examining the concept of a local option income tax. That, he said, would be one alternative. A second alternative would be to re-examine the amount of allocated income tax funds distributed to school districts. The answer, he cautioned, would not be found in a “hokey formula factor.”¹³⁹³

Senator Landis’ comment was certainly not lost upon Senator Robak in her closing remarks to the amendment. Said Robak:

Senator Landis talked about a hokey-pokey formula, this is not the way to go because the formula is hokey-pokey and we should still wait till next year till this formula, LB 806, really screws up the whole finance system and we’ve got to start all over again as we’ve done since 1059 and 1050.¹³⁹⁴

Unfortunately for Senator Robak the time of day had as much as anything to do with her apparent frustration with her fellow legislators. Senators were tired, the debate was growing stale, and members of the body had begun excusing themselves from the chamber to attend other matters. She tried to convince her colleagues that any flaws in the amendment could be corrected during Select File debate. She also had one parting comment that would resonate in later school finance debates in years to come. Robak said that, “Until we change the way schools are funded and schools are financed, we will not know property tax relief.”¹³⁹⁵

Despite her efforts, the amendment failed on a 14-26 roll call vote.¹³⁹⁶ The issue was put to rest for the time being, but others would attempt to revive the income debate in later discussions and amendments. Following the vote on the Robak amendment, the body adjourned for the day.

Continuation of General File Debate

The Legislature resumed debate on LB 806 the following morning, April 29th. The body would devote the entire day to debate on the fourth division and consider a

¹³⁹³ Id.

¹³⁹⁴ Id., 5186.

¹³⁹⁵ Id., 5187.

¹³⁹⁶ NEB. LEGIS. JOURNAL, 28 April 1997, 1710-11.

variety of amendments, but very few would be adopted. In all, sixteen amendments would be considered on April 29th but only three would be adopted. The dominant issues on this day of debate were the cost groupings used to compute state aid, the poverty factor used to adjust weighted formula membership, and the stabilization factor designed to prevent spiking in state aid. Only the first two issues (cost groupings and poverty factor) would receive votes to change the committee amendments. By the end of the day, it would become obvious to the leadership of the body that extraordinary measures would have to be taken to move the bill forward in the legislative process.

Bracket Motion

The first item for discussion was not an amendment but a priority motion to bracket the bill until May 29, 1997. The motion, filed by Senator Robak, was perhaps offered spitefully given the failure of her amendment the evening before concerning income as a factor in the state aid formula. At first she gave no reasons for offering the motion, but, after prompting by Senator Beutler, said the Legislature could use the time to study the matter and also address other bills waiting on General File. However, the proposed delay, until May 19th, would mean resumption of first-round debate on the 78th day of the 90-day session. Considering the complexity of the issues yet to be resolved, this would be tantamount to a kill motion and most in the chamber knew it. But it also was obvious that few supported Robak's motion. Senator Bohlke, in particular, spoke of the importance to move forward despite the tediousness of the issues:

I think that we had made a promise to the taxpayers of this state that we would come back this session and we would resolve the property tax process, property tax relief package process, and how we were going to distribute aid to schools. I think that it would be a terrible mistake for us to delay resolving this.¹³⁹⁷

Senator Bohlke was joined by Senator Wickersham, who himself had significant concerns with the legislation as it currently stood. Nevertheless, he opposed the bracket motion and urged the continuation of debate. "This is one of the most critical components of the bill," Wickersham said, "We do need to begin to familiarize you, the

¹³⁹⁷ *Floor Transcripts, LB 806 (1997)*, 29 April 1997, 5190.

rest of the body, with what this section of the bill does.”¹³⁹⁸ The only way to do that, he said, was to continue working through the legislation. Ultimately, Senator Robak “reluctantly” withdrew the motion.¹³⁹⁹

The bracket motion only served to add yet more tension to an already strained debate. Prior to the resumption of debate on April 29th, the Legislature had already devoted nearly 16 hours of debate over a three-day period on the first four divisions of the committee amendments. The bracket motion did, however, have one positive effect, which was to allow Senator Bohlke an opportunity to remind her colleagues of the importance of the legislation in relationship to the levy limitations passed a year earlier. She initiated the debate on April 22nd with the premise that LB 1114 (1996) set in motion a policy directive and a promise of property tax relief. It was her belief that LB 806 served as the next logical step in that policy directive, and would also resolve some glaring problems with the school finance formula in relation to the levy limits.

Poverty Factor

One of the amendments adopted on April 29th concerned the poverty factor that was incorporated into LB 806. Under the provisions of the original bill, the poverty factor was crafted to be relatively basic and straightforward. The original version of the bill provided that for districts, in which there are students qualified for free lunches or free milk, the weighted formula students would be increased by a poverty factor equal to the result of multiplying the ratio of students *qualified* for free lunch/milk to the total formula students of the district times 25%.¹⁴⁰⁰ However, upon advancement from committee, the poverty factor had evolved to a somewhat more elaborate calculation.

The committee amendments to LB 806 incorporated a poverty factor based upon a graduating scale.¹⁴⁰¹ The percentage of students *qualifying* for free lunches or milk in each local system would be linked to a corresponding factor. The higher the percentage

¹³⁹⁸ Id., 5194.

¹³⁹⁹ Id., 5196.

¹⁴⁰⁰ LB 806 (1997), § 10, p. 32.

¹⁴⁰¹ Committee Amendments to LB 806 (1997), *FA192 (AM1205)*, fourth division, § 32, pp. 65-66.

of qualifying students, the higher the corresponding factor. A threshold was established so that a local system had to have over 10% of its students qualify for free lunches or milk before the poverty factor would become applicable. And it was the chosen threshold that caused one legislator to seek a modification.

Senator Bob Wickersham believed the proposed poverty factor unfairly treated those school districts that could not meet the threshold number of students. He proposed an amendment that would lower the threshold so that a local system had to have no less than 5% of its students qualify for free lunches or milk. The amendment also expanded the graduating scale in order to more closely link the applicable poverty factor to the percentage of poverty students.¹⁴⁰² “What I think that does is more closely reflects some of the circumstances that you may find in school districts,” Wickersham explained to his colleagues.¹⁴⁰³

Table 69. Proposals for a Poverty Factor, LB 806 (1997)

<i>Committee Amendment Version</i>		<i>Wickersham Amendment</i>	
Poverty factor equals the formula students qualified for free lunches or free milk multiplied by the following factors:		Poverty factor equals the formula students qualified for free lunches or free milk multiplied by the following factors:	
<i>Factor</i>	<i>% of qualified students</i>	<i>Factor</i>	<i>% of qualified students</i>
0	0 to 10%	0	0 to 5%
.15	> 10% and < 15%	.05	> 5% and < 10%
.20	> 15% and < 20%	.10	> 10% and < 15%
.25	> 20% and < 30%	.15	> 15% and < 20%
.30	> 30%	.20	> 20% and < 25%
		.25	> 25% and < 30%
		.30	> 30%

Sources: Committee Amendments to LB 806 (1997), FA192 (AM1205), fourth division, § 32, pp. 65-66; NEB. LEGIS. JOURNAL, *Wickersham AM1486*, 17 April 1997, 1592-93.

There was no opposition to the amendment even though Senator Wickersham admitted he did not know what the fiscal impact would be if more students were counted

¹⁴⁰² NEB. LEGIS. JOURNAL, *Wickersham AM1486*, 17 April 1997, 1592-93.

¹⁴⁰³ *Floor Transcripts, LB 806 (1997)*, 29 April 1997, 5304.

under the poverty factor. The assumption was that it would produce a slight shift in state aid from district to district. Said Wickersham:

If you don't have those demographic factor students in your district, this may very well lower the amount of assistance that you receive. But if you have those demographic factor students in your district, it should tend to increase the amount of money that you'll receive, given the fact that the cost factors are going to be lower than what they are now.¹⁴⁰⁴

A more compelling question, however, was asked by several members of the body and concerned the method by which students are classified as poverty students in the first place.

The language in the committee amendments, which was maintained under the Wickersham amendment, required that students qualify for free lunches or free milk under the U.S. Department of Agriculture child nutrition programs. The students did not necessarily have to partake in the programs. It was enough that they merely qualify. But how would the Nebraska Department of Education accurately calculate the number of qualifying students for each local system? And, generally, what is the correct definition of "poverty"?

Senator Wickersham shared these concerns and suggested he would offer another amendment at a later time to address those issues. In the meantime, he requested and received enough support for the present amendment to change the factor scale and qualifying variables. The Wickersham amendment was adopted by a 26-3 vote.¹⁴⁰⁵

Cost Groupings

Perhaps the most significant aspect of the fourth division of the committee amendments was the proposal to eliminate the existing tier structure and impose cost groupings to determine cost per student. The three cost groupings (sparse, very sparse, and standard) would serve as one of the major determinants of the total state aid awarded to each local system. In printouts prepared by the Department of Education, the standard

¹⁴⁰⁴ Id., 22 April 1997, 5308.

¹⁴⁰⁵ NEB. LEGIS. JOURNAL, 29 April 1997, 1724.

cost grouping would produce a cost per student of \$4,119.¹⁴⁰⁶ The sparse cost grouping would produce a cost per student slightly greater than the standard cost grouping, and the very sparse cost grouping would have a slightly higher cost per student amount than the sparse cost grouping. These amounts would change from year to year.

For better or worse, many legislators used the state aid models of LB 806 prepared by the department as a basis of support or opposition to the legislation. They viewed LB 806 in terms of how it affected the school districts within their own legislative district rather than the positive or negative policy impact on public education from a statewide perspective. Perhaps this was to be expected. All legislators look upon some issues from a statewide perspective and others from a more territorial outlook. Public education generally, and the survival of individual school districts specifically, has a strong political appeal to both politicians and their constituencies alike. In short, there are few issues that produce as much passion and political commitment as the education of children. And, in Nebraska, there are few issues that polarize rural and urban interests as funding for public education.

For her part, Senator Bohlke spoke honestly and forthrightly at the outset of debate on LB 806 that the legislation would shift state aid to those school districts requiring the most equalization aid. As she said on the first day of debate:

A storm of criticism has been hurled at 806 from rural schools, most of which are in the eastern two-thirds or third of the state, declaring that the bill is slanted towards helping large schools. It is true that Omaha and Lincoln receive 25 percent of the funds, but they also have 25 percent of the students. When one adds poverty and special education into their costs, it seems very appropriate that they get at least 25 percent of the dollars.¹⁴⁰⁷

The concept of the cost groupings were in part a means of working within the framework of LB 1114 to equalize property tax burdens and simultaneously force school districts to operate within a statewide average cost per student. “We worked from the theory that we should find a method of setting a statewide average of per pupil cost and hold that

¹⁴⁰⁶ *Floor Transcripts, LB 806 (1997)*, 22 April 1997, 4779.

¹⁴⁰⁷ *Id.*

amount as a goal for schools to reach,” Bohlke said, “If a school spends more than the average amount, the district will have to work harder at becoming efficient.”¹⁴⁰⁸

But no matter what the explanation or rationalization, the cost groupings were tough to swallow for those legislators with school districts at much higher costs per student than that modeled under LB 806. As politicians, they knew the best strategy to force a compromise was to filibuster until the proponents of the bill had no choice but to concede in whole or in part on the more divisive issues. Interestingly, this never really happened during the debate on LB 806. Some of the same senators who desired changes to the cost grouping structure also recognized the importance of passing the legislation. Therefore, a filibuster in the traditional sense, with incessant stall tactics and frivolous amendments, never really occurred. That is not to say, however, that the opponents and the constructive critics within the body allowed issues to pass without a fight.

On April 29th, two senators with different perspectives on LB 806 would lead the struggle to improve the legislation to meet their own political agendas. Senator Cap Dierks of Ewing would ultimately vote against the legislation, but this would not stop him from attempting to improve it on behalf of those he represented. Senator Bob Wickersham admirably played the role of constructive critic. He either authored or co-sponsored more amendments to LB 806 than any other single lawmaker, but the amendments were generally designed to enhance the legislation or to resolve technical problems within the bill. He would ultimately vote in favor of LB 806 on Final Reading. Nevertheless, both legislators had a common objective with regard to the fourth division of the committee amendments. They both sought to change the parameters of the cost groupings in order to classify additional school districts as sparse.

The debate that took place on April 29th was particularly important from an historical perspective. The committee amendments to LB 806 proposed to eliminate the tier structure that had been in existence for seven years, since the passage of LB 1059 (1990). The policy question that arose again and again during the April 29th debate focused on the historical rationale for the creation of the tier structure, and also the

¹⁴⁰⁸ Id.

rationale for eliminating it. On this day, both proponents and opponents alike would accuse one another of having hidden political motivations for espousing one view or another. Proponents had to justify the rationale for creating the cost grouping structure while opponents had to demonstrate the merit of the old system or at least demonstrate the negative aspects of the cost grouping idea. The issue and debate over cost groupings would live up to the prediction of Senator Dierks when he referred to it as one of the more “contentious points in the bill.”¹⁴⁰⁹

Legislators and lobbyists often refer to a “trial balloon” amendment as a proposal rhetorically set aloft in order to see how far it would fly or, as it may happen, how fast it would get shot down. The strategy is sometimes used to gauge the mood of the body on a given topic. For as the saying goes, one never knows unless one tries. On April 29th Senator Dierks sent aloft an idea that, whether he considered it a trial balloon or not, would stir up a hornets’ nest of commotion and heated debate.

The Dierks amendment, which was the first amendment to be debated on the fourth division, would propose the addition of a fourth cost grouping. The Dierks amendment stated that local systems not qualifying for the very sparse or sparse cost groupings yet have 300 or fewer formula students in the local system would be classified under the “rural cost grouping.”¹⁴¹⁰ The language of the amendment was simply worded with an obvious goal, to divide the proposed standard cost grouping into two groupings. According to the printouts available at the time, about half of those districts currently under the standard cost grouping would be moved, by virtue of smaller student populations, to the proposed rural cost grouping. Dierks’ plan was to award a higher cost per student amount to those districts in the rural cost grouping. The Dierks amendment would ultimately be withdrawn before a vote could be taken, but the ensuing dialogue among legislators would set the stage for the remainder of the debate on LB 806.

Senator Dierks made no secret of the fact that he simply took the districts in the lower three tiers of the existing formula to comprise his rural cost grouping. He argued

¹⁴⁰⁹ Id., 29 April 1997, 5210.

¹⁴¹⁰ NEB. LEGIS. JOURNAL, *Dierks AM1458*, 15 April 1997, 1510.

that his amendment maintained the objective under LB 806 to abandon the tier system, but it also maintained the policy established under LB 1059 to recognize various sized districts. “The tier system recognizes that rural schools are simply not able to achieve the efficiencies of scale of their more urban counterparts,” Dierks argued.¹⁴¹¹ He said the policy proposed under LB 806 would simply lump all, or most, school districts within one cost grouping regardless of the differences in student populations. “The policy assumed by the [standard] cost grouping under LB 806 is that the small rural schools which cannot meet the state average per pupil costs are inefficient by choice,” he said.¹⁴¹²

Senator Dierks may have had a legitimate point with regard to establishing some meaning to the phrase *efficient school systems*. What does an efficient school system look like? Do they all offer identical curriculum, facilities, extra-curricular activities, and teacher salaries? Or is efficiency achieved by simply existing, however possible, under a set statewide average cost per student? “I think it’s important to establish what we mean by efficiency because that is central to the policy questions we are addressing with this legislation, and, indeed, with a lot of other education funding legislation,” Dierks said.¹⁴¹³ Rural schools, he argued, were generally providing a basic education with modest ranges of extracurricular activities, and usually lower than statewide average teacher salaries. He insisted that, while rural schools may not be as efficient in the eyes of some, they are nevertheless “efficiencies of scale.”¹⁴¹⁴

Senators Bohlke and Beutler lead the opposition to the Dirks amendment. They believed the amendment represented nothing more than a continuation of the tier system. Senator Beutler, in particular, was a strong critic of the present tier system and he held nothing back in relating his concern to the body. “I think going back to a tiered system, no matter how many tiers it is, going back to the concept of a tiered-cost system is,

¹⁴¹¹ *Floor Transcripts, LB 806 (1997)*, 29 April 1997, 5197.

¹⁴¹² *Id.*

¹⁴¹³ *Id.*, 5198.

¹⁴¹⁴ *Id.*

perhaps, the major mistake we could make,” Beutler said.¹⁴¹⁵ Mistake or not, it was his next few comments that would gain the most attention from the body. Said Beutler:

And the fact of the matter is that the tier system was a political decision. In my opinion, the tier system was a political decision that made possible a state aid program. And my argument would be that that tiered system has protected inefficient schools inappropriately, continues to do so, and it ought to come to an end. Those schools that should be protected are those that need protection, not those that don’t need protection, and I will try to make the argument in this debate that there are 60 to 80 high schools in this state that should not be getting the protection that they’re getting today.¹⁴¹⁶

These were strong words, but he was not alone on the thought that the tier structure was originally created out of political considerations. Referring to the Dierks amendment, Senator Bohlke rhetorically asked aloud, “Why are we doing this other than, once again, for the whole reason we had the number of tiers, political reasons.”¹⁴¹⁷

Senator Bohlke also cut to the chase as to the true purpose of LB 806 in case anyone had forgot. LB 806, she insisted, was “about efficiencies and cutting costs” rather than maintaining a system that accounted for efficiencies of scale.¹⁴¹⁸ And, she reiterated, it was not just about efficiencies in school systems but also fairness to the taxpayer. Referring to the school districts that would comprise the proposed rural cost grouping, Senator Bohlke said:

If you pull them out and give them special protection, I think it is counter to everything that we’ve talked about, as far as the philosophy of 806, and I also think that it does not do what I keep talking about for the taxpayer, and that’s eventually address property tax relief.¹⁴¹⁹

Of all possible arguments, it may have been Senator Bohlke’s reminder about the overriding mission of property tax relief that helped place the Dierks amendment into

¹⁴¹⁵ Id., 5203.

¹⁴¹⁶ Id.

¹⁴¹⁷ Id., 5205.

¹⁴¹⁸ Id.

¹⁴¹⁹ Id., 5205-06.

perspective. In truth, the whole property tax relief package of 1996 was about cost cutting and finding efficiencies in local government. Senator Bohlke had a difficult argument to refute, especially by those of her colleagues who supported the 1996 property tax relief effort, which included Senator Dierks.

The property tax relief argument did not deter everyone. Property tax relief or not, few issues draw out the level of emotion as school funding. And even if one agrees with the notion that the overriding concern is property tax relief, does that necessarily make LB 806 the only viable solution to the school finance issues? Senator Stan Schellpeper of Stanton certainly did not believe so. “LB 806 is designed to help the large schools,” he said while noting the only messages he received in support of the legislation came from large community outside his own legislative district.¹⁴²⁰ He also noted that two busloads of residents from Wausa, which was at the time a community within his legislative district, would soon be traveling to Lincoln to lobby against the measure.¹⁴²¹

In fact, many small communities formed their own grassroots lobbying efforts during the debate on LB 806. The Capitol hallways were often filled with adults and students from rural districts who feared the legislation would cause the end of their school. Business owners in small communities feared the closing of their school would mean the eventual collapse of the town itself. There was a palatable sense of panic in the air, which often spilled into the Legislative Chamber through the words used by opponents of the bill.

Senator Dierks had a few additional salvos to throw back at his counterparts who opposed his amendment. When Senator McKenzie claimed the figure used in the amendment was an arbitrary figure (i.e., under 300 students), Senator Dierks fired back that the same could be said of the cost grouping criteria proposed in LB 806. And there may have been some truth to that assertion. As the following chart illustrates, the criteria proposed under the committee amendments and that proposed by the Dierks amendment seemed to share a common thread of randomness.

¹⁴²⁰ *Id.*, 5207.

¹⁴²¹ The 2002 redistricting legislation placed the town of Wausa in District 40 (formerly under District 18).

Table 70. Proposals for Cost Grouping Criteria under LB 806 (1997)

<i>Committee Amendment Version</i>	<i>Committee Amendment Version as Modified by the Dierks Amendment</i>
<p><i>Very Sparse</i></p> <ul style="list-style-type: none"> • Less than 0.5 students per square mile in the county where the high school is located; • less than 1.0 formula students per square mile in the local system; and • more than 15 miles between the high school and the next closest high school on paved roads. <p><i>Sparse</i></p> <ul style="list-style-type: none"> • Local systems that do not qualify for the very sparse cost grouping; • less than 2.0 students per square mile in the county where the high school is located; • less than 1.0 formula student per square mile in the local system; and • more than 10 miles between the high school and the next closest high school on paved roads. <p><i>Standard</i></p> <ul style="list-style-type: none"> • Local systems that do not qualify as very sparse or sparse. 	<p><i>Very Sparse</i></p> <ul style="list-style-type: none"> • Less than 0.5 students per square mile in the county where the high school is located; • less than 1.0 formula students per square mile in the local system; and • more than 15 miles between the high school and the next closest high school on paved roads. <p><i>Sparse</i></p> <ul style="list-style-type: none"> • Local systems that do not qualify for the very sparse cost grouping; • less than 2.0 students per square mile in the county where the high school is located; • less than 1.0 formula student per square mile in the local system; and • more than 10 miles between the high school and the next closest high school on paved roads. <p><i>Rural</i></p> <ul style="list-style-type: none"> • Local systems that do not qualify for the very sparse or the sparse cost grouping but have 300 or fewer formula students in the local system. <p><i>Standard</i></p> <ul style="list-style-type: none"> • Local systems that do not qualify as very sparse, sparse, or rural.

Sources: Committee Amendments to LB 806 (1997), *FA192 (AM1205)*, fourth division, § 33, pp. 66-68; NEB. LEGIS. JOURNAL, *Dierks AM1458*, 15 April 1997, 1510.

Senator McKenzie, vice chair of the Education Committee, noted that, of the fourteen K-12 systems within her legislative district, the Dierks amendment would place eight in the rural cost grouping and six in the standard. She wondered aloud how she would explain to one rural-based community that they are not entitled to as much state aid as the rural-based community directly down the road, which just happens to have a few less students. Senator Dierks countered with an admission that 300 students was an arbitrary number, but asked his colleagues if it was any different than the arbitrary nature of the criteria used to define sparse and very sparse. Said Dierks:

I think that the arbitrary decision was made when you selected a sparse and very sparse category in this bill. ... Well, I'd like to ask, how did you decide that two

students per square mile was sparse and one student per square mile was very sparse? I'd like to understand how that was decided. That's an arbitrary decision. In my area, I think that three students per square mile is sparse, maybe even four. So that was arbitrary. You ended up treating less than 40 schools a little bit better because you called them sparse and very sparse.¹⁴²²

Dierks claimed the decision to use 15 miles between high schools or two students per square mile, for instance, carried as much political basis and arbitrariness as the decision to use 300 students as the cutoff between one cost grouping and another.

Were the original criteria under the tier structure based upon political considerations? Were the criteria of the proposed cost groupings under the committee amendments to LB 806 based upon political considerations?

As often the case, the truth lay somewhere in the middle since the nature of policymaking involves a basis of research (a policy proposal) on top of which are found layers of political considerations. If the ultimate goal of any policymaker is to succeed in making policy, then considerations must be made to improve the chances of passage. Therefore, compromises are inevitable. Most policy is neither entirely logical nor illogical, neither good for all nor bad for all. Policy decisions and policy outcomes almost invariably make some happy and others not.

With regard to Senator Dierks' assertion that the tier structure contained in LB 1059 was based upon political considerations, no one within the body was more qualified to respond than Speaker Ron Withem, who championed the legislation in 1990. When he rose to speak on the issue, he joked that the story of the tier structure had gained almost biblical status over the course of the years. Said Withem:

I put it on the table, and since then, it has become something like those who would have us believe that Moses really came down from the mountain with three tablets, the first five commandments on one, the second five on the other, and the Nebraska tier structure on the third.¹⁴²³

Speaker Withem told his colleagues that the history of the tier structure was an interesting one, but there was certainly nothing magical about the process. In truth, the commission,

¹⁴²² *Floor Transcripts, LB 806 (1997)*, 29 April 1997, 5210.

¹⁴²³ *Id.*, 5228.

established in 1988 to recommend a new school finance formula, had considered a range of ideas to classify school districts and assign a per pupil cost. In the end, however, it was decided to essentially leave school districts as they found them. Districts were placed in a series of tiers according to their respective student counts. The break off points from one tier to another were believed to be a starting point, as Withem said, and not necessarily meant to be written in stone (or tablet as it were).

Table 71. Tier Structure as Contained under LB 1059 (1990)

Grades 1-6, including full-day kindergarten

<i>Tier</i>	<i>Tier midpoint</i>	<i>Average daily membership range</i>
1	50.5001 - 101.00
2	143.00	101.01 - 185.00
3	280.00	185.01 - 375.00
4	687.50	375.01 - 1,000.00
5	1,450.00	1,000.01 - 1,900.00
6	8,450.00	1,900.01 - 15,000.00
7	Median average daily membership of tier	15,000.01 and over

Grades 9-12

<i>Tier</i>	<i>Tier midpoint</i>	<i>Average daily membership range</i>
1	25.0001 - 50.00
2	62.50	50.01 - 75.00
3	87.50	75.01 - 100.00
4	125.00	100.01 - 150.00
5	200.00	150.01 - 250.00
6	375.00	250.01 - 500.00
7	750.00	500.01 - 1,000.00
8	5,500.00	1,000.01 - 10,000.00
9	Median average daily membership of tier	10,000.01 and over

Source: NEB. REV. STAT. § 79-3805 (Cum. Supp. 1990); re-codified § 79-1006 (1996).

From the conception of LB 1059 in 1990 through the 1997 Session, the tier structure remained essentially unchanged. Whether the chosen membership ranges were arbitrary or political is perhaps open to speculation. One known political consideration involved Omaha Public Schools (OPS). The tier structure was created such that the state's largest school district would have its own tier. However, the reasoning also

incorporated some practical considerations since the state's only metropolitan school district certainly had unique characteristics and issues with regard to education of children, and these had to be addressed. On the other hand, Lincoln Public Schools (LPS), the state's second largest school district, was not awarded its own tier. This fact became a major source of irritation for LPS school officials, who believed the status of their district also deserved its own tier.

In short, Senator Dierks' point about the political nature of designating schools into tiers as per LB 1059 (1990) or into cost groupings as per LB 806 (1997) had at least some merit. But then levy limitations were not an issue in 1990 as they were in 1997. Senator Bohlke believed the Legislature had committed itself to a policy direction involving cost containment, efficiency, and general downsizing of local government. It was her belief that LB 806 would conform the state aid formula to this policy direction with full knowledge that it would neither be easy nor popular with everyone concerned.

Senator Dierks withdrew his amendment after a little more than an hour of debate. His proposal would likely not have garnered sufficient votes to be adopted, and he had other proposals to offer on the bill. Dierks' trial balloon amendment likely would have been shot down. By the end of the day, however, there would be at least some movement on the issue of sparsity and the cost groupings.

Two separate amendments would be adopted on April 29th to change the sparse cost grouping. The first amendment, offered jointly by Senators Bohlke and Wickersham, would expand the criteria for the sparse cost grouping. The amendment stated that if a local system had less than one formula student per square mile and more than 20 miles between the high school attendance center and the next closest high school attendance center on paved roads then such district would be placed in the sparse grouping.¹⁴²⁴ In their shared opening remarks, Senator Bohlke said the amendment would cause five additional local systems to be reclassified from the standard cost grouping to the sparse cost grouping. Two of the five schools affected by the amendment were located in Senator Wickersham's legislative district.

¹⁴²⁴ NEB. LEGIS. JOURNAL, *Wickersham-Bohlke AM1738*, 29 April 1997, 1724.

The amendment should have provided evidence to opponents of the bill that Senator Bohlke was willing to compromise, at least to some extent. “I rise to support this,” said Senator Jim Cudaback of Riverdale, who added that “anything we can do here to increase the sparsity issue” would be appreciated.¹⁴²⁵ Senator Cudaback would be one of the few rural-area senators to support passage of the legislation. Whether quietly appreciating or in stunned silence, none of the opponents of the bill rose to speak on the amendment. After a short discussion, the amendment was adopted by a 33-0 vote.¹⁴²⁶

The second amendment to be adopted concerning the sparsity issue came very late in the day, and was not as warmly received as the Wickersham-Bohlke amendment. The amendment, offered by Senator Jim Jones, would add yet another set of criteria to the sparse cost grouping. This time the proposed change would admit just one additional local system, Taylor Public Schools, to the sparse grouping. The *Taylor amendment*, as it came to be referred, would classify a school district under the sparse cost grouping if the district constitutes 95% or more of a single county.¹⁴²⁷ Unfortunately for Senator Jones, by the time his amendment came up for consideration, the body had already dedicated the entire day on LB 806. Tensions were running particularly high and the Jones amendment only served to illustrate just how tedious the debate had become.

Senator Jones explained to his colleagues that Taylor Public Schools had been classified within the standard cost grouping under the NDE printout. He felt the district warranted special consideration due to very unique circumstances. Said Jones:

And the only thing that is wrong with the whole deal is it [Taylor] just happens to sit in the corner of the county, and it’s nine miles from Sargent. And if anybody’s been up there and drove between Taylor and Sargent, you go over some really rough hills, and I can imagine that they might have to close and go down at Sargent.¹⁴²⁸

¹⁴²⁵ *Floor Transcripts, LB 806 (1997)*, 29 April 1997, 5298.

¹⁴²⁶ NEB. LEGIS. JOURNAL, 29 April 1997, 1724.

¹⁴²⁷ *Id.*, *Jones AM1610*, 21 April 1997, 1615.

¹⁴²⁸ *Floor Transcripts, LB 806 (1997)*, 29 April 1997, 5340.

Jones explained that the nine miles between Taylor and Sargent just barely missed the existing ten-mile requirement found under the sparse cost grouping. He suggested there should be other indicators to classify a local system as sparse under the state aid formula.

Senator Bohlke was aware of the amendment prior to the debate, but she did not act or appear overly enthusiastic about the proposal. She acknowledged it, but did not speak in support. It was left to Speaker Withem to point out to the body, through calculated questioning of Senator Jones, that opponents of the legislation should recognize the good faith effort to accommodate sparse schools. Said Withem:

I'm beginning to have a problem with, conceptually, concessions that are made or this legislation dealing with special sort of circumstances. ... There was a previous amendment today that added additional school districts, I think three in Senator Jones' district were added to this segment of sparse school districts. We now have another amendment that adds yet another school district of Senator Jones into the sparsity factor.¹⁴²⁹

Withem said he planned to support the Jones amendment, but he wanted the rural-based members of the body to recognize the concessions made by supporters of the legislation. After a short discussion, the Jones amendment was adopted by a 27-2 vote.¹⁴³⁰

The concept of sparsity within the formula may have been a concession, but it was not enough for some within the body. At the close of debate on April 29th, the fate of LB 806 was uncertain at best. The proponents of the legislation had the advantage of more resident experts on school finance than the opponents. The opponents seemed to know what they wanted (less negative impact on rural schools) without being able to articulate it through a sound compromise proposal, or at least a compromise that the supporters would abide. "There's been a lot of dancing around, searching for the ultimate compromise," Speaker Withem said after the Legislature adjourned on April 29th, adding that, "Each side is afraid to make an offer."¹⁴³¹

¹⁴²⁹ Id., 5342.

¹⁴³⁰ NEB. LEGIS. JOURNAL, 29 April 1997, 1732.

¹⁴³¹ Leslie Boellstorff, "Compromise Difficult On School-Aid Bill," *Omaha World-Herald*, 30 April 1997, 17sf.

The Speaker requested a meeting at the end of the session day with five members of the Education Committee (Bohlke, McKenzie, Beutler, Wickersham, and Bromm) to discuss possible solutions. The next morning, April 30th, the Legislature was set to resume debate but Withem decided to pull the bill off the agenda in order to buy time for both sides to resolve some of the more contentious issues. He promised the bill would return to the agenda that afternoon. In fact, the bill would return that afternoon, but not for purposes of debate.

The Cooling Off Period

From the moment Speaker Withem announced his prerogative to pull LB 806 off the agenda through the noon hour lunch break, key proponents and opponents met to discuss once again. There were actually a number of meetings, some in the rotunda, some in hallways and offices, and some on the floor of the Chamber. A number of options were floated, but there were really only two viable alternatives considering the complexity of the issues yet to be debated. And indefinitely postponing the bill was certainly not among those alternatives, at least as far as the proponents were concerned.

The first alternative was to simply keep moving forward with the debate even as tedious and tiresome as it had become for everyone. But the idea of continuing first-round consideration after already debating the bill for almost 22 hours over a four-day period seemed daunting, especially in light of the dozens of amendments yet to be addressed. The body had successfully progressed through three of the five divisions of the committee amendments, but had stalled on the state aid formula division. The body had yet to even begin debate on the fifth division concerning educational service units. Some senators felt they lacked sufficient data to continue debate. Some, like Senator Wickersham, had requested additional models in order to analyze various alternatives to the cost groupings. But the overriding concern was fatigue. The body was simply tired of the issues being addressed and wanted to move on to other pieces of legislation.

The second alternative, which was ultimately taken by the Legislature, was to undertake a cooling-off period. Parties would still have the opportunity to politic and propose ideas, but it would all be done off microphone and off the floor of the

Legislature. After a reasonable period of time, the body would return to debate on the bill. But there was a catch: the bill would first have to be advanced to Select File before the cooling-off period commences. And Speaker Withem just happened to have a pending motion on the table that would facilitate this course of action. The motion would suspend the normal rules and permit the advancement of LB 806 even though not all pending amendments had been addressed.¹⁴³²

Under normal circumstances, the Legislature must dispose of all amendments and motions pending on a bill before it may be considered for advancement to the next phase of the process.¹⁴³³ Then, in 1991, the Legislature changed their rules to permit a motion for “cloture” to end debate at any stage after at least eight hours of deliberation.¹⁴³⁴ By definition, cloture means a “legislative rule or procedure whereby unreasonable debate (i.e., filibuster) is ended to permit vote to be taken.”¹⁴³⁵ A cloture motion requires a two-thirds majority vote (33 affirmative votes) in order to be adopted. If the cloture motion is successful, the body must then vote on the matter(s) under present consideration (e.g., the amendment to the amendment and the parent amendment), and then a vote for advancement of the bill itself.¹⁴³⁶

The problem with the cloture motion is that it represents a gamble for the proponents of the legislation. If the motion fails, the bill remains alive but it also suffers a significant setback. It could send a message to the Legislature and to the public that problems exist in the legislation and further advancement may be in doubt.

In contrast to the cloture motion, Speaker Withem’s motion, to suspend the rules and permit a vote to advance, would not necessitate any sudden death vote on pending amendments. It would simply move the bill to the second stage of the process (Select

¹⁴³² NEB. LEGIS. JOURNAL, 23 April 1997, 1682.

¹⁴³³ RULES OF THE NEB. LEG., Rule 6, § 3.

¹⁴³⁴ The eight-hour stipulation would be removed in 2001. The rules were changed to permit the cloture motion at just about any time so long as the presiding officer agrees that a full and fair debate has been afforded.

¹⁴³⁵ *Black’s Law Dictionary*, 6th ed., s.v. “Cloture.”

¹⁴³⁶ RULES OF THE NEB. LEG., Rule 7, § 10.

File) and move all pending amendments along with it. In truth, Withem's motion was filed a full week before it was actually considered on April 30th. He had filed a series of the same motion beginning on April 22nd only to withdraw them as various parts of the committee amendments were adopted. The motions served as a hammer of sorts to be invoked if Withem deemed it necessary. But Speaker Withem also knew that the hammer required a three-fifths majority vote to pass (30 votes), and that, again, is a gamble a politician has to contemplate very carefully and methodically. And he did.

If Withem had chosen to take up the same motion during one of the heated debates in the previous week, the hammer may not have worked. By April 30th, however, the mood of the body suited the motion. “[T]his is an extraordinary motion but this is an extraordinary bill and we have had extraordinary circumstances relative to it,” said Speaker Withem in his introductory remarks.¹⁴³⁷ “I think what this approach will do is it will give the body an opportunity to deal with other issues, to move this bill forward so that it doesn't caught behind everything else, and it will give us that precious time to do this analysis,” he added.¹⁴³⁸ And once the cooling off period has had its desired effect, Withem believed, the body could return to a more “healthier debate” on the bill.¹⁴³⁹

Speaker Withem also had the authority to select the order for consideration of amendments and non-priority motions due to his prior designation of LB 806 as a Speaker Major Proposal. This allowed him to keep the motion in dormant status until (if) he needed it. But the motion is also classified as a debatable motion and could have been a hard fought issue unless the majority of the opponents agreed to it. And this is exactly what happened.

As often occurs in the legislative process, many compromises are worked out off the floor of the Legislature. In this case, a few key proponents and opponents agreed prior to the start of the afternoon session to support Withem's motion. This was a critical factor in the adoption of the motion and advancement of the bill. But as with all good

¹⁴³⁷ *Floor Transcripts, LB 806 (1997)*, 30 April 1997, 5437.

¹⁴³⁸ *Id.*, 5438.

¹⁴³⁹ *Id.*, 5439.

compromises, both sides had to give a little. The proponents would see the advancement of LB 806 to the next stage of debate. The opponents asked that the school finance provisions (the fourth division of the committee amendments) not be pushed through without adequate analysis and consideration.¹⁴⁴⁰ This meant the proponents would not pursue a similar motion on Select File to force advancement once again.

Some of the opponents of LB 806 supported the motion outright. It delayed debate on the bill until later in the session and any delaying tactic would suffice. Other opponents supported the motion because it gave them time to do their own analysis on alternative amendments. Other opponents, such as Senator Dierks, initially expressed grudging support for the motion. Said Dierks:

I think that we haven't had a more weighty bill for a long time in this body, a bill that would do so much harm to so many people, and the ability for us to take advantage of this rule suspension, which I am not all that whoopee on, by the way, is probably appropriate.¹⁴⁴¹

During the debate Senator Dierks appeared to vacillate between supporting and opposing the motion. And Senator Ernie Chambers may have had something to do with the vacillation.

Senator Chambers first complained about the motion itself. After Speaker Withem introduced the motion, Senator Chambers submitted a priority motion to bracket the bill, which he immediately withdrew, but he used the time to state his opposition to suspending the rules and ceasing debate.¹⁴⁴² Later in the debate, Chambers chided opponents of the bill for giving in to the proponent's strategy. At one point he spoke directly to the audience in the balcony where a group of citizens from rural communities had gathered to watch the debate. Said Chambers:

I'm listening to your representatives in there, they're the ones who represent you. If you think they're not smart, you sent them down here, you sent the best you

¹⁴⁴⁰ Leslie Boellstorff, "Foes Permit School-Aid Bill to Advance," *Omaha World-Herald*, 1 May 1997, 17sf.

¹⁴⁴¹ *Floor Transcripts, LB 806 (1997)*, 30 April 1997, 5444.

¹⁴⁴² NEB. LEGIS. JOURNAL, 30 April 1997, 1743.

have, the most intelligent you have, so I'm going to follow what they tell me and figure that's what you all want. Now you all sit up in the balcony and you all listen to them.¹⁴⁴³

Turning next to his rural colleagues, Senator Chambers scolded the opponents of the bill for failing to recognize the error of supporting the Withem motion. "Well, now you may think this is a good tactic, you may think it's a good strategy, and for your purposes it may be," Chambers said, "But if you give up everything that you have, that's never a good strategy, that's not smart, but you think it is."¹⁴⁴⁴

Whether or not due to Senator Chambers' remarks, Senator Dierks would ultimately decide to vote against the Withem motion and advancement of the bill itself. Another of his rural colleagues, Senator Stan Schellpeper, would take a different course of action by voting in favor of the motion but against advancement. While he cast his support for the motion, he took the opportunity to tell his colleagues exactly what he thought about the legislation. Said Schellpeper:

I'm going to support the suspension of the rules also, 'cause I think we need time to work out the problems, and I think we can probably get them worked out. I still don't like LB 806. I don't know, nobody has ever explained to me why we really need LB 806. If we take our present formula and put more money into it, change a few dates, it will work. We have to put more money into LB 806, so what's the difference? Why are we going through this blood bath with LB 806 when we don't have to do it?¹⁴⁴⁵

Schellpeper argued that the legislation had already put rural communities in a state of turmoil and that advancing the bill would only communicate a message of selling out to urban interests.

But it may have been Senator Bromm, one of the lead opponents of the bill, who gave the Withem motion the decisive nod. Senator Bromm believed the opponents had adequately made their dissatisfaction known concerning the school finance provisions. "It was also apparent," Bromm said, "that we did not have the necessary technical

¹⁴⁴³ *Floor Transcripts, LB 806 (1997)*, 30 April 1997, 5454.

¹⁴⁴⁴ *Id.*

¹⁴⁴⁵ *Id.*, 5451.

information to know exactly what we wanted in its place.”¹⁴⁴⁶ Bromm also spoke openly about the deal that had been made between various members of the body:

I think in the spirit of doing what’s best for the entire state, reluctantly, we agreed to go ahead and consent to or agree and support, and I will vote green to advance the bill as amended by sections one, two and three of the committee amendments, reserving every right to talk as long and offer as many amendments as are necessary on Select File, to try to get the bill in a shape that we feel that we can live with it.¹⁴⁴⁷

Bromm’s words were meant to be as much a reiteration of the agreement as a warning that the opponents would continue to fight for change in the bill.

After an hour-long debate, the body voted 40-6 to pass the motion to suspend the rules and permit advancement of LB 806 without further amendment or debate.¹⁴⁴⁸

Immediately after suspension of the rules, the body voted 35-7 to advance the bill.¹⁴⁴⁹

Table 72. Record Vote: Advance LB 806 (1997) to E&R Initial

Voting in the affirmative, 35:

Abboud	Crosby	Jensen	McKenzie	Suttle
Beutler	Cudaback	Jones	Dw Pedersen	Wehrbein
Bohlke	Elmer	Kiel	D Pederson	Wesely
Brashear	Hartnett	Kristensen	C Peterson	Wickersham
Bromm	Hilgert	Landis	Preister	Will
Brown	Hillman	Lynch	Robinson	Witek
Bruning	Janssen	Maurstad	Schimek	Withem

Voting in the negative, 7:

Chambers	Hudkins	Schellpeper	Schmitt	Tyson
Dierks	Robak			

Present and not voting, 4:

Matzke	Schrock	Stuhr	Vrtiska	
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Excused and not voting, 2:

Coordsen	Engel			
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Source: NEB. LEGIS. JOURNAL, 30 April 1997, 1743-44.

¹⁴⁴⁶ Id., 5447.

¹⁴⁴⁷ Id., 5448.

¹⁴⁴⁸ NEB. LEGIS. JOURNAL, 30 April 1997, 1743.

¹⁴⁴⁹ Id., 1743-44.

Defining the Issues

There was no question in anyone's mind that the proponents of LB 806 scored a major victory in the advancement of the measure to the second stage of consideration. It may have been one of the more memorable political victories in Nebraska legislative history. It took, as Speaker Withem said, an extraordinary motion, a legislative procedure seldom invoked in order to move the bill forward. The proponents could have taken the debate to a standard cloture motion, but the risks were too great. The opponents would have dug in their heels, and compromise solutions would have been that much more difficult to iron out. The proponents may or may not have had enough votes (33) to succeed on a cloture motion, but it was a wise decision not to utilize such a drastic step.

The proponents had the upper hand, albeit just barely, and all that should have remained for the proponents was to engineer, or go along with, a series of relatively minor compromises on various issues while remaining steadfast on the larger objectives of the legislation. But it would not be that simple. To their credit, the opponents would not allow it to be that simple. In fact, the discussions that ensued between May 1st and May 15th, when the legislation returned to the agenda, brought about very little resolution. The issues became more personal, and in some cases emotional for those who felt LB 806 had nothing but ruin in store for their rural school districts.

For his part, Speaker Withem attempted to take the reins and help guide both sides to a peaceful solution to the school provisions contained in the committee amendments. On Friday, May 2nd, Withem asked for a meeting of certain key legislators, including Senators Bromm, Wickersham, and Bohlke. "It was kind of like a peace treaty talk in which you decide what size the table should be," Withem said after the meeting.¹⁴⁵⁰ "The bill has been advanced with the idea of working toward agreement and not of blustering and posturing," Withem complained.¹⁴⁵¹ And the Speaker was perfectly willing to bring the remainder of the session to a screeching halt before he planned to let

¹⁴⁵⁰ Leslie Boellstorff, "Options Offered on School-Aid Bill," *Omaha World-Herald*, 3 May 1997, 49sf.

¹⁴⁵¹ *Id.*

LB 806 go by the wayside. “We have more than enough votes to pass the bill in pretty much its current form,” he said.¹⁴⁵²

Naturally, the opponents disagreed with the Speaker’s assessment. “If there’d been enough votes to advance the bill as it is, we would have seen it,” Senator Wickersham said.¹⁴⁵³ However, the tally from the record vote to advance the bill only produced seven negative votes. This count, Senator Bromm believed, was misleading since he himself voted to advance the bill, but that was in the spirit of compromise and carrying through on his word. Bromm believed as many as 17 of the 48 active members of the body were prepared to vote against the bill. (The 49th member, Senator Joyce Hillman, had been absent from much of the session due to her husband’s grave illness, but she would return in time to cast her vote in favor of the bill.) But, assuming the opponents did in fact have the votes to hold up the bill, what exactly did they want short of outright killing the bill? What were their concerns?

Perhaps the overriding concern had to do with the cost groupings. Under the committee amendments, the vast majority of all school districts would fall within the standard cost grouping, which, under the existing state aid model, would produce a cost per student of about \$4,100. The other two cost groupings, sparse and very sparse, would produce a higher cost per student, but the criteria to fall within one of these cost groupings were fairly strict, or so the opponents believed. If another cost grouping were added to the mix or the existing criteria were widened to admit more districts, this would certainly lend to the opponents’ concerns.

Another issue from the opponent camp had to do with excess state aid. The state aid model prepared by NDE indicated some districts, mostly larger districts, would receive more than sufficient state aid when combined with property tax revenue. Both sides were aware of this anomaly in the proposed state aid formula, and neither side particularly liked the result. The opponents thought a way around this situation would be

¹⁴⁵² Id.

¹⁴⁵³ Id.

to create a mechanism to “lop off” excess state aid for these districts and distribute those funds to other schools.

Yet another concern related to Class I budgets and specifically how those budgets would be proposed and approved under the committee amendments. The opponents had already won the battle to strike those provisions that would require merger of elementary-only schools. With that issue resolved, the next became how Class I districts would be treated by the primary high school district. Would these districts merely be the subjects of the high school district’s board of education? Would they have any control over their own finances? This particular issue, unlike the others, had deep historical roots in Nebraska politics. This issue would once again stir the age-old arguments on the organization of schools, and there was no easy answer.

The Governor’s Position

Senator Bohlke took the victory on April 29th as a positive sign and initially had high hopes that the differences between the opponents and proponents could be resolved. True to her skills as a lawmaker, she knew the next step, a step incumbent upon the principle sponsor of a bill, would be to communicate with the executive branch about the prospects for a signature, assuming the bill landed on the Governor’s desk.

Governor Nelson naturally followed the debate on LB 806 very closely. His Chief of Staff, Tim Becker, was often seen in the rotunda and hallways as he monitored the progress of the debate on the Governor’s behalf. The Governor also had other interests in the 1997 Session and a permanent income tax reduction was near the top of the list. (The Legislature had been toying with the idea to offer only a temporary income tax rate reduction in light of the state’s recent budget surplus.) And school finance legislation for any Nebraska Governor is typically a no win situation given the dramatic and varying needs of the rural and urban communities.

Senator Bohlke wished to avoid one historical aspect of the 1990 comprehensive school finance legislation (LB 1059) in that she did not wish to fight for a veto override. She maintained contact with the Governor’s office throughout the 1997 Session and stepped up her efforts once LB 806 advanced to Select File. On May 1st, she met with the

Governor and came away with assurance that he would not veto the bill. Perhaps wanting to publicly temper Bohlke's enthusiasm, Tim Becker announced that the Governor had not made up his mind about LB 806. "It's too early for him to rubber-stamp a signature - or a veto - on a bill," Becker said.¹⁴⁵⁴

Governor Nelson also had some particularly nasty historical footnotes to avoid concerning the issue of school finance and school organization. He need only remember the high drama surrounding Governor Kerrey's signing of LB 662 in 1985 (concerning Class I mergers) and Governor Orr's veto of LB 1059 in 1990. Both legislative bills became the subjects of referendum petition drives and divisive political struggles. Governor Nelson could agree to sign LB 806 into law, but he needed to first publicly stand away from the issue long enough to see whether the people's representatives could substantially resolve their differences. In the meantime, LB 806 was public fair game as far as Nelson was concerned.

On April 30th the Governor appeared at a conference of school administrators, which was hosted by the Nebraska Council of School Administrators. The Governor appeared to take the middle road on the issue of LB 806 and spoke generally about the legislation. Nelson spoke to reporters afterwards and expressed his concern that the debate on LB 806 had become a fight over the "haves" and "have-nots," referring to the winners and losers in the school finance battle.¹⁴⁵⁵ "This shouldn't be considered a vendetta on small schools," Nelson said.¹⁴⁵⁶ His remarks, although really not all that offensive to the casual observer, did not sit well with Speaker Withem. "He just flat out does not understand the bill," Withem said, "He does not understand school finance, and he never wanted to."¹⁴⁵⁷

In the case of LB 806, the posturing was certainly not limited to the proponents. The opponents also flexed their political muscle by appealing directly to the general

¹⁴⁵⁴ Leslie Boellstorff, "School-Finance Opponents Hopeful Nelson Concerned Bill Is Pitting Districts Against Each Other," *Omaha World-Herald*, 2 May 1997, 13sf.

¹⁴⁵⁵ *Id.*

¹⁴⁵⁶ *Id.*

¹⁴⁵⁷ *Id.*

public on the steps of the Capitol. On May 13, 1997, just two days before debate would resume on the bill, opponents of the bill, including Senators Bromm, Dierks, and Schellpeper, joined about 100 rural community citizens to voice opposition to LB 806. One of the speakers included former state senator Elroy Hefner of Coleridge who served as a member of the Legislature in 1990 when LB 1059 was passed. Hefner not only voted for passage of LB 1059 but also voted to override Governor Orr's veto.¹⁴⁵⁸ But he had a different sentiment about LB 806 in 1997. "I am dead set against it," Hefner said, "This school-finance bill is a rush to judgment."¹⁴⁵⁹ Hefner compared the process that produced LB 1059 to that of LB 806, and indicated the latter did not have the same legislative "background" (referring to the two-year effort to construct the 1990 legislation).¹⁴⁶⁰ Other individuals present at the rally included businessmen and even clergymen. The Reverend Peter Freeburg of Wausa said he drove to Lincoln to "join the people as they cry out against injustice."¹⁴⁶¹

Appropriation Bill

Senator Stan Schellpeper also spoke at the rural school rally. He indicated his support for the infusion of more state funds into the school finance formula. In 1997 the state had the unusual good fortune to have a \$330 million budget surplus, and many ideas on how to spend it. Senator Bohlke had her sight set on at least \$100 million of the excess revenue for the purpose of school funding. And, on May 7th, her objective came one step closer to reality when the Legislature took up debate on LB 806A (the companion appropriation bill to LB 806). Some senators advocated less while others advocated even more siphoning of the surplus toward education. "I think we need to move \$150 million of that into education," Senator Schellpeper said a week later during the May 13th rally.¹⁴⁶² But for the time being, the Legislature would be content to advance

¹⁴⁵⁸ NEB. LEGIS. JOURNAL, 3 April 1990, 1842; 9 April 1990, 2043-44.

¹⁴⁵⁹ "School-Finance Bill Opponents Decry It as 'Rush to Judgment,'" *Omaha World-Herald*, 14 May 1997, 15.

¹⁴⁶⁰ *Id.*

¹⁴⁶¹ *Id.*

¹⁴⁶² *Id.*

LB 806A to second-round debate with a tentative promise for \$100 million of additional funding for schools.¹⁴⁶³

In the meantime, the political muscle-flexing by both sides during the “cooling-off” period only served to harden their respective positions, and by the time LB 806 was set to return for debate, on May 15th, no substantive compromise was available for review by the body. Still more delay tactics were needed to give parties additional time. Accordingly, Speaker Withem made the decision to further postpone debate on the fourth division, relating to school finance, until after deliberation on the fifth division, relating to educational service units.

Fifth Division - Educational Service Units

Debate began on the fifth division in the afternoon of May 15th without much fanfare. No pep speeches. No requests for points of personal privilege to offer guidance and well wishes for fair debate. It simply began as it ended over two weeks before with an undercurrent of suspicion and doubt. But given the public rallies and war of words over the previous two weeks, one could hardly expect much else. In short, the mood of the body was not particularly conducive for meaningful and productive debate.

Perhaps the best indicator of what lay ahead on May 15th occurred in an exchange between Senator Dierks and Speaker Withem. Within a short time after the start of debate on the fifth component, Dierks rose to ask the Speaker a pointed question:

Mr. Speaker, there’s a rumor that many of us have heard this morning, and I’d like to have you address it if you would. And that is that if LB 806 is not across the next stage of debate by tonight that it’ll be on the agenda tomorrow morning. Would you like to talk to us about that?¹⁴⁶⁴

“Yeah, that’s the case,” Withem coolly responded.¹⁴⁶⁵ But the meaning of Dierks’ question was not so much about LB 806 as it was about the other priority bills held captive to the school finance legislation.

¹⁴⁶³ NEB. LEGIS. JOURNAL, 7 May 1997, 1868. LB 806A advanced to E&R Initial on a 33-7 vote.

¹⁴⁶⁴ *Floor Transcripts, LB 806 (1997)*, 15 May 1997, 7094.

¹⁴⁶⁵ *Id.*

The Speaker had decided to allow no other bill to be considered until LB 806 had been advanced to the third and final stage. Withem's obstinate view concerning the agenda would ultimately make all the difference in the passage of this comprehensive school finance legislation. The body was effectively served notice that, unless LB 806 moves, no other priority bill would move. The motivating factor had become apparent to all within and outside the body.

And while the initial mood of the body may not have been the best environment to resume debate, there would be a silver lining. By the end of the evening, this would prove to be both the most frustrating and most fruitful day for the legislative life of LB 806. For some among the body, this day would bring about a renewed faith in the legislative process and the ability among people to reach workable, albeit painful, solutions to their differences.

Compared to the school finance issues that awaited the body, the discussion on the structural changes to educational service units (ESUs) could be analogized to the relative calm before the storm. The issues surrounding ESUs really amounted to a mini-drama in its own right. Prior to and since the passage of the levy limitations under LB 1114 (1996), Senator Paul Hartnett of Bellevue had been on a personal crusade to restructure ESUs. The use of the word "restructure" is relative in this case. At one point, Senator Hartnett did not see much wisdom in continuing their existence at all. This, however, would change in time and after gaining a better understanding of the services that ESUs provide to member school districts.

Senator Hartnett introduced several bills concerning ESUs in the 1997 Session.¹⁴⁶⁶ But only one, LB 419 (1997), under the jurisdiction of the Education Committee, would receive a favorable response. Senator Elaine Stuhr designated the bill as her individual

¹⁴⁶⁶ Legislative Bill 418, *Change provisions relating to a maximum tax levy and provide for reorganization of educational service units*, sponsored by Sen. Paul Hartnett, Legislative Bill, 95th Leg., 1st Sess., 1997, title first read 16 January 1997; Legislative Bill 419, *Provide for reorganization of educational service units*, sponsored by Sen. Paul Hartnett, Nebraska Legislature, 95th Leg., 1st Sess., 1997, title first read 16 January 1997. LB 418 was referred to the Revenue Committee and killed in committee. NEB. LEGIS. JOURNAL, 18 March 1997, 1093. LB 419 was referred to the Education Committee and advanced to General File. NEB. LEGIS. JOURNAL, 2 April 1997, 1316.

priority bill for the 1997 Session.¹⁴⁶⁷ Then, on March 25th, the Education Committee met in executive session to consider LB 806. The committee unanimously voted to merge the bulk of LB 419 into the committee amendments of the comprehensive school finance bill.¹⁴⁶⁸ Upon the division of the committee amendments on April 22nd, the ESU portion of the legislation became known as the fifth component.

Table 73. Fifth Division: ESU Organization and Services under LB 806 (1997)

Number of ESUs	Prior to LB 806 there were 17 regional ESUs. The committee amendments to LB 806 proposed to expand the number to 19 so that Omaha Public Schools and Lincoln Public Schools would each become their own ESU.
Core Services	<p>The committee amendments outlined “core services” each ESU must provide to member school districts. Core services would fall within service areas in the following order of priority: (i) staff development, (ii) technology, and (iii) instructional materials services.</p> <p>The core services must improve teaching and student learning by focusing on enhancing school improvement efforts, meeting statewide requirements, and achieving statewide goals in the state’s system of elementary and secondary education.</p> <p>The core services must provide schools with access to services that: (i) the ESU and its member districts have identified as necessary services; (ii) are difficult, if not impossible, for most individual districts to effectively and efficiently provide with their own personnel and financial resources; (iii) can be efficiently provided by each educational service unit to its member school districts; and (iv) can be adequately funded to ensure that the service is provided equitably to the state’s public school districts.</p> <p>The core services must be designed so that the effectiveness and efficiency of the service can be evaluated on a statewide basis, and core services must be provided by the ESU in a manner that minimizes the costs of administration to member school districts.</p>
Core Service Funding	The Legislature would appropriate \$9.1 million in FY1998-99 to fund core services. Funds appropriated for core services would be distributed proportionally to each ESU based on fall membership in member districts. Funds must be used for core services with the approval of representatives of two-thirds of the member districts, representing a majority of the students in the member districts.
Dissolution of ESUs	Permits the State Board of Education to grant or deny petitions of dissolution if the ESU board and two-thirds of the member school boards representing a majority of the students within the ESU region vote in favor of such dissolution.
Property Tax Revenue	Funds generated from the property tax levy for ESUs must only be used for purposes approved by representatives of two-thirds of the member districts in an ESU, representing a majority of the students in the member districts.

Source: Committee Amendments to LB 806 (1997), *FA193 (AM1205)*, fifth division, §§ 51-58, pp. 96-104.

¹⁴⁶⁷ NEB. LEGIS. JOURNAL, 19 March 1997, 1102.

¹⁴⁶⁸ *Executive Session Report, LB 806 (1997)*, 1.

The debate on the fifth division possessed the single characteristic that alluded debate on the school finance portion of the committee amendments: unanimous votes. This is not to say, however, that debate on the fifth division did not have its dramatic moments.

On the day of the debate, May 15th, Senators Stuhr and Hartnett jointly filed an amendment to merge the contents of LB 808 (1997), relating to county superintendents, into the committee amendments to LB 806.¹⁴⁶⁹ Whether by tactic or late decision, Senator Stuhr decided to offer what most legislative insiders call a surprise amendment. In this case, however, Senator Stuhr said she had the backing of several groups, including the Nebraska Association of County Officials (NACO).

And this was no small amendment. It proposed to eliminate the elected office of county superintendent by June 30, 2000, ostensibly for the cost savings it would produce for county government and the taxpayer at large.¹⁴⁷⁰ It would purportedly eliminate another layer of government and thereby further the goal of LB 1114 (1996) to become more efficient in dispensing needed services. However, the true savings to the taxpayer may have been questionable unless the elimination of the office corresponded with the elimination of actual duties.

In her opening remarks, Senator Stuhr reported that, of the 93 counties, 46 such counties elected their county superintendent.¹⁴⁷¹ In other counties, the office was an appointed position. Her amendment would not eliminate any duties, but it would require NDE to prepare a report outlining recommendations for retention or elimination of duties assigned to county superintendents. In the meantime, the amendment would permit a county board to contract with an ESU, a K-12 district, or a qualified individual to perform the prescribed duties. The amendment required NDE to produce its report by December 1, 1997 and also required the Education Committee to prepare legislation in

¹⁴⁶⁹ Legislative Bill 808, *State intent relating to county superintendents*, sponsored by Sen. Elaine Stuhr, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 22 January 1997. LB 808 was referred to the Education Committee, which had not taken any action on the bill at the time of the debate on May 15th.

¹⁴⁷⁰ NEB. LEGIS. JOURNAL, *Stuhr-Hartnett AM2198*, 15 May 1997, 2018-20.

¹⁴⁷¹ *Floor Transcripts, LB 806 (1997)*, 15 May 1997, 7108.

the 1999 Legislative Session to implement acceptable recommendations and to finalize the elimination of the elected office of county superintendent.¹⁴⁷²

The connection between Senator Stuhr's amendment and the fifth division of the committee amendments was apparent. ESUs could potentially take over many of the duties performed by county superintendents. Senator Hartnett not only supported the amendment, but was also a cosponsor of the Stuhr amendment. In his mind, there was no reason why regional-based ESUs could not perform these duties. But not everyone was thrilled by the proposed idea.

Senator Wickersham initially rose to express his surprise at the content of the proposal and to express his opposition:

This is a shocking afternoon here. ... I am going to rise in opposition to the Stuhr amendment. And I wish to indicate that my opposition is based on the experience that I have had and that residents of the 49th District have had with the kinds of services that county superintendents are able to offer.¹⁴⁷³

Wickersham seemed to indicate that the circumstances of his very sparsely populated legislative district require a different service approach than would be permitted under Stuhr's amendment. He did not believe an ESU or a school district could provide the same level of responsible service to an entire county. "I think we get value out of our county superintendents and can continue to obtain value," he argued.¹⁴⁷⁴

As an alternative, Senator Wickersham said he could live with the proposal offered by the state county superintendents' association to create regional superintendents across the state. However, Senator Stuhr's amendment would not preclude the employment of county superintendents. It would simply eliminate the elected office of county superintendent. No doubt Senator Wickersham realized this distinction and ultimately decided not to cast his vote against the amendment. The Stuhr amendment was adopted on a 36-0 vote.¹⁴⁷⁵

¹⁴⁷² NEB. LEGIS. JOURNAL, *Stuhr-Hartnett AM2198*, 15 May 1997, 2018-20.

¹⁴⁷³ *Floor Transcripts, LB 806 (1997)*, 15 May 1997, 7118.

¹⁴⁷⁴ *Id.*, 7119.

¹⁴⁷⁵ NEB. LEGIS. JOURNAL, 15 May 1997, 2020.

The other major amendment to the fifth division related more closely to the overall objective of the committee amendments. Offered by Senator Wickersham, the amendment eliminated the appropriation request of \$9.1 million to fund core services for ESUs. In its place, the amendment required NDE to perform a cost estimate for ESUs to provide the core services outlined in the committee amendments. The cost estimate was to be completed by October 15, 1997 so that legislation could be prepared in time for the 1998 Session. The amendment also took a step further by providing intent language such that core service funding would be continued in years to come.¹⁴⁷⁶ This may have been the underlying intent behind the committee amendments but not explicitly so written.

Wickersham said the \$9.1 million figure used in the committee amendments was simply an educated guess by staff and members of the Education Committee during its executive sessions. The estimate was, in fact, based upon historical spending patterns by ESUs coupled with a built-in growth factor on expenditures. In retrospect, Wickersham, who served on the Education Committee, said he believed the more prudent approach was to allow the department to submit a formal cost estimate. In this way, the appropriation ultimately approved by the Legislature would be based upon sound fiscal analysis rather than speculation. After a short debate, the Wickersham amendment was adopted on a 33-0 vote.¹⁴⁷⁷

The fifth division would be adopted as amended on a 30-0 vote.¹⁴⁷⁸ This meant four of the five divisions had been successfully debated and adopted, although several issues would be rehashed in subsequent debate, including freeholding and Class I budget authority. The body would, by authority of the Speaker, return to the subject matter of two earlier major divisions of the committee amendments (the first and third divisions).

Class I Budgets and Freeholding Revisited

Since the initial adoption of the first and third divisions of the committee amendments, a fair amount of private discussion and negotiation had transpired between

¹⁴⁷⁶ Id., *Wickersham AM2106*, 13 May 1997, 1944.

¹⁴⁷⁷ Id., 15 May 1997, 2018.

¹⁴⁷⁸ Id., 2020.

Senators Bohlke, McKenzie, Bromm and Wickersham on the separate issues of freeholding and Class I budgets. A good faith effort had been made by all parties to resolve these issues in time for Select File debate. The result of their efforts was embodied within an amendment offered by Senators Bohlke and McKenzie.¹⁴⁷⁹ The amendment contained both technical revisions, concerning Class I budgets, and substantive changes to the freeholding issue. Senator Bohlke distributed a bullet sheet containing the major provisions of the amendment.

Table 74. Summary of Bohlke-McKenzie AM2237 to LB 806 (1997)
Related to Class Is and Freeholding

- NDE designates the primary high school district by December 1 each year. NDE certifies to districts and county clerks the primary high school district for each Class I.
- The terminology is generally changed from “preparation and adoption of the budget” to “determination of the total allowable general fund budget of expenditures.”
- The special education budget of expenditures is excluded from the calculation of the total allowable general fund budget of expenditures.
- When a Class VI is the primary high school district, the Class VI determines the total allowable general fund budget for the Class I on or before January 1.
- When another class of district is the primary high school district, the Department calculates the total allowable general fund budget of expenditures by averaging the Class I costs per formula student with the primary high school district K-8 cost per formula student and multiplying the result by the formula students for the Class I. Both costs per formula student are increased by the applicable allowable growth rate for the primary high school district local system before averaging. The K-8 cost per formula student is calculated by dividing the general fund budget from the prior year by the formula students weighted by grade factors in the primary high school district, multiplying the result by the K-8 formula students weighted by grade factors, and dividing that result by the K-8 formula students without weighting.
- On or before February 1, Class Is may submit requests to all of their high school districts to exceed the total allowable general fund budget calculated by NDE.

The total allowable general fund budget may not be exceeded, unless approved by high school districts comprising 2/3 of the valuation, including the primary high school district.

The high school districts must act on the request at the next regularly scheduled meeting of the school board.

¹⁴⁷⁹ NEB. LEGIS. JOURNAL, *Bohlke-McKenzie AM2237*, 15 May 1997, 2020-23.

Table 74—*Continued*

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- The voting provisions for exceeding the levy limits are amended to include voters in portions of Class I districts that are affiliated with the high school district.
 - The freeholding limitation based on student numbers is raised from 25 students in grades 9-12 to 100.
 - Encapsulated property may be moved to the encapsulating district.
-

Source: Handout distributed during floor debate of LB 806 (1997) on May 15, 1997.

The amendment essentially maintained the same process to establish Class I budgets as that formulated on General File. The major difference was the addition of language concerning treatment of patrons in Class I districts in situations involving votes on bond issues or votes to exceed the maximum levy once the levy limitations become operative. The amendment specified that residents of a Class I district must be allowed to vote when such Class I district is affiliated with or a part of the high school district involved in the override election or bond issue.¹⁴⁸⁰

The contested portion of the Bohlke-McKenzie amendment, however, was not the portion related to Class Is, but rather freeholding. As advanced to Select File, the committee amendments incorporated a compromise provision on the issue of freeholding. The initial April 28th compromise was crafted by Senators Bromm, McKenzie, and Wickersham, and would permit freeholding if the following criteria were met:

- The Class II or Class III district has less than 25 students in grades 9-12 for at least two consecutive years and the high school is located within 15 miles of another high school on a “maintained” highway or road; and
- The district has voted to exceed the maximum levy for any fiscal year beginning on or after 1998-99.¹⁴⁸¹

The problem, as they eventually discovered, was that the criteria only produced one school district in the state where freeholding could occur. The criteria were too strict to function as they intended.

¹⁴⁸⁰ *Id.*

¹⁴⁸¹ NEB. LEGIS. JOURNAL, *Bromm-McKenzie-Wickersham AM1755*, 28 April 1997, 1698.

The focus of the discussion on Select File was the criteria concerning the number of students in grades 9-12. No one doubted the number proposed on General File (i.e., 25) was arbitrarily chosen. The Bohlke-McKenzie compromise amendment of May 15th proposed to boost the number to 100 students.¹⁴⁸² But what was the appropriate number? Should such a criteria be included?

On this issue, even the opinions of rural senators were split. Some rural senators favored a lower number, some favored a higher number, and some opposed the use of any number of students. And this was no small matter. At stake, potentially, was the erosion of a tax base in one district and the profit to another district. It could possibly promote what Senator Wickersham called “levy shopping” whereby a farmer could move his/her land from one district to another depending upon the rate of taxation.¹⁴⁸³ Wickersham would offer then withdraw an amendment to leave the number as previously set at 25.¹⁴⁸⁴ But this would merely leave the issue unfinished as Senator Wickersham well knew.

The policy question appeared to have all the markings of a proverbial “catch 22.” The higher the number, the more districts would qualify for freeholding. The more districts qualify for freeholding, the greater potential for an unstable tax base for some school districts. But to unduly restrict freeholding would be unfair to certain property taxpayers with unusually high tax burdens. In short, the Legislature could be criticized no matter what number they chose. The only option would be to use a different set of criteria as suggested by Senator Owen Elmer of Indianola:

If I had my way about this particular amendment, we would strike the section requiring numbers entirely, entirely, and if any school district in the state voted to exceed the \$1.10, and if a landowner was contiguous with a district that had not and was within 15 miles of the other school that he was going to take his land into, he would be free to do so, irregardless of how many students were in either of the school districts, irregardless.¹⁴⁸⁵

¹⁴⁸² *Id.*, *Bohlke-McKenzie AM2237*, 15 May 1997, 2020-23.

¹⁴⁸³ *Floor Transcripts, LB 806 (1997)*, 15 May 1997, 7138.

¹⁴⁸⁴ NEB. LEGIS. JOURNAL, *Wickersham FA338 to Bohlke-McKenzie AM2237*, 15 May 1997, 2023.

¹⁴⁸⁵ *Floor Transcripts, LB 806 (1997)*, 15 May 1997, 7137.

Senator Elmer, an eleven-year veteran of the Legislature, merely suggested the idea, but did not propose an amendment to effectuate the idea.

Based on the data supplied by NDE, the proposal to use the 100-student criteria would expose 132 existing school districts to freeholding. This would include Class II, III, and VI school districts. But it was clear the 100-student criteria contained in the Bohlke-McKenzie amendment would not be acceptable. Absent an entirely different set of criteria, the body would have to tinker with the student criteria until one figure became acceptable. Senator Bromm offered a compromise number of 50 in the form of a floor amendment.¹⁴⁸⁶ Senator Bromm believed this would qualify no more than 25 existing school districts to the freeholding provisions. (Although it was later learned that the 50-student count would only qualify 12 school districts.) After a brief debate, the body rejected Senator Bromm's 50-student criteria on a 21-22 vote.¹⁴⁸⁷ Once again, too few school districts would qualify for freeholding petition.

Finally, a number arose from the discussions that seemed to suit most legislators in the Chamber. Senator McKenzie, who by now was earning a deserved reputation as an effective negotiator, offered the idea of a 60-student criterion.¹⁴⁸⁸ Senator Jones joked to the delight of the body that the debate was sounding more and more like an auction than a legislative proceeding. And it was the McKenzie bid that won the prize. The body unanimously supported her amendment by a 28-0 vote.¹⁴⁸⁹ The Bohlke-McKenzie amendment, as amended, was then adopted by another unanimous 28-0 vote.¹⁴⁹⁰

The good cheer brought about by Senator Jones' auction humor was unfortunately short-lived. Senator Dierks offered a series of amendments to help Class I districts, but all were either soundly defeated or withdrawn by the sponsor. One particular amendment would have treated all Class I districts under a uniform budget setting method.¹⁴⁹¹

¹⁴⁸⁶ NEB. LEGIS. JOURNAL, *Bromm FA340 to Bohlke-McKenzie AM2237*, 15 May 1997, 2023.

¹⁴⁸⁷ *Id.*, 2023-24.

¹⁴⁸⁸ *Id.*, *McKenzie FA342 to Bohlke-McKenzie AM2237*, 2037.

¹⁴⁸⁹ *Id.*

¹⁴⁹⁰ *Id.*

¹⁴⁹¹ *Id.*, *Dierks-Jones AM2036*, 13 May 1997, 1968.

Senator Dierks disagreed with the process proposed in the Bohlke-McKenzie amendment whereby Class I districts under a Class VI (high school only) system would have their budgets approved by the Class VI school board rather than NDE.

However, Senator Dierks may not have understood that it was the Class VI districts, and many of the associated Class I districts, that originally proposed this arrangement. As Senator Wickersham explained to his colleagues:

I sympathize with what Senator Dierks is attempting to do. I think I understand his concern about how the budgets are going to be set for the Class Is in a Class VI system. But earlier this session there was a meeting with the Class VI representatives, and I think Class I representatives were there as well, and they, as I understand it, their belief was that they already had a good working relationship between those two kinds of schools and would be able to set a budget that met the needs of all the schools in those particular kinds of systems.¹⁴⁹²

Another problem with the Dierks' proposal involved the proposed method of calculating Class I districts' general fund budget of expenditures in relation to the committee amendments (and also the Bohlke-McKenzie amendment).

The Bohlke-McKenzie amendment would require NDE to establish a general fund budget for Class I districts under a K-12 system by using the primary high school district's K-8 cost per formula student. By definition, a Class VI (high school only) district does not include K-8 instruction. Accordingly, the Dierks proposal would simply not function as he intended. His amendment failed on a 12-15 vote, which only served to increase the hard feelings and frustration among some opponents of the legislation.¹⁴⁹³

Return to the Fourth Division

Following Senator Dierks' unsuccessful attempts on behalf of Class I districts, the Legislature returned its attention to the controversial school finance provisions. At long last, the body had returned to the heart of the committee amendments. From this moment late in the afternoon of May 15th through the following day, members of the Legislature would experience just about every possible emotion that could surround an issue of this magnitude. For the remainder of the day on May 15th, the body would consider just three

¹⁴⁹² *Floor Transcripts, LB 806 (1997)*, 15 May 1997, 7166.

¹⁴⁹³ NEB. LEGIS. JOURNAL, 15 May 1997, 2037-38.

amendments, and only two would be adopted. It would be the third amendment (the unsuccessful amendment) that would set the stage for the final day of Select File debate.

Adequate Appropriations

Once the body returned to debate on the fourth division, the first amendment for consideration belonged to Speaker Withem. And this particular amendment would have far reaching importance not only for LB 806, but also for future legislative debates. The policy issues embodied in the Withem amendment included the extent to which the state should fund public schools, and the extent to which the Legislature should be bound to automatically determine expenditures to fund public schools.

Specifically, the Withem amendment provided intent language “to ensure sufficient appropriations” to fund public schools to the extent local property taxes cannot fund public schools due to the levy limitations.¹⁴⁹⁴ The amount of the appropriation would be calculated each year by taking the statewide total formula need and adjusting that amount by the Consumer Price Index (CPI) for each of the most recent two years. The amendment also required the Appropriations Committee to annually include the calculated amount in its recommendations to the Legislature.¹⁴⁹⁵ “If I could go back to my old reliable needs minus resources equals state aid, this really deals with the equals part of it, the amount of money that go into the formula,” Withem explained.¹⁴⁹⁶

The topic of the Speaker’s amendment was certainly relevant and timely. The committee amendments to LB 806 proposed to do away with the 45% state funding goal originally created under LB 1059 (1990). In its place, the committee amendments proposed intent language such that the state would provide “sufficient” funding for public schools that “cannot be met by local resources.”¹⁴⁹⁷ In addition, the proponents of the legislation were recommending a substantial increase in state funding through the appropriation (A) bill to LB 806. In fact, the \$100 million originally proposed under LB 806A would grow to \$110 million before it reached final-round consideration.

¹⁴⁹⁴ Id., *Withem AM1389*, 10 April 1997, 1463-64.

¹⁴⁹⁵ Id.

¹⁴⁹⁶ *Floor Transcripts, LB 806 (1997)*, 15 May 1997, 7187.

¹⁴⁹⁷ Committee Amendments to LB 806 (1997), *FA192 (AM1205)*, fourth division, § 27, p. 47.

Withem's amendment created a mechanism to calculate annual recommendations for state aid appropriations with the intent that the recommendations be met. No one speaking to the amendment that day seemed to disagree with the overall objective. But there were cautionary remarks about the consequences. "When it comes to tough times, this will be one that's going to be very difficult to meet," said Senator Roger Wehrbein, chair of the Appropriations Committee.¹⁴⁹⁸

Speaker Withem defended his proposal by emphasizing what it would and would not do. Said Withem:

It does not guarantee that the money will be there. It does guarantee, however, that the Legislature will have to affirmatively change that number after the recommendation is made by the Appropriations Committee and there will be occasions when that is done, but it will have to be done not just by inactivity. It will have to be one done by activity.¹⁴⁹⁹

The idea, Withem argued, was that the Legislature would have to knowingly alter the recommended funding level. If the Appropriations Committee suggested a lesser amount than the pre-determined amount, it would have to provide justifications to the full Legislature for doing so. In essence, the amendment did not guarantee an amount of annual state aid, as Withem clarified, but it did guarantee a process to determine the amount. In the final analysis, politics and economic circumstances would inevitably govern the level of funding.

Senator Wickersham was quick to offer his support for the "general intent" of Withem's amendment, but he also expressed concerns on at least two grounds.¹⁵⁰⁰ First, he said, the passage of LB 1114 (1996) would necessitate a change in the way the Legislature views state support for political subdivisions, including school districts. Local governments would have limits to the amount they can levy for property tax revenue. But does this mean a bottomless pit of state resources to make up the difference? Should the Legislature *guarantee* the difference in state aid?

¹⁴⁹⁸ *Floor Transcripts, LB 806 (1997)*, 16 May 1997, 7193-94.

¹⁴⁹⁹ *Id.*, 7196.

¹⁵⁰⁰ *Id.*, 15 May 1997, 7189.

The second point made by Senator Wickersham concerned the mechanics of the method to calculate the state aid funding level. Speaker Withem's amendment utilized the Consumer Price Index for the previous two years to adjust the need calculation. It was Wickersham's belief that this would be tantamount to using outdated data to make the calculation. "Your needs calculation isn't going to be as current as what it should be to determine how much money to put in," he said.¹⁵⁰¹ Wickersham questioned the rationale to use the CPI when the state aid formula already contained a growth factor.

Senator Wickersham's concern about the CPI would be addressed in subsequent legislation in the 1997 Session. For the time being, the body was content to adopt the Withem amendment by a solid 32-0 vote.¹⁵⁰² Whether or not he knew it at the time, Speaker Withem had set in motion an issue that would be addressed and readdressed in later sessions. Perhaps fittingly, it was Senator Wickersham who would eventually pick up where Speaker Withem left off on the issue of guaranteed levels of state aid.

Poverty Factor Revisited

The last two amendments debated on May 15th involved the poverty factor contained within the legislation. The first amendment, offered by Senator Wickersham, would pick up where the issue remained on General File debate. The second amendment, offered by Senator Stuhr, would propose an outright elimination of the poverty factor from the legislation.

Senator Wickersham was particularly instrumental in shaping the poverty factor on first-round debate. He successfully amended the committee amendments to expand the schedule of weighting factors used to adjust the poverty allowance. But questions remained following first-round debate, including the method by which students would qualify to be counted under the poverty provision. It was never the intent of the legislation to require students to actually participate in free lunch or free milk programs. It was enough that they merely qualify for the programs in order to be counted in the poverty factor of the school finance formula. But how would these *qualified* students be

¹⁵⁰¹ Id., 7190.

¹⁵⁰² NEB. LEGIS. JOURNAL, 15 May 1997, 2047-48.

determined? Would school administrators need to, or be reduced to, encouraging parents to sign forms indicating their students' qualifications for such programs?

"This amendment," Senator Wickersham began, "concerns the methodology for calculating the poverty students that are then weighted in the formula and can increase needs for a school district."¹⁵⁰³ The Wickersham amendment proposed to first define "low-income child" and then provide a system for NDE to determine the poverty factor for each local system.¹⁵⁰⁴ The premise of the plan was to eliminate the guesswork and to centralize the process. School administrators would not have to chase down parents to sign forms, and parents would not have to endure the potential embarrassment of admitting their economic status.

The amendment defined "low-income child" as a child under the age of 18 years living in household having an annual adjusted gross income of \$15,000 or less for the calendar year preceding the year for which aid is being calculated.¹⁵⁰⁵ The department would then calculate the number of formula students to whom the poverty factor would apply as follows:

- (1) In order to determine the number of low-income students within each local school system, NDE would:
 - (a) Calculate a ratio of the low-income children to the total children residing in the county in which the local system is located; and
 - (b) Attribute an equal ratio of low-income students to total weighted formula students within the local system; and
- (2) The applicable poverty factor for each local system would equal:
 - (a) The greater of:
 - (i) The number of low-income students determined by the ratio; or
 - (ii) The formula students qualified for free lunches or free milk under U.S. Department of Agriculture child nutrition programs; and
 - (b) Multiplied by the *appropriate factor*.¹⁵⁰⁶

¹⁵⁰³ *Floor Transcripts, LB 806 (1997)*, 15 May 1997, 7196.

¹⁵⁰⁴ NEB. LEGIS. JOURNAL, *Wickersham AM1992*, 7 May 1997, 1876.

¹⁵⁰⁵ *Id.*

¹⁵⁰⁶ *Id.*

The *appropriate factor* would be the number assigned to the corresponding percentage of qualified formula students. It was this part of the poverty provision that the Legislature addressed on General File debate.

The key to the process proposed under Wickersham's amendment was the acquisition of necessary data to determine the number of low-income children in each local system. In fact, this became one of the focuses of discussion among members of the body since some appeared unaware that the data was available. Wickersham explained:

Every year the state of Nebraska receives the federal tapes, and off the federal tapes they find federal gross income, adjusted gross income, deductions, dependents, whether those dependents are at home, whether they're out of the home, a great deal of information. ... When you combine that with the information that is on your Nebraska income tax return, where you check a box and say which school district you live in, then we can determine how many kids literally are in a given school district.¹⁵⁰⁷

Senator Wickersham reminded his colleagues of the discussion during General File and the concern that the committee version of the bill might inadvertently count low-income students attending parochial schools. These students should not be counted for purposes of the public school finance formula. "The amendment that you have before you now takes those things into account," Wickersham said.¹⁵⁰⁸

The other major focus of discussion on the Wickersham amendment concerned the income threshold of \$15,000. How did Senator Wickersham arrive at this figure, and could another figure just as easily be used? Wickersham said the actual standard was "a little over \$20,000," which meant the figure used in his amendment, a lower threshold, would theoretically classify more families and, therefore, more students as low-income.¹⁵⁰⁹ Wickersham later noted that even the federal government used different standards to identify low-income families for various federal need-based programs. But in the case of the state school finance formula, the threshold could be determined by the Legislature. There would be a direct and obvious relationship between the chosen

¹⁵⁰⁷ *Floor Transcripts, LB 806 (1997)*, 15 May 1997, 7197.

¹⁵⁰⁸ *Id.*

¹⁵⁰⁹ *Id.*

threshold and the number of students counted as low-income. The higher the threshold, the fewer number of students classified as low-income, which means less state assistance under the formula. His amendment was intended to identify as many students as possible in order to assist those school districts needing the extra resources.

The Wickersham amendment and the accompanying discussion had the effect, albeit briefly, to unify just about everyone in the body on an issue of common interest and compassion. “[S]omething like this I think would work, especially in my district, because a lot of them out there are really too proud to accept it and tell them that they’re in poverties,” said Senator Jim Jones, who supported the Wickersham amendment but generally opposed LB 806.¹⁵¹⁰ The Wickersham amendment was adopted by a 30-1 vote.¹⁵¹¹

Immediately following the adoption of Wickersham’s amendment, the body took up debate on the second poverty factor amendment. This amendment, offered by Senator Elaine Stuhr, would put an end to whatever good will may have been channeled from the previous amendment, and would ultimately leave the fate of LB 806 as uncertain as it had been earlier in the day. While Wickersham’s amendment sought to improve the proposed poverty provision, Stuhr’s amendment sought to eliminate the provision entirely.¹⁵¹²

Senator Stuhr’s amendment struck at the heart of the tensions between rural and urban interests and seemed somewhat out of place considering the productive discussion just a few minutes earlier. The body had just adopted an amendment to improve the poverty factor and now they entertained an amendment to do away with it.

In her opening remarks, Senator Stuhr alleged that the poverty factor would be too costly when state resources were tight as it was. She requested and received analysis from NDE indicating that the poverty factor alone would increase necessary state appropriations for aid to schools by \$28 million.¹⁵¹³ “I do not believe at this time, with

¹⁵¹⁰ Id., 7208.

¹⁵¹¹ NEB. LEGIS. JOURNAL, 15 May 1997, 2049.

¹⁵¹² Id., *Stuhr AM1771*, 28 April 1997, 1711-12.

¹⁵¹³ *Floor Transcripts, LB 806 (1997)*, 15 May 1997, 7213.

very limited resources, that we should be adding another category that distributes the limited resources that we have in the state aid formula,” she said to her colleagues.¹⁵¹⁴ Stuhr also provided evidence for what she believed demonstrated the extravagance of the provision in comparison with other state school finance formulas. Only six states nationwide, she said, had employed a poverty provision within their respective formulas. Missouri, for instance, incorporated a poverty factor, but Stuhr was quick to add that Missouri’s formula also incorporated a “small school factor.”¹⁵¹⁵

And here the real intent of her amendment became apparent. She viewed the poverty factor as primarily benefiting larger school districts. Shouldn’t the rural schools be entitled to something of their own in the formula if the larger schools have the poverty factor? In truth, of course, the poverty factor applied to all school districts statewide. Naturally, the factor would produce proportionately higher amounts of additional aid for school districts with larger student populations. Stuhr also alluded to previous debates concerning the use of income as a factor within the formula. “The main point that I am concerned about is that I believe it’s very inconsistent philosophy to not include income on the resource side and yet include a poverty factor on the need side when we’re looking at our overall formula,” she said.¹⁵¹⁶

Senator Stuhr was obviously referring to the fact that the formula takes into account property and overall property valuation as a symbol of wealth on the resource side of the equation. However, the formula does not necessarily take into account the overall wealth of the citizens of the school district. The old expression, “property rich, income poor,” comes into play in this discussion. And, truthfully, just because a farmer owned hundreds or even thousands of acres did not necessarily translate into high-income capacity. Should the formula take into account some form of wealth index or income factor as Senator Robak urged on first-round debate or Senator Stuhr on second-round?

¹⁵¹⁴ Id., 7212-13.

¹⁵¹⁵ Id., 7213.

¹⁵¹⁶ Id.

Stuhr's amendment appeared to hold the poverty factor hostage to further discussions on either some form of small school adjustment or a dramatic change in the formula to account for school district wealth. Some opponents of the bill picked up on Senator Stuhr's strategy enough to press the issue for some form of compromise. In the meantime, proponents of the legislation were not about to give away the poverty factor.

The amendment caused a significant stir among urban senators who felt strongly about the provision. Ironically, it was not the content of Senator Stuhr's amendment but rather something one of her supporters said that galvanized opposition to the proposal. One of the first supporters of the amendment was Senator Kate Witek of Omaha who had every logical reason to support LB 806, but nonetheless opposed the legislation. She also opposed the poverty factor. Said Witek:

When I first saw the formula that came out of the Education Committee and I looked at the use of poverty, or free and reduced lunch program, I have wondered since that time what that has to do with educating. The inference here is that if you're poor you need more money to educate, because that's what we're talking about here. You're already getting the money to feed individuals who qualify for these programs, but you're saying you need more money to educate them.¹⁵¹⁷

Witek's statement sparked a furor among proponents of the bill who were fully prepared to defend the poverty factor and expose the ignorance of those who failed to see a connection between poverty and education.

Senator Bohlke rose to speak to the Stuhr amendment and had several statistical reports and journal articles to share with her colleagues. Quoting from these materials, Bohlke noted that poor children are more likely than children who are not poor to fall behind in school, to have below average academic skills, to drop out, and to fall behind one or more grades. Bohlke read aloud excerpts indicating that poverty increases the risk of health and nutritional problems that inhibit a child's ability to concentrate and causes absenteeism. She noted that family stress and isolation heightened by poverty reduce the likelihood that young children will have preschool experiences that promote intellectual development and early school success. Poor children, she said, are more likely to attend

¹⁵¹⁷ Id., 7215.

schools with limited resources due to the school's proximity to economically depressed neighborhoods and communities.¹⁵¹⁸ The point from Bohlke's comments was that school districts with significant numbers of low-income students require additional state aid to address the educational needs of those students.

Senator Stuhr also had some statistical analysis to demonstrate the merit of her amendment, although in this case, she said, it was the absence of statistics that made her point. She asked her colleagues if they, like her, had reviewed the annual report issued by the Omaha Public School District. "Nowhere in the report did it quote the number of students at risk or poverty," she said while asking if any of the Omaha area senators could explain the absence of the data to her.¹⁵¹⁹ She also asked Senator Bohlke to address the idea of using a grant program for poverty allowances rather than infusing it into the state aid formula. "Well, that would not be my choice and I would say, Senator Stuhr, at 8:13 [p.m.] on May 15th, that that has not been something that we had ever discussed before," Bohlke responded.¹⁵²⁰ Bohlke added that a grant system would probably distribute the funds proportionately to districts just as the state aid formula would operate. However, she did not say, but in retrospect could have said, that a grant program would simply add yet another administrative and bureaucratic layer to the educational process.

In her closing remarks, Senator Stuhr once again spoke about the lack of an income factor on the needs side of the state aid formula while at the same time spoke of the "inconsistent philosophy" involved in adding a poverty factor to the formula.¹⁵²¹ She also reemphasized earlier comments about the relationship between poverty and education. "I do not believe that there is any empirical evidence that really supports the assumption that it costs more to educate pupils from families who receive free lunch and

¹⁵¹⁸ Id., 7218.

¹⁵¹⁹ Id., 7240.

¹⁵²⁰ Id., 7241.

¹⁵²¹ Id., 7244.

milk,” she said.¹⁵²² “Those students receiving free lunch and milk are reimbursed for those costs on the federal level,” Stuhr added.¹⁵²³

The Stuhr amendment to eliminate the poverty factor was a long shot on the part for the opponents of LB 806. But it did give them more time to argue collateral points about the negative consequences to rural schools. Some may have seen the amendment as more or less a stall tactic designed to bring the proponents to the table for further negotiations. Whatever the motivation, the amendment failed on a 14-27 vote.¹⁵²⁴ Interestingly, the record vote on the Stuhr amendment provided a reasonably accurate measure of the support for LB 806 on the whole. With a few exceptions, those voting for the amendment would ultimately vote against passage of the legislation a few days later.

Table 75. Record Vote: Stuhr AM1771 to LB 806 (1997)
to Eliminate Poverty Factor

Voting in the affirmative, 14:

Bromm	Jones	Robak	Schrock	Vrtiska
Coordsen	Matzke	Schellpeper	Stuhr	Witek
Dierks	Maurstad	Schmitt	Tyson	

Voting in the negative, 27:

Beutler	Cudaback	Hudkins	Pedersen Dw	Schimek
Bohlke	Elmer	Janssen	Pederson D	Suttle
Brown	Engel	Kiel	Peterson C	Wesely
Bruning	Hartnett	Kristensen	Preister	Wickersham
Chambers	Hilgert	McKenzie	Robinson	Withem
Crosby	Hillman			

Present and not voting, 3:

Brashear	Jensen	Wehrbein		
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Absent and not voting, 1:

Landis

Excused and not voting, 4:

Abboud	Lynch	Raikes	Will	
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Source: NEB. LEGIS. JOURNAL, 15 May 1997, 2049.

¹⁵²² Id.

¹⁵²³ Id.

¹⁵²⁴ NEB. LEGIS. JOURNAL, 15 May 1997, 2049.

The defeat of the Stuhr amendment marked the end of the session day on May 15th, but not the end of day for everyone within the body. In fact, the evening of May 15th would prove to be a pivotal moment in the legislative history of LB 806. A few key proponents and opponents met in the office of Senator Dave Landis to attempt to find a solution to their differences. In attendance were Senators Bohlke, McKenzie, Wickersham, Bromm, Beutler, and Coordsen along with Senator Landis who served as mediator.¹⁵²⁵ While some members of the lobby were aware of the meeting, none were invited to attend. This was strictly a meeting of policymakers. The full story of the meeting and its significance would not become public until several days later, but their work would in fact produce a significant compromise on the part of proponents.

“Their three best shots”

By the morning of Friday, May 16th, tensions were at a high point, and the Speaker was in no mood for another prolonged day of debate. May 16th marked the 77th day of the 90-day session, and there were plenty of other legislative bills besides LB 806 remaining on the agenda. Of particular importance to many members of the body, and also Governor Nelson, was the proposal to reduce the income tax rates contained in LB 401 (1997). But Speaker Withem was also an ardent supporter of LB 806, which was one of his designated “super priorities” for the 1997 Session. He was not going to let the matter fall by the wayside, as some opponents of the bill would have hoped. And the Speaker was about to take extraordinary measures to break the impasse on advancement.

The concept of Speaker Major Proposals (super priorities) was still relatively new to the Legislature. The rule change came in 1996 and Ron Withem was the first Speaker of the Legislature to exercise the new authority. One of the advantages of the priority designation was that the Speaker could decide the order in which amendments and non-priority motions were considered. If the Speaker had the authority to establish the order of amendments and motions, then why not also the prerogative to delegate such authority in extraordinary circumstances. And this was what Withem chose to do.

¹⁵²⁵ Bill Hord, “Intense Negotiations Bring Compromise,” *Omaha World-Herald*, 17 May 1997, 2.

Immediately after a quorum was established on May 16th, Speaker Withem rose to address his colleagues and to convey his plan with regard to the agenda:

We need to reach some sort of decision on 806 today, in my opinion. ... The first three motions this morning will be determined by those that have been in opposition to LB 806. ... They can be any amendment motion that they care to bring up. ... We'll take their three best shots.¹⁵²⁶

As he issued the challenge, Speaker Withem also identified Senators Wickersham, Bromm, and Stuhr as the individuals in charge of making the decision. This whole episode came as a surprise to just about everyone inside and outside the Chamber, and at first no one knew how to take it. If the unfolding events were not unusual enough, Speaker Withem then ordered the body to stand at ease for “10 to 15 minutes.”¹⁵²⁷ “Is that a fair deal,” Withem asked as if anyone could possibly break the collective astonishment long enough to answer one way or another.¹⁵²⁸ Needless to say, this was not a typical way of conducting legislative business.

Speaker Withem's actions may not have been all that common, nor since repeated by subsequent Speakers, but it was arguably a reasonable demonstration of leadership at a time when leadership was needed most. Withem took his role as manager of the legislative agenda seriously, and acting in this capacity he also believed the opponents of LB 806 were obstructing a successful conclusion to the 1997 Session. At the very least, Withem's actions could not be disputed as being highly original. The Nebraska Legislature, after all, was designed to employ what political scientists regard as a “weak” office of speaker. In other words, an office of speaker devoid of the powers and authority normally associated with bipartisan, bicameral legislatures, including the U.S. House of Representatives. The advent of the Speaker Major Proposal in 1996 presented an opportunity to enhance the authority of the Speaker, but the accepted boundaries of this authority were still being tested through practice and error.

¹⁵²⁶ *Floor Transcripts, LB 806 (1997)*, 16 May 1997, 7247.

¹⁵²⁷ *Id.*

¹⁵²⁸ *Id.*, 7248.

And “error” would be putting it nicely in the mind of Senator Ernie Chambers who rose to state his opposition to the Speaker’s plan:

You all are some of the dumbest people I’ve ever encountered in my life. They done suckered you once and you’re going to let them get you again. But I don’t care about you all. Those who are dumb, let them be dumb still. I’m concerned about perverting the process because it can come against me in the future. This becomes a precedent.¹⁵²⁹

Senator Chambers opposed any rule or action that, in his opinion, impeded the legislative process and prevented a full discussion of the matter at hand. To Senator Chambers, the Speaker’s actions on May 16th “perverted” the legislative process.

Senators Wickersham, Bromm, and Stuhr did, in fact, huddle as requested by the Speaker to determine the three amendments they would most like to see debated. The chosen amendments included: (1) an amendment to temporarily change the state aid certification date to April 1st; (2) an amendment to create a small school adjustment factor for local systems with fewer than 900 students; and (3) an amendment to create a sub-tier system within the standard cost grouping to account for various size school systems.¹⁵³⁰ The Legislature commenced debate on the first of these amendments, but discussion seemed to focus as much on the content of the amendment as the unusual decision to limit the opponents to their three best shots. The body was distracted to say the least.

By mid-morning, it was clear to most that the Speaker’s approach to the agenda may not have been the best approach in light of the negotiations completed the night before. If the negotiations had not taken place the night before or had taken place without much success, the Speaker’s actions may have been seen as more appropriate. At one point, Senator Wickersham rose to address the pending amendment and also convey his disappointment with the process:

I can tell you that a group of senators met last night and began discussing the possibility of finding a way to resolve our differences on this bill. I would have characterized those discussions as productive; but given the posture that I’m

¹⁵²⁹ Id., 7253.

¹⁵³⁰ NEB. LEGIS. JOURNAL, *Bromm AM2086*, 14 May 1997, 1981; *Wickersham AM1735*, 23 April 1997, 1679-80; *Bromm AM1796*, 14 May 1997, 1981-82.

placed in this morning of insisting that somehow a decision be made when it is in my view nearly impossible to make a decision is not a very good process. I would much have preferred that we be given some time to develop on what I thought was a good initiative and a good beginning last night. And I will say that Speaker Withem was not at that meeting and maybe was unaware that there were initiatives that were underway, that there were discussions, that there were prospects for some resolution of this issue without this ... without having to insist that it necessarily be done within one minute.¹⁵³¹

Senator Bohlke also rose to voice her concern and to reiterate that the negotiations had, in fact, met with some success and that a compromise amendment was in the works. She urged a recess to allow the parties to finish their negotiations.

Whether or not Speaker Withem was aware of the success of the negotiations the night before, he eventually came to realize the futility of further debate that morning. He took the advice offered by Senator Bohlke and requested an early recess. The plan was to return that afternoon and continue discussion on the bill. Just prior to recess, however, Senator Floyd Vrtiska demonstrated just how emotional LB 806 had become for some rural area legislators. Fighting back tears, Senator Vrtiska spoke of the destruction and tragedy that would befall certain districts if the legislation passed in its current form:

And now we've reached a point where many of the schools in my district are being absolutely devastated by the way the original bill of 806 was written. It takes away everything that we've been able to accomplish under other legislation that other people have been able to get brought forth over the years and it really pains me. I have to tell you it pains me so much that I just don't know how I can accept and go back to my district and talk to those people. Yeah, I have two districts who gained and I'm grateful for that. But unfortunately, they gain at the expense of some very, very good schools in my district who are being hurt by this piece of legislation.¹⁵³²

Vrtiska wondered aloud why the body could not arrive at a solution that would not be as hard on some school districts. As fate would have it, a solution would indeed arrive although perhaps not to universal approval.

¹⁵³¹ *Floor Transcripts, LB 806 (1997)*, 16 May 1997, 7255.

¹⁵³² *Id.*, 7267-68.

Averting a Meltdown

Upon reconvening at 1:00 p.m. on May 16th, it was clear that those negotiating a package of compromise amendments still had not finished their work. Part of the delay had to do with the time necessary for bill drafters to prepare and print the amendments, proof reading, etc. Throughout the recess period, those responsible for forging the compromise worked diligently to arrive at an acceptable solution. Emotions were still running on high gear. “I thought last night at 8:30 and again this morning at 10:30 that we were in total meltdown,” Senator Jan McKenzie later recalled.¹⁵³³ “You can’t have a meltdown,” she added, “There would be no way to pull it back together.”¹⁵³⁴

Once the amendments arrived on the floor, Senator Bromm rose to address his colleagues. He withdrew his pending amendment that had been one of the three “best shots” as ordered by the Speaker. In fact, none of the “best shot” amendments would be debated in light of the new compromise package. Senator Bromm was far from jubilant as he spoke about the situation. He complained that the opponents had in “good faith” permitted the advancement of LB 806 from first to second-round debate on the grounds that it would give the body time to evaluate data prepared by the department. This, he said, did not happen. “That data did not come ... was not forthcoming, and with the time parameters we’re under, the bill is on the floor, we’re on Select File, and that’s where we’re at,” he said.¹⁵³⁵ Senator Bromm gave ample warning that between second and third-round debate, he expected to see a printout that conformed to the intent of the compromise package.

The compromise package consisted of three amendments. Two of these amendments were actually first and second versions of the same matter and concerned a provision that would later be dubbed the “lop off.” The third would change the sparse cost grouping in order to admit more school districts that would otherwise fall within the standard cost grouping.

¹⁵³³ Bill Hord, “Intense Negotiations Bring Compromise,” *Omaha World-Herald*, 17 May 1997, 2.

¹⁵³⁴ *Id.*

¹⁵³⁵ *Floor Transcripts, LB 806 (1997)*, 16 May 1997, 7278.

Lop Off Provision

Senator Bohlke explained the first amendment as a method of handling those school systems through the formula when the amount of revenue generated by their property tax levy coupled with the amount of state aid awarded to them exceeded the amount required to meet their needs. The purpose of the first amendment was to “lop off” this excess amount and redistribute or recycle the funds through the formula.¹⁵³⁶ The initial amendment on lop-off was applauded by nearly everyone as a step in the right direction provided that the second half of the provision was forthcoming later that day. The initial amendment was adopted on a 35-4 vote.¹⁵³⁷

The second version of the lop-off amendment was still being crafted even as the body considered the first version. Speaker Withem had to suspend debate on LB 806 long enough to allow the second amendment to arrive on the floor. Once the amendment was printed and distributed, debate on the compromise package resumed.

This second version contained all the same intent and purpose as the first version of the lop off provision, but it also contained what would later be called the “small school stabilization adjustment.” This was a mechanism by which funds funneled back into the formula by virtue of the lop-off calculation would be distributed. And, as the name of the adjustment implied, small schools would become the beneficiaries of this particular provision. In order to qualify for the adjustment, the local system:

- Must have 900 or fewer formula students; and
- must have adjusted general fund operating expenditures per formula student below the average for all local systems with 900 or fewer formula students.¹⁵³⁸

The redistributed aid would be awarded only to those systems facing revenue losses of more than 10% in combined state aid and property tax receipts, and the redistributed aid

¹⁵³⁶ NEB. LEGIS. JOURNAL, *Bohlke-McKenzie AM2217*, 16 May 1997, 2065-66.

¹⁵³⁷ *Id.*, 2066.

¹⁵³⁸ *Id.*, *Bohlke-McKenzie AM2269*, 16 May 1997, 2067-69.

could not increase a local system's revenue by more than 90% of its previous year's revenue.¹⁵³⁹ But how many local systems would be impacted and to what extent?

The answer depended upon several variables. One of the variables for the small school stabilization adjustment would be the amount of money available for distribution from year to year. The amount available would depend upon the amount of state aid lopped off other local systems. It could be \$8 million one year and \$10 million the next. The other variable would be the number of local systems qualifying for the adjustment, which again would vary from year to year.

Senator Wickersham produced and distributed a map illustrating school districts that would be receiving less than 90% in combined state aid and tax revenue after the levy limitations became operative and if LB 806 became law. Wickersham called the map a "gap analysis" since these schools would be facing budget cuts of 10% or more due to the provisions of LB 806.¹⁵⁴⁰ The gap analysis identified 113 school districts that would fall under these circumstances. Wickersham guessed that the Bohlke-McKenzie amendment would assist "roughly 70 of those school districts."¹⁵⁴¹ However, the exact number would not be known until an official report was prepared. After a short debate, the body voted to adopt the second Bohlke-McKenzie amendment by a 34-2 vote.¹⁵⁴²

Sparse Cost Grouping Revisited

The final part of the compromise package involved what proponents of LB 806 viewed as a major concession. The amendment, introduced by Senator Bohlke, would again expand the sparse cost grouping in order to admit additional school systems and, accordingly, shift state aid dollars to those systems. The amendment stated that a local system would qualify for the sparse cost grouping if it had less than 1.5 formula students per square mile in the local system, and more than 15 miles between the high school

¹⁵³⁹ Id.

¹⁵⁴⁰ *Floor Transcripts, LB 806 (1997)*, 16 May 1997, 7327.

¹⁵⁴¹ Id.

¹⁵⁴² NEB. LEGIS. JOURNAL, 16 May 1997, 2069.

attendance center and the next closest high school attendance center on paved roads.¹⁵⁴³ Bohlke said the amendment would allow “some 23” additional school systems to enter into the sparse category.¹⁵⁴⁴

Most of the discussion on the amendment focused on the lack of data to support Bohlke’s contention concerning the number of new schools added to the sparse cost grouping. Senator Cap Dierks said, “[Y]ou are asking us to take a giant leap in faith when we don’t know what ... the bottom line is on this amendment.”¹⁵⁴⁵ Senator Ed Schrock echoed Dierks’ comment, but added a note of gratitude for the effort to compromise:

I wish I had a printout. I don’t. I’m afraid the best thing to do at this point in time is to move forward with the bill but, believe you me, there is going to be a lot of heartache out there someplace in rural Nebraska and I understand that. But I am thankful we can make some school districts more viable under the compromises that we reached.¹⁵⁴⁶

Also expressing some frustration were the proponents of the bill. “I feel a little bit of anger that we are transferring money for this purpose, to these kinds of schools because that is what is necessary to bring us all together,” said Senator Chris Beutler.¹⁵⁴⁷ “But, if that is what is necessary, that in what is necessary, but I want people to understand that some things directly contrary to what I think is good philosophy in this matter is being done as a matter of political expediency,” he added.¹⁵⁴⁸

If the discussion required a calming voice, it came from perhaps the best possible source. It was the appropriate words of Senator George Coordsen, a rural legislator from Hebron, who helped to bring closure to the debate and to put the situation into perspective. Said Coordsen:

¹⁵⁴³ *Id.*, *Bohlke AM2274*, 2069.

¹⁵⁴⁴ *Floor Transcripts, LB 806 (1997)*, 16 May 1997, 7333.

¹⁵⁴⁵ *Id.*, 7337.

¹⁵⁴⁶ *Id.*, 7345.

¹⁵⁴⁷ *Id.*, 7344.

¹⁵⁴⁸ *Id.*

Senator Withem mentioned being angry today. There were a lot of us that were angry early on in the session. But I believe that there was a good faith effort to reach resolution and address the concerns of those of us that have all of the rural schools that we are talking about for the most part.¹⁵⁴⁹

Coordsen also would have preferred to see a printout to make sure that additional school systems would be added to the sparse cost grouping. He echoed the expectation from previous speakers that data would be available prior to a vote on Final Reading.

The Bohlke amendment was adopted by a strong 39-2 vote.¹⁵⁵⁰ It would be the last amendment adopted on LB 806 in its long and arduous legislative history. In keeping with the compromise, the remaining pending amendments on LB 806 were withdrawn one by one by their respective sponsors. In all, twenty-eight amendments on a range of topics were withdrawn. All that remained was the adoption of the now infamous fourth division of the committee amendments, which occurred on a 32-2 vote.¹⁵⁵¹ This was immediately followed by a 33-9 vote to advance the legislation to the third and final stage of consideration.¹⁵⁵²

Table 76. Vote Record: Advance
LB 806 (1997) to E&R Final

Voting For, 33:

Beutler	Elmer	Kiel	D Pederson	Schrock
Bohlke	Engel	Kristensen	C Peterson	Suttle
Brown	Hartnett	Landis	Preister	Wehrbein
Bruning	Hilgert	Lynch	Raikes	Wesely
Chambers	Hillman	Maurstad	Robinson	Wickersham
Crosby	Janssen	McKenzie	Schimek	Withem
Cudaback	Jensen	Dw Pedersen		

Voting Against, 9:

Bromm	Dierks	Matzke	Schmitt	Witek
Coordsen	Hudkins	Robak	Tyson	

¹⁵⁴⁹ Id., 7342.

¹⁵⁵⁰ NEB. LEGIS. JOURNAL, 16 May 1997, 2070.

¹⁵⁵¹ Id.

¹⁵⁵² Id.

Table 76—Continued

<i>Present, not voting, 4:</i>			
Brashear	Stuhr	Vrtiska	Will
<i>Excused, not voting, 3:</i>			
Abboud	Jones	Schellpeper	

Source: NEB. LEGIS. JOURNAL, 16 May 1997, 2070.

Before adjourning for the day, the Legislature also took up debate on LB 806A, the companion appropriation bill to the school finance legislation. As advanced from General File, LB 806A contained an appropriation of \$100 million in additional state aid to schools. Through an amendment, offered by Senator Bohlke, the appropriation was increased to \$110 million during second-round debate.¹⁵⁵³ The increase in total state aid would be operative for the 1998-99 school year in conjunction with the effective date of the levy limitations imposed under LB 1114 (1996). This amounted to a substantial increase in state aid, which in itself was a great victory for supporters of public education. In 1997 the total amount of state support to public schools was approximately \$460 million. A year later this amount would grow, as per LB 806A, by an additional \$110 million plus the normal growth factors involved in computing state aid to schools. LB 806A was advanced to Final Reading by a 32-10 vote.¹⁵⁵⁴

May 16, 1997 would be remembered for several years afterward as one of the most strenuous and challenging days within the collective memory of the Legislature. By the end of the session day, both smiles of jubilation and concerned frowns could be observed on various members of the body. In the hallways, anterooms and offices of the Capitol, small groups clustered together either to congratulate one another or to lament the day's events. "This is a good example of how the Legislature can work," said Senator Don Wesely of Lincoln.¹⁵⁵⁵ "We didn't leave with nearly the hard feelings that I thought

¹⁵⁵³ *Id.*, *Bohlke FA344*, 16 May 1997, 2070.

¹⁵⁵⁴ *Id.*

¹⁵⁵⁵ Bill Hord, "Intense Negotiations Bring Compromise," *Omaha World-Herald*, 17 May 1997, 2.

we would,” Wesely added, “I’ve seen these state-aid fights, and they can be vicious.”¹⁵⁵⁶ But Senator Cap Dierks had a different take on the situation. “You talk about watching sausage being made - that was sausage,” said Dierks from the confines of his Capitol office.¹⁵⁵⁷ Dierks voiced concern that the final compromise amendment, to expand the sparse cost grouping, might not yield its intended effect. “But it is my opinion that this amendment will probably help this terrible bill,” he added.¹⁵⁵⁸

On the whole, however, the feeling among members was generally positive. Both sides perhaps felt they had compromised more than they should have. But most believed the legislative process had worked. The majority interests were met while the minority interests were at least discussed, and in some cases successfully addressed. As with all major legislative initiatives, the art of compromise proved the difference between success and failure. In fact, Senators Bohlke and McKenzie (Chair and Vice Chair of the Education Committee) were credited afterward for consistently reaching out to the opponents and their concerns. Naturally, this did not necessarily mean that they agreed with the opponents’ viewpoint or were willing to compromise on every issue.

The advancement of LB 806 to Final Reading also shifted the spotlight back to Governor Nelson. Would he sign the bill into law if it reached his desk? Would he sign the \$110 million appropriation bill (LB 806A) into law? Would the Legislature be forced to challenge the Governor’s veto of either or both bills as it did in 1990 with LB 1059?

From the public perspective, it appeared the Governor wanted to withhold a final decision on the legislation until further review. “I am encouraged that progress has been made on issues that I have discussed with Sen. (Ardyce) Bohlke and others,” Nelson said, but added that one of his concerns was the possibility that the bill would increase property taxes.¹⁵⁵⁹ “I will be looking at changes made today in determining to what

¹⁵⁵⁶ Id.

¹⁵⁵⁷ Id.

¹⁵⁵⁸ Id.

¹⁵⁵⁹ Leslie Boellstorff, “School-Aid Stalemate Is Broken Millions Added To Pot to Ease Tax-Cut Blow,” *Omaha World-Herald*, 17 May 1997, 1.

extent they address my concerns,” he said.¹⁵⁶⁰ But privately Nelson’s support for LB 806 may have hinged on the extent to which his own agenda was met. The Governor was adamant not only about property tax relief, but also tax relief in the form of an income tax rate reduction. LB 401 (1997), to reduce the income tax rate, was still pending before the Legislature, and it was not known for sure what final course the body would take.

Shadow of Doubt

Unfortunately for proponents of the legislation, two events would occur to cast some doubt about the school finance package. Just a day after the advancement of LB 806 and LB 806A to Final Reading, it was learned that the Legislature might have overestimated the amount of replacement funds necessary to offset the levy limitations that soon would become operative. The Legislature had been operating on the assumption that at least \$193 million in replacement funds would be necessary to make up the revenue schools would lose once the \$1.10 levy limit took effect. The \$110 million appropriation bill (LB 806A), they thought, would only begin to cover the lost revenue. It was largely believed school districts would need to make budgetary changes to account for some of the lost revenue. Then, on May 17th, the Legislature’s Fiscal Office announced that the actual amount of lost revenue might be closer to \$150 million, perhaps as low as \$139 million.¹⁵⁶¹ These amounts were certainly significant, but not quite as bad as the original \$193 million benchmark.

The change in fiscal outlook was due largely to the realization that school building funds, to a certain extent, would not be counted within the levy limitation. After further research, it was discovered that as much as \$54 million of the \$193 million revenue loss would be covered under an exemption to the levy limitations. The exemption would permit school districts to levy outside the limitation to pay for building renovations, removal of asbestos and hazardous materials, and for making buildings accessible to people with disabilities.

¹⁵⁶⁰ Id.

¹⁵⁶¹ Leslie Boellstorff, “New Estimate Clouds Status of School Aid Revenue Loss May Be Less Than Expected,” *Omaha World-Herald*, 18 May 1997, 1a.

Even for proponents of the legislation, the new revelation cast at least some doubt about the appropriation bill attached to LB 806. “We should not be looking at a \$139 million problem with \$110 million in state aid,” said Senator Dave Maurstad.¹⁵⁶² Senator Eric Will of Omaha agreed. “We’re getting real close to putting up the whole cost (of the loss), which flies in the face of what we were trying to do,” Will said.¹⁵⁶³ If the purpose of LB 1114 (1996) was in part to force schools to become more efficient, Senator Will thought, then the idea of making up nearly the entire revenue loss seemed counterproductive. It must also be remembered, however, that some legislators were vying for replacement funds for other classes of political subdivisions, such as counties and municipalities. It served some political agendas to criticize the amount of replacement funds to schools in order to support funding to other local governments.

It seemed the exact amount to include in LB 806A had become a question of guesswork, a political decision. But the other issue surfacing, after LB 806 advanced to Final Reading, was slightly more difficult for proponents to explain. This time the announcement came from the Department of Education in regard to part of the compromise package adopted on May 16th. The intent of the compromise package was to dedicate funds funneled from the lop-off provision to the small school stabilization fund so that qualified rural schools could benefit from the additional resources. It was initially believed that approximately 60 small schools would benefit from this plan. However, a new computer analysis prepared by the department and released on May 27th indicated only nine school systems would qualify for the adjustment.¹⁵⁶⁴

“If it only helps nine, that’s not a very good rescue percentage,” said Bill Mueller, who at the time was a registered lobbyist for the Nebraska Rural Community Schools Association.¹⁵⁶⁵ “If this were the Coast Guard, it would be grounded,” Mueller said, “Our

¹⁵⁶² Id.

¹⁵⁶³ Id.

¹⁵⁶⁴ Leslie Boellstorff, “New Doubts Are Cast On School Compromise,” *Omaha World-Herald*, 28 May 1997, 1.

¹⁵⁶⁵ Id.

lifeboats have leaks in them.”¹⁵⁶⁶ But Senator Bohlke justified the new analysis as a natural result of the increased level of replacement funds under LB 806A. When the Legislature added another \$10 million to the appropriation bill, Bohlke argued, fewer school districts faced local budget cuts of 10% or more. And one of the qualifications for the adjustment was the projected loss of 10% or more from the local system’s budget.

Final Reading

In the afternoon of Wednesday, May 28th, the Legislature took up Final Reading of LB 806. Senator Bohlke filed a motion to strike the enacting clause in order to grant herself time to address her colleagues before a final vote was taken.¹⁵⁶⁷ The motion would also allow her colleagues to air any final concerns or comments.

“LB 806 has certainly had few easy answers,” Bohlke began.¹⁵⁶⁸ But she reminded her fellow lawmakers that the legislation was a direct response to the property tax relief package initiated and passed the year before. By her estimation, the body had devoted almost 34 hours of debate time to the school finance proposal. “Together, we have crafted a major piece of legislation that addresses the organization of schools and the distribution formula under which they will be funded,” she said.¹⁵⁶⁹

Senator Bohlke would withdraw her motion after a reasonable period of time after several of her colleagues had a chance to make some remarks. But just as soon as she withdrew her motion, another motion, this time by Senator Curt Bromm, was presented for consideration by the body. And this motion would not be withdrawn.

Filed by Senator Bromm and cosigned by several other members, the motion sought to return the legislation to Select File in order to consider a specific amendment. The amendment would propose to alter the parameters of the small school adjustment in order to qualify additional schools for the extra funding.¹⁵⁷⁰ Under the existing language of the bill, only those local systems with 900 or fewer formula students and with adjusted

¹⁵⁶⁶ Id.

¹⁵⁶⁷ NEB. LEGIS. JOURNAL, *Bohlke FA395*, 28 May 1997, 2418.

¹⁵⁶⁸ *Floor Transcripts, LB 806 (1997)*, 28 May 1997, 8509.

¹⁵⁶⁹ Id.

¹⁵⁷⁰ NEB. LEGIS. JOURNAL, *Bromm AM2486*, 28 May 1997, 2418.

general fund operating expenditures per formula student less than the average for all local systems with 900 or fewer formula students would qualify for the small school adjustment. Senator Bromm proposed to change the threshold number from 900 to 700 in order, he said, to increase the number of qualifying schools.

What the amendment would do, Senator Bohlke said in response, would be to increase the average general fund operating expenditures per formula student for the purpose of calculating the small school adjustment. The average had been previously calculated to be \$5,007, which, according to Senator Bohlke, would leave two options:

We could add more than the \$110 million, and I don't think that there will be the votes to do that, or you will be taking money from schools who are not in that nine school group right now and be sending ... taking money away from them and directing it towards those schools. It's that simple.¹⁵⁷¹

Neither option was acceptable to Bohlke who opposed Senator Bromm's attempt to amend the bill.

Bromm, on the other hand, called on his colleagues to remember the agreement made during Select File debate concerning the compromise package. Said Bromm:

A week ago Friday, when the body was attempting to deal with this bill and there was considerable negotiating taking place, one of the negotiated items was that the opponents of the bill would have an opportunity to present an amendment on Final Reading following the receipt of the printout to see exactly what the results were of the amendments that were adopted on that Friday.¹⁵⁷²

Bromm explained that the printout, arriving just a day before Final Reading, indicated a less than favorable report on the prospects for certain rural schools. And only nine rural schools would qualify for the small school adjustment.

Coming to Bromm's defense was Senator Bob Wickersham, who cosponsored the Bromm amendment and motion to return the bill to Select File. Said Wickersham:

Some people are disappointed that it only benefits nine schools, and that there's only a little over a half a million dollars that goes specifically for that purpose. The expectation would be that there was more. That is simply an example of how

¹⁵⁷¹ *Floor Transcripts, LB 806 (1997)*, 28 May 1997, 8540.

¹⁵⁷² *Id.*, 8531-32.

counterintuitive this formula can be. That you can attempt to do something, you can think you see a path to do it, and you don't quite get there because of a number of other parameters change.¹⁵⁷³

Wickersham suggested that the goal of the compromise amendment on Select File simply had not been met. Wickersham argued that Senator Bromm's amendment was an attempt to "get closer" to the goal, which was to "address some of those schools that were receiving less than 90 percent of funding."¹⁵⁷⁴ Senator Wickersham once again drew attention to the map used on General and Select File debate indicating the school districts at risk of losing 10% or more of their funding capacity.

After nearly an hour of debate, the question was called and a vote taken. On a record vote, Senator Bromm's motion to return to Select File for specific amendment failed on a 19-27 vote.¹⁵⁷⁵ And with that vote, the opposition had exhausted its options. The Legislature voted 36-13 to pass the legislation.¹⁵⁷⁶

Table 77. Record Vote: LB 806 (1997) Final Reading

Voting in the affirmative, 36:

Abboud	Cudaback	Jensen	Dw Pedersen	Schrock
Beutler	Elmer	Kiel	D Pederson	Suttle
Bohlke	Engel	Kristensen	C Peterson	Wehrbein
Brashear	Hartnett	Landis	Preister	Wesely
Brown	Hilgert	Lynch	Raikes	Wickersham
Bruning	Hillman	Maurstad	Robinson	Will
Chambers	Janssen	McKenzie	Schimek	Withem
Crosby				

Voting in the negative, 13:

Bromm	Hudkins	Robak	Stuhr	Vrtiska
Coordsen	Jones	Schellpeper	Tyson	Witek
Dierks	Matzke	Schmitt		

Source: NEB. LEGIS. JOURNAL, 28 May 1997, 2420.

¹⁵⁷³ Id., 8541.

¹⁵⁷⁴ Id.

¹⁵⁷⁵ NEB. LEGIS. JOURNAL, 28 May 1997, 2419.

¹⁵⁷⁶ Id., 2420.

The Legislature also took action to pass LB 806A by a 41-6 vote.¹⁵⁷⁷ Then, on June 3, 1997, Governor Nelson signed both bills into law.¹⁵⁷⁸ He signed the historic legislation before an audience of school officials, reporters, and several sponsors of the legislation, including Senator Ardyce Bohlke. Nelson emphasized the goal of property tax relief as a major reason for his support of the legislation. Said Nelson:

The underlying premise set out last year in LB 1114 was to provide property-tax relief through efficiencies, not dismantling our educational system. ... LB 806 and 806A are intended to help accomplish this goal. Providing our students with a quality education must be the top priority for our state, and we must emphasize that quality education can be delivered through efficient measures.¹⁵⁷⁹

This is not to say, however, that the Governor found it necessarily easy to support the comprehensive legislation. In fact, Nelson said it was difficult to sign the bill with the knowledge that it would not assist all schools. He had concerns about the way the legislation may treat some rural schools. Nevertheless, Nelson said he did not have “the luxury to play politics with this bill.”¹⁵⁸⁰ “As governor, I must take the needs of the entire state into consideration when making my decisions on legislative issues,” Nelson said.¹⁵⁸¹

Table 78. A Review: LB 806 (1997)
as Passed and Signed into Law

The effective date for most of the provisions of LB 806 was September 13, 1997. LB 806 contained major changes affecting school district reorganization, school finance, county superintendents, and educational service units. Beginning with the 1998-99 school year, the total allowable general fund budget of expenditures would be limited for Class I districts. The freeholding provisions were expanded to allow the transfer of land out of Class II and III districts that vote to exceed the levy limits, with less than 60 students in grades 9-12, within 15 miles of another high school.

¹⁵⁷⁷ Id., 2429.

¹⁵⁷⁸ Id., 3 June 1997, 2564.

¹⁵⁷⁹ Leslie Boellstorff, “Gov. Nelson Signs School-Aid Bill,” *Omaha World-Herald*, 3 June 1997, 1.

¹⁵⁸⁰ Id.

¹⁵⁸¹ Id.

Table 78—*Continued*

The reorganization procedures were also streamlined. TEEOSA was amended to provide aid based on K-12 systems, rather than individual districts. The tier structure was replaced with membership adjustment factors and cost groupings based on sparsity to determine formula needs. A new special education allowance equal to the accountable special education receipts was modeled after the transportation allowance. Districts were guaranteed 85% of the aid received in the previous year minus the amount that could be generated off of increases in adjusted valuation, except aid was reduced for districts that were 10% below the levy limit. Core services for educational service units were outlined and a mechanism was provided for funding those core services. The elective office of county superintendent was eliminated effective June 30, 2000.

I. School District Organization.

- A. *Class I Districts.* Beginning with the 1998-99 school year, the department must designate a primary high school district for each Class I district based on the high school district with the greatest share of the Class I district's valuation.

If the primary high school district was a Class VI district, the Class I total allowable general fund budget of expenditures minus the special education budget of expenditures would be determined by the Class VI and certified to the Class I on or before January 1 of each year.

If the primary high school district was not a Class VI, the total allowable general fund budget of expenditures minus the special education budget of expenditures would be determined by the department based on the per student average between the K-8 portion of the high school district's budget and the Class I budget multiplied by the applicable allowable growth rate for the local system. The special education budget of expenditures would be subtracted from each budget before averaging. The K-8 portion of the high school budget would be determined using weighted formula students.

Class I boards may request to exceed the total allowable general fund budget of expenditures, minus the special education budget of expenditures. Prior to February 1, the request must be submitted to all of the high school districts the Class I district was affiliated with or of which it was a part. The request must be approved by the primary high school district and such other high school districts as were necessary to comprise at least 2/3 of the Class I valuation. High school districts must act on the request prior to March 1.

Existing law was clarified such that Class I school districts were not authorized to hold elections to exceed the levy limits and that those eligible to vote on exceeding the levy limits for school districts includes people living on portions of Class I districts which are affiliated with or a part of the high school district.

Table 78—Continued

- B. *Freeholding*. Existing law was amended to allow freeholders in a Class II or III district to transfer their property to a district contiguous to the property if the district had less than 60 students in grades 9-12 for two consecutive years, the district had voted to exceed the levy limits, and the high school was within 15 miles of another high school on a maintained public highway or maintained public road. Under prior law, a freeholder may transfer their property to a district in the same county or an adjoining county if the district had less than 25 pupils in grades 9-12 and the high school was within 15 miles of another high school on a reasonably improved highway. With these changes, transfers of property based on a high school pupil count must also be to another district that was contiguous to the tracts of land being transferred.

A new section allowed any landowner or group of landowners whose land was encapsulated by another school district to have such property become a part of the school district by which it was encapsulated. Such transfers would take place on January 1 following the request.

- C. *Reorganization Procedures*. Reorganization procedures were amended to require county committees to complete their work before petitions go to the state committee under both the election and petition methods of reorganization. Under prior law, the state committee returned the petition to the county committee after approval or disapproval with any recommendations. The recommendations provision was removed and the approval or disapproval would be certified to the county superintendent. The county committee's authorization to consider the action of the state committee and give final approval or disapproval was deleted.

County committees would be required to hold at least one public hearing within 40 days after receiving petitions for reorganizations involving over 640 acres. Hearings following the return of the petitions from the state committee after the committee's final action in the case of affiliations were eliminated. If two or more counties were involved, only the special committee would need to hold a hearing, review, and approve/disapprove the proposal. Existing law was amended to reflect the requirement for hearings prior to approval of reorganization plans.

Existing law was amended to reflect the removal of the state committee's authority to make recommendations and the county committee's authority to take further action after the state committee's review. Plans disapproved by the state committee would not be submitted to a special election. The law was also amended to reflect the special committee approval changes and the removal of the county committee from the procedures following state committee approval. New procedures for county superintendents require them to hold the petitions for 10 days during which time names may be added or withdrawn from the petitions. If there was a bond election to be held in conjunction with the petition, the petitions would be held until the bond election has been held. If the bond election was unsuccessful, no further action would be required.

Table 78—*Continued*

The hearing for the sufficiency of signatures is delayed until after the holding period or the bond election, and the boundary changes were effective within 15 days after the holding period or bond election results were certified. The deadline for a public hearing to determine the sufficiency of the signatures was moved from 15 days after the filing of the petitions to 15 days after the end of the holding period. If a bond election was successful, the deadline would be 15 days after receipt of the certification of the election results. That deadline also becomes the deadline for changing the boundaries if there were sufficient valid signatures. The provisions for the addition and removal of names from petitions were modified to reflect the changes.

The provisions for school board initiated reorganizations were extended to include all Class I and II boards. Under previous law, all boards were included except boards for Class I or II districts that did not have a city/village. A new section provided that the plans for reorganization may originate in the county committee or the school board of any district affected.

The county committee authorization provisions were amended to require each county committee to appoint 3 members to serve on any special committees. The law was amended to reflect the changes in who can initiate a reorganization plan and the appointment of special committees. The legislation also clarified that only the special committee approval was required, with no approval requirement for the county committees when more than one county was involved. Existing law was amended to reflect the removal of approval authority for county committees where special committees were involved and the removal of authority for the state committee to make suggestions. The quorum requirements for county committees were modified to define a quorum as those present, rather than a majority of the members. The actions of a quorum shall be valid and binding.

Outdated language requiring the county committee to submit a plan of reorganization is deleted from §79-440. Responsibility for the notice requirement in that section is moved from the county superintendent to the county committee or the board proposing the plan.

- D. *Class VI Systems.* Existing law was amended to allow the creation of new Class I districts as part of a reorganization creating a new Class VI system. When a Class VI system merged to form a K-12 on or after January 1, 1997, the district may, but was not required to authorize transportation to students.

II. School Finance.

- A. *Intent Language.* The intent language for 45% state funding for general fund operating expenditures was modified to state an intent of providing state funding sufficient to support general fund operating expenditures that could be met by local resources.

Table 78—Continued

A new section required an appropriation sufficient to result in a statewide levy for each year's state aid calculation that would be less than the maximum levy. The Legislative Fiscal Analyst must calculate the amount that most accurately accounts for the growth in school district budgets.

- B. *Local Systems.* The definitions for adjusted valuation, average daily membership, and fall membership were amended to refer to local systems, instead of individual districts. Local systems were defined as Class VI districts and the associated Class I districts or a Class II, III, IV, or V district and any affiliated Class I districts or portions of Class I districts. The membership, expenditures, and resources of Class I districts that were affiliated with multiple high school districts would be attributed to local systems based on the percent of the Class I valuation that was affiliated with each high school district. Law was amended to change the district designation on tax forms to indicate the resident high school district.
- C. *Formula Needs.* The existing provision for calculation of tiered costs was limited to the 1996-97 and 1997-98 aid years. The new method for calculating needs included the calculation of adjusted formula membership and use of cost groupings. Adjusted formula membership for each local system would be calculated as follows:
1. Multiply the formula students in each grade range by the matching weighting factors to calculate the weighted formula students for each grade range:
 - 0.5 is the weighting factor for kindergarten;
 - 1.0 is the weighting factor for grades 1-6, including full day kindergarten;
 - 1.2 is the weighting factor for grades 7-8; and
 - 1.4 is the weighting factor for grades 9-12.
 2. Add the weighted formula students for each grade to calculate the weighted formula students for the local system.
 3. Adjust the weighted formula students based on the following criteria:
 - a. *Indian-Land Factor:* The Indian-Land Factor was equal to 0.25 times the average daily attendance of students who reside on Indian land as reported to the U.S. Department of Education.
 - b. *Limited English Proficiency Factor:* The Limited English Proficiency Factor was equal to 0.25 times the formula students with limited English proficiency as defined by the U.S. Department of Education.
 - c. *Extreme Remoteness Factor:* The Extreme Remoteness Factor was equal to 0.125 times the formula students in systems with fewer than 200 formula students, more than 600 square miles, fewer than 0.3 formula students per square mile, and more than 25 miles between the high school attendance center and the next closest high school attendance center on paved roads. *See also LB 710 (1997).*

Table 78—Continued

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- d. *Poverty Factor*: The number of formula students included in the poverty factor would be the greater of the low-income children attributed to the local system or the formula students qualified for free lunches or free milk. Low-income child was defined as a child under 19 living in a household having an adjusted gross income of \$ 15,000 or less. The Poverty Factor was equal to the qualified formula students multiplied by the following factors:
- (i) 0 for the qualified formula students comprising the first 5% of the formula students in the local system;
 - (ii) 0.05 for the qualified formula students comprising more than 5% but less than 10% of the formula students in the local system;
 - (iii) 0.10 for the qualified formula students comprising more than 10% but less than 15% of the formula students in the local system;
 - (iv) 0.15 for the qualified formula students comprising more than 15% but less than 20% of the formula students in the local system;
 - (v) 0.20 for the qualified formula students comprising more than 20% but less than 25% of the formula students in the local system;
 - (vi) 0.25 for the qualified formula students comprising more than 25% but less than 30% of the formula students in the local system; and
 - (vii) 0.30 for the qualified formula students comprising more than 30% of the formula students in the local system;
4. The department must divide the local systems into three *cost groupings* based upon the following criteria:
- a. *Very Sparse*:
 - < 0.5 students/sq. mile in the county where the high school was located;
 - < 1.0 formula students/sq. mile in the local system; and
 - > 15 miles between the high school and the next closest high school on paved roads.
 - b. *Sparse*:
 - < 2.0 students/sq. mile in the county where the high school is located;
 - < 1.0 formula student/sq. mile in the local system; and
 - > 10 miles between the high school and the next closest high school on paved roads; or
 - < 1.5 students/sq. mile in the local system; and
 - > 15 miles between the high school and the next closest high school on paved roads; or
 - > 95% of a county is in the local system.
 - c. *Standard*: Local systems that do not qualify as very sparse or sparse.

Table 78—Continued

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5. *Formula Cost Per Student.* NDE will calculate the average formula cost per student in each cost grouping by dividing the total estimated adjusted general fund operating expenditures for all local systems in the cost grouping by the total adjusted formula membership for all local systems in the cost grouping. The total estimated adjusted general fund operating expenditures for all local systems in the cost grouping is equal to the total adjusted general fund operating expenditures for all local systems in the cost grouping multiplied by a cost growth factor. The cost growth factor would be the sum of:
- a. 1;
 - b. 2 times (formula students - ADM for most recently complete data year) ADM for most recently complete data year;
 - c. Allowable growth rate for year of distribution;
 - d. Allowable growth rate for preceding year;
 - e. 0.5 times any additional growth rate allowed by special action of the school board for year of distribution; and
 - f. 0.5 times any additional growth rate allowed by special action of the school board for preceding year.
- D. *Transportation/Special Education.* Each local system's formula need would be equal to the sum of the local system's transportation allowance, special education allowance, and the product of the local system's adjusted formula membership multiplied by the average formula cost per student in the local system's cost grouping. The special education allowance was defined as the amount of special education receipts included in local system formula resources. The special education and transportation allowances were subtracted from the general fund operating expenditures before the cost grouping calculations.
- E. *Stabilization Adjustment.* Each local system received equalization aid in the amount the total formula need exceeded total formula resources. A local system would not receive aid less than 85% of the amount certified in the preceding school fiscal year minus the amount that the maximum levy could generate off of any increase in adjusted valuation, unless the system had a levy in the calendar year when aid was certified that was less than 90% of the maximum levy.
- F. *Minimum Levy Adjustment.* A minimum levy adjustment would be made for any district that had a levy less than 90% of the maximum levy in the calendar year when aid was certified. The adjustment was calculated by subtracting the system levy from 90% of the maximum levy and multiplying the result by the adjusted valuation divided by 100. The adjustment would be added to the formula resources. If the adjustment is greater than the rebate, the system would not receive rebate. If the adjustment is less than the rebate, the system would receive the difference between the rebate and the adjustment in rebate funds.

Table 78—Continued

G. *Lop-Off and Small School Adjustment.* Equalized local systems would not receive more revenue from the combination of state aid and property taxes based on a \$1.00 levy (90¢ beginning in 2000-01) than could be spent without exceeding the budget lids. A maximum amount of revenue from property taxes and state aid would be determined for each equalized local system. The maximum amount would limit the amount of equalization aid that a local system received such that the total aid when added to a \$1 levy (90¢ beginning in 2000-01) on the adjusted value would not exceed the sum of:

1. Aid plus property tax receipts from the preceding school year increased by:
 - (a) 1% for the optional growth rate; (b) the applicable growth rate; and (c) the percentage growth in formula students;
2. Unused budget authority; and
3. Decreases in other actual receipts.

The aid that not distributed based on this limitation would be distributed to local systems with:

- i. 900 or fewer students;
- ii. Adjusted general fund expenditures per student that are less than the average for local systems with 900 students or fewer; and
- iii. Losses greater than 10% based on state aid and property tax receipts.

The distribution would be proportional to qualifying districts based on the dollar amount each local system's calculated state aid plus property tax receipts based on \$1.10 (\$1.00 beginning in 2000-01) and the adjusted valuation would be below 90% of the previous year's state aid plus property tax receipts based on the common levy and the assessed valuation for that year. Funding through this mechanism was limited to raising local systems to the 90% level.

H. *Equalization Aid.* A new section provided the same dates and notification requirements for state aid awards, except that it applied to local systems, instead of individual districts, and reflected other changes in the bill. The amount of aid to be distributed to each district from the amount certified for a local system would be proportional based on the weighted formula membership attributed to each district in the local system.

I. *Income Tax Rebate.* A new section repeats the existing language for income tax rebate, except that the provisions applied to local systems, not individual districts. The 1996 income tax liability of resident individuals of Class I districts that were affiliated with multiple high school districts would be divided between local systems based on the percentage of the Class I district's valuation affiliated with each high school district. For income taxes after 1996, the high school district would be indicated on the income tax form.

Table 78—Continued

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- J. *Net Option Funding.* The net option funding provisions were modified to reflect the move from tiers to cost groupings. The amount per student would be the lesser of the average cost grouping cost per student or the option school district's cost grouping cost per student multiplied by the weighting factor for the corresponding grade range.
- K. *Local Effort Rate, Adjusted Valuation, and Other Resources.* A new section repeated the existing local effort language except that it applied to local systems, instead of individual districts. The local effort rate was also prohibited from going more than 10 cents below the maximum levy. The certification of adjusted valuation would also be for local systems, instead of individual districts. A new section repeated the existing other receipts section except that it applied to local systems, instead of individual districts.
- L. *Aid Distribution.* Aid would be distributed to each district in a local system proportionally based on the weighted formula students attributed to each district.
- III. Educational Service Units.
- A. *Boundaries.* The statutory ESU boundaries would remain in effect until July 1, 1998. Clarification was added to exclude the Omaha and Lincoln school districts from the ESUs containing Douglas and Lancaster counties.
- B. *Core Services.* Existing law declared the role and mission for ESUs. This section was amended to make the existing language more directive and to add requirements and definitions. Core services were added as a required service to member districts. Core services were within the areas of staff development, technology, and instructional materials in that order of priority. The core services would improve teaching and learning by enhancing school improvement efforts, meet statewide requirements, and achieve statewide goals. The services must be identified as necessary by the ESU and its member districts, must be difficult for individual districts to provide effectively and efficiently, must be adequately funded to ensure the services is provided equitably, must be designed so that the effectiveness and efficiency can be evaluated on a statewide basis, and must minimize the cost of administration or service delivery.
- A requirement for adequate educational opportunities statewide was added to the equity requirements in the accreditation provisions. ESUs would be allowed to contract to provide services to nonmember districts, nonpublic schools, other ESUs, and political subdivisions under the Interlocal Cooperation Act. The prohibition against regulating school districts was modified to reflect that other sections of law may provide otherwise.
- C. *Reorganization of ESUs.* Existing law was amended to add new ways that an ESU may be reorganized. The dissolution of one or more entire educational service units for attachment to or merger with other ESUs would be allowed.

Table 78—Continued

Existing law was amended to add a new criterion for State Board approval of boundary changes. For the dissolution of one or more ESUs, there must be evidence of consent from each ESU board and 2/3 of the member school boards, representing a majority of students in each affected ESU.

- D. *Funding.* By October 15, 1997, the department must report to the Legislature an estimate of costs for ESUs to provide core services in the following order of funding priority: (1) staff development; (2) technology; and (3) instructional materials services. The Appropriations Committee must determine an appropriation level; and it was the intent of the Legislature to appropriate funds to the department to fund core services.

The funding would be distributed proportionally to each ESU by the department on or before August 1, for each fiscal year based on the fall membership in member district in the preceding school fiscal year.

Funds may be distributed directly to districts by the ESU if evidence is provided showing that the district will provide core services for itself in a cost-efficient manner. If all member school districts together provide evidence satisfactory to the department that the districts will provide core services for themselves in a more cost-efficient manner than the ESU, the department shall distribute funds directly to the districts. The funds shall be used for core services with the approval of representatives of two-thirds of the member school districts, representing a majority of the students.

A new section requires levy proceeds to be used only for purposes approved by representatives of two-thirds of the member school districts, representing a majority of the students.

- IV. County Superintendents. Existing law was amended to limit the election of county superintendents to 1998 and to end the elective office of county superintendent on June 30, 2000.

By December 1, 1997, NDE must make recommendations to the Legislature about the duties to be eliminated or retained and who should be assigned the retained duties. The Education Committee was required to prepare legislation to carry out this intent.

Existing law was amended to allow counties to discontinue the office of county superintendent and contract under existing provisions until June 30, 2000. However, the contracts were limited to one year. Individuals who meet the qualifications of a county superintendent were also added to the list of potential contractors. On and after June 30, 2000, the counties may continue to contract on an annual basis.

Table 79. Summary of Modifications to TEEOSA
as per LB 806 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
29	79-1001	Act, how cited	Change citation of the Tax Equity and Educational Opportunities Act to incorporate nine new sections.
30	79-1002	Legislative findings and intent	Change intent language to provide support from all sources of state funding sufficient to support the statewide aggregate general fund operating expenditures that cannot be met by local resources.
31	79-1003	Terms, defined	<p>Change definition of adjusted general fund operating expenditures to mean general fund operating expenditures minus the transportation allowance and for purposes of State Aid paid in school fiscal year 1998-99 and each school fiscal year thereafter, minus the special education allowance.</p> <p>Change definition of adjusted valuation to mean the assessed valuation of taxable property of each district in the state, for school fiscal years before 1998-99, and of each local system in the state, for school fiscal year 1998-99 and each school fiscal year thereafter.</p> <p>Change definition of allocated income tax funds to mean the amount of assistance paid to a district and for school fiscal year 1998-99 and each, school fiscal year thereafter, as adjusted by the minimum levy adjustment.</p> <p>Change definition of average daily membership to mean the average daily membership for K through 12 attributable to the district for school fiscal years before school fiscal year 1998-99, and for school fiscal year 1998-99 and each school fiscal year thereafter, attributable to the local system.</p> <p>Change definition of fall membership to mean the total membership in K through 12 attributable to the district for school fiscal years before school fiscal year 1998-99, and for school fiscal year 1998-99 and each school fiscal year thereafter, attributable to the local system, as reported on the fall school district membership reports for the local system.</p> <p>Change definition of a low-income child to mean a child under 18 years of age living in a household having an annual adjusted gross income of \$15,000 or less for the calendar year preceding the year for which aid is being calculated.</p> <p>Change definition of special education allowance as the amount of special education receipts included in district formula resources.</p>
32	79-1005	School fiscal years 1996-97 and 1997-98; income tax receipts; disbursement; calculation	Sunset existing statute relevant to income tax rebate after school fiscal year 1997-98.

Table 79—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
33	79-1005.01	School fiscal years 1998-99 and thereafter; income tax receipts; disbursement; calculation	<p>For 1998-99 and after, provide that an amount equal to the amount appropriated to the School District income Tax Fund for distribution in 1992-93 be disbursed as option payments and as allocated income tax funds. Funds not distributed as allocated income tax funds due to minimum levy adjustments shall be distributed as Equalization Aid.</p> <p>Require the Tax Commissioner to certify to the department for the second preceding tax year the income tax liability of resident individuals for each local system. The 1998 income tax liability of resident individuals of Class I districts that are affiliated with multiple high school districts shall be divided between local systems based on the percentage of the Class I district's valuation affiliated with each high school district.</p>
34	79-1007	School fiscal years 1996-97 and 1997-98; adjusted tiered cost per student; adjusted general fund operating expenditures; calculations	The tier structure created under LB 1059 (1990) would remain in effect through the 1997-98 school fiscal year.
35	79-1007.01	School fiscal year 1998-99 and thereafter; adjusted formula membership for local system; calculations	Requires the computation of adjusted formula membership in each local system, rather than individual district, based on a weighting factor by grade level which is adjusted to reflect systems with Indian-land, limited English proficiency students, poverty and sparsity.
36	79-1007.02	School fiscal year 1998-99 and thereafter; cost groupings; average formula cost per student; local system's formula need; calculation	Local systems are divided into three cost groupings and general fund operating expenditures are determined for each of the cost groupings. A cost growth factor is then applied to each cost grouping to determine formula need. The growth factor reflects a two-year increase in students, the allowable budget growth rate under the formula and half of a school board's discretionary growth authority.
37	79-1008	School fiscal years before 1998-99; equalization aid; amount	This section automatically sunsets after the 1997-98 school fiscal year.
38	79-1008.01	School fiscal year 1998-99 and thereafter; equalization aid; amount	<i>Incentive Funds:</i> Creates a new section for reorganization incentive payments for school fiscal year 1998-99 and beyond that applies to districts reorganized on or before June 30, 2005. Each local system shall receive Equalization Aid in the amount that the total formula need of each local system exceeds its total formula resources.

Table 79—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
38	79-1008.01	School fiscal year 1998-99 and thereafter; equalization aid; amount <i>Continued</i>	<p><i>Stabilization Factor:</i> Provide that for school fiscal year 1998-99 and beyond, local systems shall not receive less than 85% of the total aid certified for the prior school year. Except that any district that has a levy in the current calendar year that is less than 90% of the maximum levy allowed by law for that fiscal year shall have its calculated state aid amount reduced.</p> <p><i>Lop-Off:</i> Provide that no local system may receive equalization aid such that, when total aid is added to a levy of one dollar for state aid to be distributed in school fiscal years 1998-99 and 1999-00 or of 90¢ for state aid to be distributed in school fiscal year 2000-01 and each school fiscal year thereafter, multiplied by the local system's adjusted valuation divided by 100, would result in total local system revenue from state aid plus property tax receipts which exceeds the total of:</p> <p>State aid + property tax receipts from the preceding fiscal year X (1.01 + the applicable allowable growth rate for the system + the percentage growth in formula students) + unused budget authority + the difference between other actual receipts</p> <p><i>Small School Adjustment:</i> Provide that the aid not distributed through equalization based on the lop-off calculation shall be distributed to local systems that have 900 or less formula students and have adjusted general fund operating expenditures per formula student less than the average for all local systems with 900 or less formula students. The aid shall be distributed based on the dollar amount each local system is below ninety percent of calculated state aid plus the product of a levy of \$1.10 multiplied by the adjusted valuation divided by 100.</p>
39	79-1008.02	Minimum levy adjustment; calculation; effect	Provide for a minimum levy adjustment calculated and applied to any system that has a levy in the calendar year when aid is certified that is less than 90% of the maximum levy. The minimum levy adjustment is added to the formula resources for the determination of equalization aid. If the minimum levy adjustment is greater than or equal to the allocated income tax funds, the system shall not receive allocated income tax funds. If the minimum levy adjustment is less than the allocated income tax funds, the local system shall receive allocated income tax funds in the amount of the difference between the allocated income tax funds and the minimum levy adjustment.
40	79-1009	Option school districts; net option funding; calculation	Provide that for 1998-99 and thereafter, net option funding is the sum of the products of the net number of option students in each grade range multiplied by the lesser of the average cost grouping cost per student OR the option school district's cost grouping cost per student multiplied by the weighting factor for the corresponding grade range. Provide that net option funding will be paid directly to a district. The net option fund receipts will be counted as a formula resource for the local system.

Table 79—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
41	79-1010	Incentives to reorganized districts; qualifications; requirements; calculation; payment	Provide that incentive payments shall be paid directly to the consolidated district.
42	79-1011	School fiscal years prior to 1998-99; reorganized districts; state aid; amount	Sunset this particular section after the 1997-98 school fiscal year.
43	79-1014	School fiscal years 1996-97 and 1997-98; adjusted need; calculation	Sunset this particular section after the 1997-98 school fiscal year.
44	79-1015	School fiscal years before 1998-99; district formula resources; local effort rate; determination	Sunset this particular section after the 1997-98 school fiscal year.
45	79-1015.01	School fiscal year 1998-99 and thereafter; district formula resources; local effort rate; determination	Provide that for school fiscal year 1998-99 and each school fiscal year thereafter, district formula resources shall include local effort rate yield. The local effort rate shall be determined by the department. The local effort rate yield shall be determined by multiplying each local system's total adjusted valuation by the local effort rate.
46	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	Require the Property Tax Administrator to certify to the Department of Education the adjusted valuation for the current calendar year of each local system.
47	79-1017	School fiscal years before 1998-99; district formula resources; income tax funds allocation	Provide that for school fiscal years before 1998-99, district formula resources shall include allocated income tax fund.
48	79-1017.01	School fiscal year 1998-99 and thereafter; local system formula resources; income tax funds; allocation	For school fiscal year 1998-99 and beyond, local system formula resources shall include allocated income tax funds determined for each district.
49	79-1018	School fiscal years before 1998-99; district formula resources; other receipts included	Sunset this particular section after the 1997-98 school fiscal year.
50	79-1018.01	School fiscal year 1998-99 and thereafter; local system formula resources; other actual receipts included	Restate current language on which receipts are considered accountable receipts.

Table 79—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Catch Line</i>	<i>Description of Change</i>
51	79-1022	Distribution of income tax receipts and state aid; effect on budget	Provide that on or before December 1, 1997, and on or before December 1 of each year thereafter, the department shall determine the amounts to be distributed to each local system based on estimated funding levels and shall certify the amounts to the Director of Administrative Services, the Auditor of Public Accounts, and each district. <i>[This section actually amends section 5 of LB 713 (1997), which was passed into law prior to LB 806.]</i>
52	79-1026	Applicable allowable growth percentages; determination	Require the department to determine a target budget level for each local system by multiplying the average daily membership of each local system by the cost grouping cost per student. The sum of such products and the local system's special education allowance and transportation allowance shall be each local system's target budget level.
53	79-1031	Department; provide data to Governor; Governor; duties	Harmonize with change in intent language to provide support from all sources of state funding sufficient to support the statewide aggregate general fund operating expenditures that cannot be met by local resources.
54	79-1031.01	Legislative intent	Requires the Appropriations Committee to annually recommend an appropriation level to result in a local effort rate in the state aid formula that is less than the maximum levy for schools after total statewide formula need is inflated by the CPI for the most recent two years.
69	79-1004	Income tax receipts; use and allocation for public school system	Repealed.
69	79-1006	Tiered cost per student; general fund operating expenditures; calculations	Repealed.
69	79-1013	Unadjusted need; computation	Repealed.

Source: Legislative Bill 806, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 29-54, pp. 17-34 (1543-60); Bill summary prepared by Thomasin Tate Barry, Legal Counsel, Education Committee.

C. Technical and Substantive Revisions to LB 806

LB 710 (1997) was originally introduced as a technical cleanup bill on behalf of the Department of Education. It would eventually serve a vital role in the 1997 Session as the vehicle for last minute changes to LB 806 (1997). The legislation had been referred to the Education Committee, advanced from committee, and had sailed through the legislative process. By April 9th (the 54th day of the session) the bill had advanced to the third and final round of consideration.¹⁵⁸² It was at this time that Speaker Withem, in collaboration with Senator Bohlke, requested to have the bill bracketed until June 1, 1997.¹⁵⁸³ The bracket motion, which was successfully passed, would literally shelve the bill for a later time. It was believed, if LB 806 passed, such a vehicle might be necessary to correct or clarify various provisions of the comprehensive school finance bill.

As introduced, LB 710 contained purely technical-oriented provisions. For instance, one section deleted obsolete language concerning county nonresident high school tuition funds.¹⁵⁸⁴ These funds ceased to exist on July 1, 1993 after the Class I affiliation legislation became operative. Another example involved the calculation of each district's applicable allowable growth percentage (spending limit) and the number of digits this percentage was carried out beyond the decimal point. Prior to 1997 this percentage was carried out eight digits beyond the decimal point in order to capture the most accurate growth rate for each district. Under LB 710 the percentage would be carried out four digits beyond the decimal point, which according NDE would produce just as much accuracy and would be less cumbersome for agency personnel to manage.¹⁵⁸⁵

¹⁵⁸² NEB. LEGIS. JOURNAL, 9 April 1997, 1441.

¹⁵⁸³ *Id.*, 1451.

¹⁵⁸⁴ Legislative Bill 710, *Change provisions relating to school finance*, sponsored by Sen. Ardyce Bohlke, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 22 January 1997, § 3, pp. 9-12.

¹⁵⁸⁵ *Id.*, § 6, p. 15.

 Table 80. Original Provisions of LB 710 (1997)

- Section 1 Amended the definitions of base fiscal year and general fund operating expenditures. The base fiscal year would be the second year following a reorganization instead of the first year in which all data sources reflected the reorganized district. The subtractions to arrive at general fund operating expenditures were expanded to include all categorical funds, not just federal categorical funds. School lunch pass through was removed from that list. School lunch funds would be categorical.
- Section 2 Clarified provisions describing valuation for the purpose of dividing allocated income tax funds.
- Section 3 Deleted language regarding county nonresident high school tuition funds.
- Section 4 Clarified provisions concerning other actual receipts in formula resources by specifying the receipts must be available for the finding of general fund operating expenditures. State receipts included were also clarified as being non-categorical. Deleted language relating to the textbook loan program.
- Section 5 A requirement was added for the Auditor to consult with the department before changing budget documents for districts to effectuate budget limitations. Another provision was added to require state aid withheld from districts for noncompliance to revert to the General Fund prior to the end of the biennium following the biennium for which the aid was calculated.
- Section 6 The required decimal places for allowable growth percentage calculation was reduced from 8 to 4.
- Section 7 The requirements for the department to provide information to the Governor for the preparation of legislation was modified to reflect that state aid may be returned to the General Fund from an earlier appropriation for reasons other than the repayment of funds by districts.
- Section 8 The annual statistical summary is added to the reports school districts are required to submit. Provisions are also added stating that if a school district does not submit the required reports prior to the end of the state's biennium following the biennium which included the year aid for which aid was calculated, the funds will revert to the General Fund and the amount of those funds will be provided to the Governor.

The provisions allowing districts that receive more than 25% of their general fund budget from federal funds to apply for early payment of state aid were expanded. The expansion allows the 25% requirement to apply to the most recently available complete data year or in either of the two fiscal years preceding the most recently available complete data year.

Table 80—*Continued*

Section 9	The deadline for the Commissioner of Education to apportion funds in the school fund was modified from 20 days following delivery from the State Treasurer to February 25th. The State Treasurer's deadline was the third Monday in January.
Section 10	Added a provision allowing adjustments to be made in future years when the recalculation of aid required an adjustment more than the aid to be paid.
Section 11	The personal property tax reimbursement fund was added to the funds that school districts may borrow against.
Section 12	Permitted Class III districts to publish only the fund summary pages of the budget instead of the entire budget.
Section 13	Provisions were added to the school district audit requirements stating that if a school district does not comply prior to the end of the state's biennium following the biennium which included the year aid for which aid was calculated, the funds will revert to the General Fund and the amount of those funds will be provided to the Governor.
Section 14	The deadline for an itemized estimate of the amounts necessary for the abatement of environmental hazard or accessibility barrier elimination was changed from September 10 to the date provided in law.

Source: Committee on Education, *Committee Statement, LB 710 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 1-2.

LB 710 (1997) was destined to be just another technical cleanup bill had it not been for the passage of LB 806, the comprehensive school finance bill. LB 710 would effectively lose its technical status on June 3rd when the Speaker placed the bill back on the agenda. The legislation appeared on the Final Reading agenda, but there were no less than six pending motions to return the bill for specific amendment. Two of the motions to return would be withdrawn, but the other four motions would be passed.

In order to amend a bill currently on Final Reading, the sponsor of an amendment must first convince his/her colleagues to return the bill to Select File in order to debate the merits of the amendment.¹⁵⁸⁶ In essence, this means promoting the merits of the amendment in order to be in position to debate the merits of the amendment. If the motion to return to Select File is passed by a majority of the body, the bill falls back to

¹⁵⁸⁶ RULES OF THE NEB. LEG., Rule 6, § 6.

the second stage of debate, procedurally, and the amendment attached to the motion is then debated. Whether or not the amendment is adopted, the body must then take action to re-advance the bill to Final Reading (usually by voice vote). For the chief sponsor of the legislation, the act of returning a bill to Select File can at times be risky since the body is under no obligation to actually re-advance the bill to Final Reading. The more controversial the amendment, the more risk involved in returning the bill to Select File.

The first successful motion to return for specific amendment came from Senator Bohlke. The amendment she proposed would change various sections of LB 806 (1997) and also add a new weighting factor within the formula.

Concerning the poverty factor, the Bohlke amendment redefined “low-income child” as a child under the age of 19 years of age living in a household having an annual adjusted gross income of \$15,000 or less for the *second* calendar year preceding the beginning of the school fiscal year in which state aid was being calculated.¹⁵⁸⁷ In essence, this would mean using data two years in arrears to calculate the poverty factor for each local system. In addition, the amendment clarified that the department must calculate a ratio of the *formula students* to the total children under 19 years of age residing in the local system and apply the ratio to the low-income children within the local system, in order to determine the number of low-income students within such local system.¹⁵⁸⁸

The amendment specified that the data to be used in the poverty factor would be derived from the income tax information generated by the Department of Revenue.¹⁵⁸⁹ This had always been the underlying intent, but it was not expressly provided in LB 806. Finally, relative to the poverty factor, the Bohlke amendment clarified that the poverty ratios must be applied to “qualified” students rather than merely students who qualify for free lunches or free milk, as had been originally proposed.¹⁵⁹⁰ If a student qualified under

¹⁵⁸⁷ NEB. LEGIS. JOURNAL, *Bohlke AM2635*, printed separate, 3 June 1997, 2557; Amendment to LB 710 (1997), *Bohlke 2653*, § 7, p. 18.

¹⁵⁸⁸ Amendment to LB 710 (1997), *Bohlke 2653*, § 8, p. 21.

¹⁵⁸⁹ *Id.*, pp. 21-22.

¹⁵⁹⁰ *Id.*, pp. 22-23.

the definition of low-income, then the student must be counted for purposes of the poverty factor.

Concerning the Small School Adjustment, the Bohlke amendment stated that any funds not distributed through the adjustment must be funneled back through the equalization formula.¹⁵⁹¹ The Small School Adjustment was created under LB 806 as part of the compromise package adopted on Select File debate. The funding mechanism for the Small School Adjustment would derive from the lop-off calculation, and local systems would have to meet certain requirements before being eligible for funds from the adjustment. The Bohlke amendment accounted for the potential that more funds would be generated through the lop-off calculation than might be necessary to meet the demand for funds under the Small School Adjustment in some fiscal years. In other years, the demand for funds under the Small School Adjustment may require a distribution of funds on a proportionate basis if demand exceeds availability of funds.

One of the more controversial components of the Bohlke amendment concerned the addition of a new weighting factor (the “Extreme Remoteness” factor).¹⁵⁹² Since the new factor would be listed in statute among the other major weighting factors (i.e., poverty, LEP, and Indian land), it might be falsely assumed that it had the potential to redistribute funds among all local systems. This was not meant to be the case. The extreme remoteness factor emerged after it was discovered that some local systems within the very sparse cost grouping would still be disproportionately impacted under the school finance formula, even with the additional state aid awarded to very sparse local systems. Some of these local systems, explained Senator Bohlke, have much higher expenditures due to their extreme remoteness in relation to other school systems. Senator Bohlke identified school districts in Arthur County and Sioux County as examples of local systems that would benefit from the new weighting factor.

The new weighting factor would simply redirect some of the state aid allocated under the very sparse cost grouping to those districts qualifying for the factor. It would

¹⁵⁹¹ Id., § 10, p. 29.

¹⁵⁹² Id., § 8, p. 23.

essentially draw funds away from some systems within the very sparse cost grouping in order to give to other systems within the very sparse cost grouping. Bohlke explained:

This would just be money in the very sparse school districts that actually would allow some movement of some money in that very sparse category to address some of the real uniqueness of those schools that are so extremely remote that when we put them in the very sparse category their costs had to come down, because they were ... higher than the other very sparse schools, because of their extreme remoteness.¹⁵⁹³

Senator Bohlke believed some schools were so remotely situated that the formula had to somehow reflect that geographic factor.

Perhaps the most far-reaching provision of the Bohlke amendment to LB 710 was a seemingly innocuous re-wording of a section of LB 806 added during second-round debate. At issue was the section of LB 806 that created intent language for the Legislature to ensure “sufficient appropriations” for the operation of the state aid formula.¹⁵⁹⁴ The intent language required the Appropriations Committee to annually recommend an appropriation level to result in a local effort rate for the state aid formula that is less than the statutory maximum school tax levy after total statewide formula need is inflated by the Consumer Price Index (CPI) for the most recent two years.¹⁵⁹⁵

The Bohlke amendment to LB 710 proposed to slightly alter the wording of the intent language as follows:

It is the intent of the Legislature to ensure sufficient appropriations to the School District Income Tax Fund and to the Tax Equity and Educational Opportunities Fund to result in a statewide tax levy for each year’s state aid calculation that would be less than the maximum tax levy specified in section 77-3442. To carry out the intent of this provision, the Legislative Fiscal Analyst shall calculate an amount which most accurately accounts for the growth in school district budgets. The Appropriations Committee of the Legislature shall annually include such amounts in its recommendations to the Legislature to carry out the requirements of this section.¹⁵⁹⁶

¹⁵⁹³ Legislative Records Historian, *Floor Transcripts, LB 710 (1997)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 3 June 1997, 9285-86.

¹⁵⁹⁴ LB 806, Session Laws, 1997, § 54, p. 34 (1560).

¹⁵⁹⁵ *Id.*

¹⁵⁹⁶ Amendment to LB 710 (1997), *Bohlke 2653*, § 15, p. 33.

The purpose of the proposed change was to encourage the Legislature to account, as close as possible, the actual growth in school districts budgets statewide. However, the use of the phrase, “statewide tax levy,” had some analysts wondering what the state was committing itself. “[T]he reference to ‘statewide tax levy’ is unclear as is the requirement to accurately account for the growth in school district budgets, so the fiscal impact of this section is unknown,” wrote fiscal analyst Sandy Sostad.¹⁵⁹⁷

During debate of the amendment on June 3, 1997, Senator Bob Wickersham defended the proposed change. “We must do that, we will have no choice,” he said, referring to the limitation on property tax revenue for schools. Wickersham added:

I think, quite frankly, that the expression that you see in the amendment before you does not go far enough because it says that we will have a statewide tax levy, in other words a yield rate that is only ... it just says it’s going to be less than the maximum levy. There’s a problem with that. The statewide levy is calculated on adjusted valuations. The actual levies are calculated on assessed valuations. The adjusted valuations are typically higher.¹⁵⁹⁸

Senator Wickersham said he would prefer the Legislature set the appropriation at a level that would guarantee a statewide tax levy or a yield rate 10¢ less than the maximum levy in order to account for the difference in valuation and the effect that it would have on schools. The language contained in the Bohlke amendment, however, was at least a step in the right direction as far as Senator Wickersham was concerned.

After a relatively short debate, the Bohlke amendment to LB 710 was adopted by a 26-6 vote after a successful motion to return the bill to Select File for specific amendment.¹⁵⁹⁹ The Legislature took action to pass LB 710 on June 12, 1997 by a 37-7 vote.¹⁶⁰⁰ Governor Nelson signed the bill into law on June 16th.¹⁶⁰¹

¹⁵⁹⁷ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 710 (1997)*, prepared by Sandy Sostad, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 11 June 1997, 1.

¹⁵⁹⁸ *Floor Transcripts, LB 710 (1997)*, 3 June 1997, 9287.

¹⁵⁹⁹ NEB. LEGIS. JOURNAL, 3 June 1997, 2557.

¹⁶⁰⁰ *Id.*, 12 June 1997, 2745.

¹⁶⁰¹ *Id.*, 18 June 1997, 2759.

Table 81. Summary of Modifications to TEEOSA
as per LB 710 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Notes</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
5	79-1003	Amend LB 806 (1997), § 31.	Terms; defined	Define base fiscal year as (a) for school district reorganizations that occurred prior to the 1995-96 school fiscal year, the first fiscal year in which all data sources reflect the reorganized district as a single district and (b) for school district reorganizations that occur during or after the 1995-96 school fiscal year, the second fiscal year following the year in which the reorganization occurred. Define low-income child as a child under 19 years of age living in a household having an annual adjusted gross income of \$15,000 or less for the second calendar year preceding the beginning of the school fiscal year in which aid is being calculated.
6	79-1005	Original section of LB 710 (1997).	School fiscal years 1996-97 and 1997-98; income tax receipts; disbursement; calculation	Provide that each district shall be preliminarily allocated a share of the sum total income tax liability based on its pro rata share of the total valuation of the school fiscal year in which the second preceding tax year ended of all such districts and multiplied by the allocation percentage.
7	79-1015	Original section of LB 710 (1997).	School fiscal years before 1998-99; district formula resources; local effort rate; determination	Remove reference to the county nonresident high school tuition fund.
8	79-1018	Original section of LB 710 (1997).	School fiscal years before 1998-99; district formula resources; other receipts included	Clarify that district formula resources include other actual receipts available for the funding of general fund operating expenditures for the most recently available complete data year.
9	79-1007.01	Amend LB 806 (1997), § 35.	School fiscal year 1998-99 and thereafter; adjusted formula membership for local system; calculation	Require the Department to calculate the number of formula students to whom the poverty factor shall apply. The Department must calculate a ratio of the formula students to the total children under 19 years of age residing in the local system and apply the ratio to the low-income children within the local system, in order to determine the number of low-income students within such local system.

Table 81—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Notes</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
9	79-1007.01	Amend LB 806 (1997), § 35.	School fiscal year 1998-99 and thereafter; adjusted formula membership for local system; calculation <i>Continued</i>	Create an Extreme Remoteness Factor equal to .125 times the formula students in the local system for each local system that has fewer than 200 formula students and more than 600 square miles in the local system, less than 3/10 formula students per square mile in the local system, and more than 25 miles between the high school attendance center and the next closest high school attendance center on paved roads. Clarify that total adjusted formula membership for each local system is the weighted formula students plus the demographic factors.
10	79-1007.02	Amend LB 806 (1997), § 36.	School fiscal year 1998-99 and thereafter; cost groupings; average formula cost per student; local system's formula need; calculation	Change the sparse cost grouping in order eliminate one of the available criteria to classify a local system in this cost grouping. Eliminates the following criteria: (A) Less than one formula student per square mile in the local system, and (B) More than 20 miles between the high school attendance center and the next closest high school attendance center on paved roads. Clarify that when calculating the cost group factor for each cost grouping, the product of two times the ratio of the difference between the formula students attributable to the cost grouping without weighting or adjustment and the average daily membership attributable to the cost grouping divided by the average daily membership, shall not be less than zero.
11	79-1008.01	Amend LB 806 (1997), § 38.	School fiscal year 1998-99 and thereafter; equalization aid; amount	Clarifies that funds from the Small School Stabilization factor be distributed proportionately to qualifying local systems based on the dollar amount each local system's calculated state aid plus the product of a levy of \$1.10 for school fiscal years 1998-99 and 1999-00 and of \$1.00 for school fiscal year 2000-01 and each school fiscal year thereafter multiplied by the assessed valuation divided by 100 is below 90% of state aid plus property tax receipts received by the local system during the preceding school fiscal year.

Table 81 — *Continued*

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Notes</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
11	79-1008.01	Amend LB 806 (1997), § 38.	School fiscal year 1998-99 and thereafter; equalization aid; amount <i>Continued</i>	Provide that any aid available for distribution under the Small School Stabilization Factor, not distributed, must be instead distributed as equalization aid.
12	79-1018.01	Amend LB 806 (1997), § 50.	School fiscal year 1998-99 and thereafter; local system formula resources; other actual receipts included	Provide that for state aid certified for school year 1998-99 and each year thereafter, other actual receipts shall equal each district's other actual receipts adjusted by the average annual change in each district's other actual receipts for the most recently available complete data year and the two school years immediately preceding. For final calculation of state aid, other actual receipts shall be as reported in the Annual Financial Report (AFR) from the most recently available complete data year.
13	79-1022	Amend LB 713 (1997), § 5; and LB 806 (1997), § 51.	Distribution of income tax receipts and state aid; effect on budget	Clarified that by December 1, 1997, and each school fiscal year thereafter, NDE must determine the amounts to be distributed to each local system based on estimated funding levels. The amount to be distributed to each district from the amount certified for a local system must be proportional based on the weighted formula membership attributed to each district in the local system. Provide that on or before November 1 st of each year, the Legislative Fiscal Analyst shall provide the department with the estimated funding level to carry out the provisions of TEEOSA.
14	79-1024	Original section of LB 710 (1997).	Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect	Provide that the Auditor, after consultation with the department, shall review each district's budget statement for statutory compliance, and notify the Commissioner of any district failing to submit to the department or the Auditor the budget documents required by statute, or failing to make any corrections of errors in the budget documents. Provide that if a district does not comply with this requirement prior to be end of the state's biennium following the biennium that included the fiscal year for which state aid was calculated, the state aid funds will revert to the General Fund.

Table 81—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Notes</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
14	79-1024	Original section of LB 710 (1997).	Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect <i>Continued</i>	Provide that the board of any district failing to comply with this requirement prior shall be liable to the school district for all school money which such district may lose by such failing.
15	79-1026	Original section of LB 710 (1997).	Applicable allowable growth percentages; determination	The required number of decimal places for allowable growth percentage calculations is reduced from 8 to 4.
16	79-1031	Original section of LB 710 (1997).	Department; provide data to Governor; Governor; duties	Editorial change.
17	79-1031.01	Amend LB 806 (1997), § 54.	Legislative intent	Clarify that it is the intent of the Legislature to ensure efficient appropriations to the School District Income Tax Fund and to TEEOSA to result in a statewide tax levy for each year's state aid calculation that would be less than the maximum tax levy.
18	79-1033	Original section of LB 710 (1997).	State aid; payments; reports; use; requirements; failure to submit reports; effect; early payments	Clarify that if a school district fails to timely submit the Annual Financial Report (AFR) and Annual Statistical Summary (ATS), the Commissioner shall direct that any state aid granted to the district be withheld until such time as the reports are received by the department. If the school district does not comply prior to the end of the state's biennium following the biennium that included the fiscal year for which state aid was calculated, the state aid funds shall revert to the General Fund.

Source: Legislative Bill 710, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 5-18, pp. 6-16 (1302-12).

D. Other Legislation Amending TEEOSA in 1997

Without question the education bill receiving the most interest and scrutiny during the 1997 Session was LB 806, the comprehensive school finance legislation. The Legislature did, however, devote a considerable amount of time to other education and

education-connected proposals. There were bills that seemingly had nothing to do with school finance, yet had, after further review, a collateral impact on funding for public education. For instance, there was the controversial income tax reduction bill (LB 401), part of the Governor’s political agenda, which would necessitate a revision to applicable school finance laws. There were also bills having a distinctly education-oriented policy objective that crisscrossed through or near by the provisions of law containing the school finance formula, thereby necessitating appropriate changes to these provisions. And there were technical “cleanup” bills. More education-related, technical-oriented bills than usual were passed in the 1997 Session, each having an impact on the formula to one level of significance or another.

Not unlike the well-known LB 806, each of these lesser known or remembered bills has a story unto itself, and each story amounts to a building block to the overall history of the current public school finance system. Therefore, each of these bills deserves mention, albeit briefly, in order to construct a complete historical record.

For purposes of classification, the eleven bills discussed below are divided into two segments. The first involves those measures referred to the Education Committee for disposition, and the second involves those referred to the Revenue Committee or Government Committee.

Table 82. Overview of Other Bills Amending TEEOSA in 1997

<i>Segment</i>	<i>Bill</i>	<i>Committee*</i>	<i>Description</i>
First	LB 345	Education	Served as a trailer bill to the recodification of Chapter 79. LB 900 (1996), the main recodification bill, was passed during the 1996 Session. LB 345 embodies many of the remaining substantive elements of the recodification process.
	LB 347	Education	Similar to LB 345, LB 347 served as a trailer bill to the main recodification bill passed in 1996. LB 347 also embodies many of the remaining substantive elements of the recodification process.
	LB 713	Education	Moved the state aid certification date from July 1 to December 1 beginning with the 1998-99 school year.
	LB 865	Education	Amended provisions of the Nebraska Special Education Act. Extended the existence of the cost reimbursement system until August 31, 1999 to provide additional time to enact a new system.

Table 82—Continued

<i>Segment</i>	<i>Bill</i>	<i>Committee*</i>	<i>Description</i>
Second	LB 269	Revenue	Incorporates changes to the property tax relief package passed in 1996, including LB 1114 (1996) and LB 299 (1996).
	LB 270	Revenue	Contained the recommendations of the Property Tax Administrator for proposed changes in the administration of the property tax to enhance enforcement and equalization.
	LB 271	Revenue	Replaced the motor vehicle property tax system with a uniform fee based system.
	LB 342	Revenue	Provided a procedure for correcting clerical errors in the process by which valuations are adjusted for purposes of state aid.
	LB 397	Revenue	Provided technical and substantive changes to legislation passed in 1995 (LB 490), which created the Tax Equalization and Review Commission.
	LB 401	Revenue	Originally intended to provide a permanent rate reduction, LB 401 ultimately lowered the income tax rates for a two-year period.
	LB 595	Government	Originally intended to allow Class III school district board members to be nominated by district or ward and elected at large. LB 595 would ultimately house other non-germane provisions, including provisions related to greenbelt land.

* Standing committee having jurisdiction over the measure.

Sources: Legislative Bill 345, Legislative Bill 347, Legislative Bill 713, Legislative Bill 865, Legislative Bill 269, Legislative Bill 270, Legislative Bill 271, Legislative Bill 342, Legislative Bill 397, Legislative Bill 401, Legislative Bill 595 (1997). in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), passim.

First Segment: Legislation referred to the Education Committee

Recodification Bills

In 1996 legislation was introduced to re-codify Chapter 79 of the Nebraska Revised Statutes, which embodies the bulk of all public education-related laws. The purpose of the recodification effort was to reorganize existing law, without making too many substantive changes, in order to provide a more logical order of various articles and sections of law. The 1996 recodification package actually included four bills: LB 900 (1996), LB 1014 (1996), LB 1015 (1996), and LB 1016 (1996). The first of these bills, LB 900, contained the overall structural changes in terms of renumbering articles and sections along with some minor, technical revisions to existing law. LB 1014, LB 1015, and LB 1016, on the other hand, embodied some of the more substantive changes to

various statutes. Only LB 900 would successfully traverse through the legislative process and pass into law in 1996.

At the start of the 1997 Session there was unfinished business as it related to the recodification process. Accordingly, LB 345 (1997) was introduced to incorporate the original provisions of LB 1015 (1996).¹⁶⁰² LB 346 (1997) was introduced to incorporate most of the original provisions of LB 1016 (1996).¹⁶⁰³ And LB 347 (1997) was introduced to incorporate the original provisions of LB 1014 (1996).¹⁶⁰⁴ Only two of the bills, LB 345 and LB 347, would actually amend various parts of the school finance formula.

Senator Ardyce Bohlke sponsored all three pieces of legislation in her capacity as Chair of the Education Committee. The public hearing for all three bills was held on January 27, 1997.¹⁶⁰⁵ The principal witnesses were Thomasin Barry, legal counsel for the Education Committee, and Larry Scherer, a consultant hired by the Legislative Council to perform the bulk of the recodification effort.¹⁶⁰⁶

Among other provisions, LB 345 clarified language regarding school funds, school governing bodies, and voters. New definitions were added for school lands, permanent school fund, and temporary school fund. School lands were defined as those lands owned or acquired by the state in trust for the support of common schools. The permanent school fund was defined as that which holds and invests the principal from lands that are sold and other sources in perpetuity for the support of the public schools. The temporary school fund was defined as the holding fund for interest, dividend, and

¹⁶⁰² Legislative Bill 345, *Define and redefine terms relating to schools*, sponsored by Sen. Ardyce Bohlke, Nebraska Legislature, 95th Leg., 1st Sess., 1997, title first read 14 January 1997. Committee on Education, *Statement of Intent, LB 345 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 27 January 1997, 2.

¹⁶⁰³ Legislative Bill 346, *Redefine terms and change terminology relating to schools*, sponsored by Sen. Ardyce Bohlke, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 14 January 1997.

¹⁶⁰⁴ Legislative Bill 347, *Change and eliminate provisions relating to schools, education, penalties, and school districts*, sponsored by Sen. Ardyce Bohlke, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 14 January 1997.

¹⁶⁰⁵ NEB. LEGIS. JOURNAL, 27 January 1997, 304.

¹⁶⁰⁶ Committee on Education, *Hearing Transcripts, LBs 345, 346, 347 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 27 January 1997, 2-12.

other income. The entire balance of the temporary school fund would be used for the support and maintenance of the common schools annually or at time intervals specified by the Legislature.¹⁶⁰⁷

The definition of legal voter was rewritten for the purposes of Chapter 79. The existing definition defined legal voters as “all who are eligible to vote at an election for school district officers.” The new definition under LB 345 clarified that a legal voter would be a voter who is properly registered and domiciled in a precinct or ward that lies in whole or in part within the school district. Those performing the recodification found numerous instances where different sections inconsistently used such terms as “elector,” “qualified voter,” and “registered voter.” Therefore, throughout the bill these terms referring to voters or electors were replaced with the term legal voters, including one applicable section within the school finance formula.

LB 345 was passed by the Legislature on March 4, 1997 by a 44-0 vote.¹⁶⁰⁸ Governor Nelson signed the legislation into law on March 10th.¹⁶⁰⁹

Table 83. Summary of Modifications to TEEOSA
as per LB 345 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
29	79-1029	Applicable allowable growth percentage; district may exceed; vote required	The prior definition defined legal voters as “all who are eligible to vote at an election for school district officers.” The new definition clarified that a legal voter is a voter registered and domiciled in a precinct or ward that lies in whole or in part within the school district. In this section, the term “registered voters” is replaced with “legal voters.”

Source: Legislative Bill 345, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 29, pp. 10-11 (717-18).

¹⁶⁰⁷ Committee on Education, *Committee Statement, LB 345 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 1.

¹⁶⁰⁸ NEB. LEGIS. JOURNAL, 4 March 1997, 866.

¹⁶⁰⁹ *Id.*, 10 March 1997, 989.

The purpose of LB 347 (1997) was to eliminate obsolete sections and provisions, correct statutory references, transfer language among different sections, harmonize various provisions, and update terminology and sentence structures. It was the lengthier of the three trailer bills but contained fewer substantive changes. The pertinent changes to the school finance formula involved the removal of all references to the county nonresident high school tuition funds. These funds were effectively rendered obsolete by July 1, 1993 when the affiliation process had been completed.¹⁶¹⁰ The funds were used by Class I (elementary-only) districts to allocate funds to applicable high school districts for high school tuition paid on behalf of students residing within the Class I district.

LB 347 was passed by the Legislature on March 4, 1997 by a 44-0 vote.¹⁶¹¹ Governor Nelson signed the legislation into law on March 10th.¹⁶¹²

Table 84. Summary of Modifications to TEEOSA
as per LB 347 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
29	79-1003	Terms, defined	Eliminates references to county nonresident high school tuition funds due to their obsolescence as of 1993.
30	79-1015	School fiscal years before 1998-99; district formula resources; local effort rate; determination	Eliminates references to county nonresident high school tuition funds due to their obsolescence as of 1993.
31	79-1018	School fiscal years before 1998-99; district formula resources; other receipts included	Eliminates references to county nonresident high school tuition funds due to their obsolescence as of 1993.
32	79-1032	School Finance Review Committee; created; members; duties	Editorial change to existing citation reference.

Source: Legislative Bill 347, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 29-32, pp. 15-18 (755-58).

¹⁶¹⁰ The affiliation process was set in motion by the passage of LB 259 (1990). The deadline to complete the affiliation process was extended under LB 511 (1991) to July 1, 1993.

¹⁶¹¹ NEB. LEGIS. JOURNAL, 4 March 1997, 868.

¹⁶¹² *Id.*, 10 March 1997, 989.

State Aid Certification Date

Introduced by Senator Bohlke, LB 713 (1997) had the singular mission to change the state aid certification date from July 1st each year to December 1st each year. The certification date is the date by which the department must let school districts know what their state aid will be for the following school year. This date had already been set and reset several times, and would change again in subsequent legislative sessions.

The principle reason for moving the date was to permit local school boards more time to establish their district budgets based upon the amount of projected revenue and state aid. School boards also had to be cognizant of the April 15th deadline to file reduction-in-force (RIF) notices to certificated staff. It was believed that by changing the certification date to December 1st there would be a more logical timeline of events and deadlines for boards to meet.

The Nebraska Association of School Boards (NASB) was a key supporter of changing the certification date. John Bonaiuto, the association's executive director, testified at the public hearing for LB 713:

We have been trying to address school board members' concerns about making decisions in the dark, if you will, looking at the budget cycle, not knowing what their state aid certification and final numbers would be until mid-June when the reduction-in-force date is April 15 and so, for the longest time, not being able to come up with a better idea, we had this notion that we needed to move that reduction-in-force date to some time later or after the session. By certifying the state aid earlier, we will address that issue.¹⁶¹³

Bonaiuto said the legislation would facilitate better budget preparation and more informed decisions by local boards and school administrators.

The change in certification date would become operative beginning with the 1998-99 school year, which meant NDE would first use the new provision to certify state aid by December 1, 1997.¹⁶¹⁴ In order to facilitate an earlier certification date, several

¹⁶¹³ Committee on Education, *Hearing Transcripts, LB 713 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 10 February 1997, 103.

¹⁶¹⁴ Legislative Bill 713, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 5, pp. 6-7 (1323-24).

adjustments also had to be made in the computation process. The definitions of “general fund operating expenditures” and “transportation allowance” were amended to reflect changes necessary to provide data for the earlier certification. Beginning in school year 1998-99, general fund operating expenditures and the transportation allowance would be calculated by using data from the school year immediately preceding the most recently available complete data year, adjusted by the average annual change in each district’s general fund operating expenditures or transportation allowance for the two school years immediately preceding the most recently available complete data year. However, for the final calculation of state aid, the general fund operating expenditures and the transportation allowance would be as reported in the annual financial reports (AFRs) from the most recently available complete data year.¹⁶¹⁵

As an example, using this process for the 1998-99 calculation of state aid with a December 1, 1997 certification date would designate the data from the 1995-96 school fiscal year as the “most recently complete data year.” The two-year averaging process would then include the two school fiscal years preceding the most recently complete data year (i.e., 1993-94 and 1994-95).

The legislation also added clarification for calculation of other actual receipts, for purposes of computing district resources, to indicate the correct data source for the earlier certification. The other actual receipts would be equal to the district’s other actual receipts from the school year immediately preceding the most recently available complete data year, adjusted by the average annual change in each district’s other actual receipts for the three school years immediately preceding the most recently available complete data year. However, for the final calculation, other actual receipts would be as reported in the district AFRs for the most recently available complete data year.¹⁶¹⁶

LB 713 certainly could not be classified as a technical bill given the substantive changes, but it was treated nearly the same way throughout the legislative process. Technical bills rarely receive much debate or attention, and neither did LB 713. The bill

¹⁶¹⁵ Committee on Education, *Committee Statement, LB 713 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 1.

¹⁶¹⁶ *Id.*, 1-2.

sailed through the first and second rounds and passed by a 42-0 vote on March 21, 1997.¹⁶¹⁷ Governor Nelson signed the bill into law on March 26th.¹⁶¹⁸

Table 85. Summary of Modifications to TEEOSA as per LB 713 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
1	79-1003	Terms, defined	The definitions for “general fund operating expenditures” and “transportation allowance” were amended to reflect changes necessary to provide data for the earlier certification (LB 713 changed the certification date to December 1 st). Beginning in 1998-99, general fund operating expenditures and the transportation allowance would be calculated using data from the school year immediately preceding the most recently available complete data year, adjusted by the average annual change in each district’s general fund operating expenditures or transportation allowance for the two school years immediately preceding the most recently available complete data year. For the final calculation of aid, the general fund operating expenditures and the transportation allowance would be as reported in the AFR from the most recently available complete data year.
2	79-1007	School fiscal years 1996-97 and 1997-98; adjusted tiered cost per student; adjusted general fund operating expenditures; calculations	Harmonizes calculation of adjusted tiered cost per student with the intent to use the data averaging process outlined in section 1 of LB 713. The tier structure would be phased out under LB 806 (1997).
3	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	In order to harmonize with the December 1 st certification date, this section changes the deadline by which the Property Tax Administrator must enter an order modifying or declining to modify the adjusted valuations of school districts and certify the order to NDE. LB 713 changes the date from December 1 st to November 1 st .
4	79-1018	School fiscal years before 1998-99; district formula resources; other receipts included	The other actual receipts for purposes of state aid certification would be equal to the district’s other actual receipts from the school year immediately preceding the most recently available complete data year, adjusted by the average annual change in each district’s other receipts for the two school years immediately preceding the most recently available complete data year. For the final calculation, other receipts would be as reported in the AFR for the most recently available complete data year.

¹⁶¹⁷ NEB. LEGIS. JOURNAL, 21 March 1997, 1162.

¹⁶¹⁸ Id., 26 March 1997, 1248.

Table 85—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
5	79-1022	Distribution of income tax receipts and state aid; effect on budget	Requires the Legislative Fiscal Office to provide an estimated funding level not later than November 1 st each year in order for NDE to meet its December 1 st state aid certification deadline. NOTE: This section would be subsequently amended by LB 806 (1997), § 51 and by LB 710 (1997), § 13.

Source: Legislative Bill 713, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-5, pp. 1-7 (1318-24).

Special Education Funding System

LB 865 (1997) was ostensibly introduced to delay the action of previous legislation to change the mechanism by which school districts receive funding for special education services and programs. In 1995 the Legislature passed LB 742, which, in part, proposed to eliminate the existing cost reimbursement system for special education services in favor of a new “identification and program neutral” funding system.¹⁶¹⁹ LB 742 (1995) established a sunset date of August 31, 1998 for the old system, which meant implementation of the new system beginning with school year 1998-99.¹⁶²⁰ As directed by LB 742, the Special Education Accountability Commission did indeed study various proposals, including a grant-based system, and did seek public input on the matter.

However, one year after the passage of LB 742, the Legislature embarked on a mission to resolve the property tax issue and imposed levy limitations and strict spending limitations on political subdivisions, including school districts. The levy and spending lid bills of 1996 (LBs 1114 and 299) necessitated a rethinking on plans to add another layer of change on schools concerning special education funding. There was a concern that the timing would not be right, particularly since the full impact of the new limitations had yet to be realized.¹⁶²¹

¹⁶¹⁹ LB 742, Session Laws, 1995, § 2, pp. 1-2 (1205-06).

¹⁶²⁰ *Id.*, § 12, p. 5 (1209).

¹⁶²¹ Nebraska Legislative Research Division, “A Review: Ninety-Fifth Legislature, First Session, 1997,” August, 1997, 43.

Accordingly, the Education Committee introduced LB 865 in 1997 in part to delay the implementation of a new funding system until the beginning of the 1999-2000 school year. The old system would win a one-year reprieve and then automatically sunset on August 31, 1999.¹⁶²² In fact, the old system would win a permanent reprieve during the 1998 Special Session, when it was decided to leave the cost reimbursement system in place.¹⁶²³

By extending the life of the old special education funding system for another year, LB 865 also extended the existence of one of the more bitterly won compromises with regard to special education issues. Once again the vessel of controversy was LB 742, the year 1995. The Legislature was heavily divided between those who wished to dramatically limit state appropriations for special education services and those who pleaded, quite literally, for compassion to those affected by spending reductions. Ultimately, the body decided upon a compromise whereby a 2.5% spending lid on state appropriations for special education would be imposed for 1996-97, and a 3% spending lid on appropriations for 1997-98 and thereafter.¹⁶²⁴ The underlying caveat to this arrangement, however, was that LB 742 also proposed to sunset the existing funding system on August 31, 1998. This meant the sunset date applied as much to the lid on appropriations as it did to the existence of the funding system itself since the two issues were intertwined. Under LB 865, the 3% growth factor for state appropriations to special education would continue through the 1998-99 school year.¹⁶²⁵

While delaying the change in funding systems may have been the primary objective under LB 865, it certainly was not the only objective. LB 865 implemented changes to the state's special education provisions that resulted from meetings and discussions conducted by the various special education entities, including the Nebraska

¹⁶²² Legislative Bill 865, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 14, p. 6 (1648).

¹⁶²³ Legislative Bill 1, *Slip Law*, Nebraska Legislature, 95th Leg., 1st Spec. Sess., 1998, § 63, p. 36.

¹⁶²⁴ LB 742, Session Laws, 1995, § 8, p. 4 (1208).

¹⁶²⁵ LB 865, Session Laws, 1997, § 14, p. 6 (1648).

Association for Special Educators and the Special Education Accountability Commission. Many of the changes were among the discussion items of an interim study conducted during the fall of 1996.¹⁶²⁶

One of the themes for the changes under LB 865 had to do with the perception among some lawmakers that school districts may have over-identified students with special education needs. This theme was particularly present in 1995 during the debate on LB 742 and had carried through to the 1997 Session. Accordingly, a good portion of LB 865 attempted to address this issue. The legislation required NDE to adopt guidelines, prior to August 1, 1998, in order to assist schools, ESUs, and cooperatives with the assessment, identification, and verification of the need for related services.¹⁶²⁷ The term of art, “related services,” included developmental, corrective, and other supportive services, including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services.¹⁶²⁸ The idea was that any changes in verification criteria suggested in the guidelines might result in a decrease in expenditures for school districts and, ultimately, the state.

And while LB 865 appeared to promote savings to government at one end, it seemed to promote expenditures on the other end. The legislation established a new category of services that would be eligible for reimbursement as a special education allowable reimbursable cost. Beginning with the 1997-98 school year, public schools, ESUs and cooperatives may provide “support services,” which means preventive services for students not identified or verified as having a disability but who demonstrate a need for specially designed assistance in order to benefit from the school’s general education curriculum.¹⁶²⁹ The State Board of Education was given authority to determine a percentage of the cost of such support services that would be reimbursable to education entities providing the services, so long as it did not exceed 10%. This was not exactly a

¹⁶²⁶ NEB. LEGIS. JOURNAL, *Legislative Resolution 411*, sponsored by Sen. Jan McKenzie, 26 March 1996, 1553-54.

¹⁶²⁷ LB 865, Session Laws, 1997, § 7, p. 4 (1646).

¹⁶²⁸ NEB. REV. STAT. § 79-1121 (1996).

¹⁶²⁹ LB 865, Session Laws, 1997, § 8, p. 4 (1646).

major commitment on the part of the state, and the bulk of the cost would fall upon the general education budgets of the districts and ESUs wishing to participate — the same entities beset by budget cutbacks due to severe spending lids and pending levy lids.

LB 865 also authorized the awarding of grants from the Education Innovation Fund (from state lottery proceeds) for programs for students with disabilities receiving special education services and students needing support services. Eligible programs must demonstrate improved outcomes for students through emphasis on prevention and collaborative planning. The bill also provided that any grants received from the fund would not be included when determining the actual special education receipts for purposes of calculating school district formula resources. The intent to exclude these amounts necessitated a change in the school finance formula concerning other actual receipts.¹⁶³⁰

The special education bill of 1997 was substantially less controversial than LB 742 in 1995. LB 865 progressed through the legislative process without much fanfare and passed on June 4, 1997 by a 48-0 vote.¹⁶³¹ The Governor signed the bill into law on June 10th.¹⁶³²

Table 86. Summary of Modifications to TEEOSA
as per LB 865 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
2	79-1018	School fiscal years before 1998-99; district formula resources; other receipts included	Harmonizes school finance formula with the intent under LB 865 to exclude lottery grants for innovative special education programs from the special education receipts included in the calculation of state aid.

Source: Legislative Bill 865, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 2, pp. 3-4 (1645-46).

¹⁶³⁰ Legislative Bill 865, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 2, pp. 3-4 (1645-46).

¹⁶³¹ NEB. LEGIS. JOURNAL, 4 June 1997, 2654.

¹⁶³² *Id.*, 10 June 1997, 2703.

Second Segment: Legislation referred to the Revenue Committee

Property Tax Relief Package Revisions

LB 269 was introduced by and referred to the Revenue Committee, which was lead by Senator Jerome Warner. The importance of LB 269 was dramatized by the special status conferred upon it by Speaker Withem in the 1997 Session. The Speaker designated the legislation a “major proposal” or what is commonly known as a “super” priority bill.¹⁶³³ The measure had previously been designated an individual priority bill by Senator Warner — sadly, the last such priority designation the senator would make prior to his death on April 20, 1997.

The intent of the legislation was to make some necessary revisions to the 1996 property tax relief package, including LB 299 (spending lids), LB 1114 (levy lids), LB 1085 (levy setting procedures), and LB 1177 (Municipal Equalization Fund). Some of the changes were of a substantive nature, but most fell into the category of technical cleanup. Noteworthy were changes in the property tax levy limit for community colleges and changes to the Municipal Equalization Fund’s eligibility and distribution formula.

LB 269 amended the Nebraska Budget Act to provide that budget documents filed with the State Auditor by September 20th need to contain an amount of property taxes to be levied, rather than just the rate itself. The levy setting deadline was changed to October 31st. It also struck a provision prohibiting the setting of a levy which would generate more money than the budget requires, and replaces it with a requirement that the levy generate no more than 1% greater or lesser than the property tax requirement.¹⁶³⁴

On the issue of levy setting itself, LB 269 amended existing law to delay the final levy setting date for the county board of equalization from October 15th to November 1st and required the board to set levies certified by other political subdivisions only if the levy is within the limit of the law.¹⁶³⁵ The bill also provided that the levy setting

¹⁶³³ Id., 3 April 1997, 1330.

¹⁶³⁴ Legislative Bill 269, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 10, p. 6 (435).

¹⁶³⁵ Id., § 41, p. 21 (450).

requirements do not apply to bond levies, and that the clerk of the county where the office of the political subdivision is located is responsible for the preliminary levy, rather than all the counties jointly.¹⁶³⁶

Some of the major substantive provisions of LB 269 related to community colleges. The bill changed the levy limits for community colleges from 8¢ per \$100 of taxable property beginning in 1998-99 and 4¢ beginning in 2001-02, as per LB 1114 (1996) to 8¢ for 1998-99 and 1999-2000 and 7¢ thereafter.¹⁶³⁷ The bill also enacted a new aid program for community colleges. The program would supply state funds for any shortfall between the revenue raised by community colleges levying the maximum levy and 40% of their operating costs. The costs were to be calculated by using 1997-98 as a base and increasing it by an amount equal to full-time equivalent student growth plus 2% annually. Community colleges were also to receive aid necessary to make up any shortfall between the categorical aid provided by the current program and 40% of operating costs measured if the college is levying the minimum levy.¹⁶³⁸

For school districts, LB 269 attempted to resolve one of the major uncertainties created upon the passage of LB 1114. The 1996 legislation was designed to impose property tax levy limits and also to enumerate and describe the possible exclusions to the levy limitations. One of the exclusions related to special building funds and sinking funds established for projects *commenced* prior to April 1, 1996, for construction, expansion, or alteration of school district buildings.¹⁶³⁹ The problem encountered by school officials was attempting to discern what the term “commenced” really meant. How far along in a building project must a school board have been in order to legally fall within the intent of LB 1114 and thereby qualify for the levy exclusion? LB 269 provided a response to the question in that the district would qualify for the levy exclusion if “any action of the school board on the record” prior to April 1, 1996 “commits the district to expend district funds in planning, constructing, or carrying out

¹⁶³⁶ Id., §§ 42-43, pp. 21-22 (450-51).

¹⁶³⁷ Id., § 56, pp. 25-26 (454-55).

¹⁶³⁸ Id., § 76, pp. 39-40 (468-69).

¹⁶³⁹ LB 1114, Session Laws, 1996, § 1, p. 1 (1245).

the project.”¹⁶⁴⁰ However, as a matter of accountability, LB 269 also required school districts to report the amount of their building fund levies that is exempt as per the levy exclusion to the Department of Education.¹⁶⁴¹

The changes under LB 269 to the school finance formula were of an editorial nature. The bill changed two separate sections clarify the exact section and subsection of law, section 13-508(1), in which can be found the deadlines for school districts to certify budget statements together with the amount of the tax required to fund the adopted budget. For Class I districts, the deadline was August 1st and for all other districts, September 20th.¹⁶⁴²

LB 269 was passed by the Legislature on May 30, 1997 with the emergency clause attached by a 42-1 vote.¹⁶⁴³ Governor Nelson signed the bill into law on June 5th.¹⁶⁴⁴ In fact, in a somewhat unusual yet touching move, the Governor submitted a letter of acknowledgment to the Legislature of his action to approve the legislation. But the letter was much less about the legislation he signed into law as the man who spearheaded its introduction, and spearheaded so many other legislative efforts before it. The letter represented the Governor’s feelings about the recent death of Senator Jerome Warner on April 20, 1997. Nelson wrote:

This bill is only one of many initiatives authored by Senator Warner during his 35 years as a member of the Nebraska Legislature. He was a genuine leader for all Nebraskans, a legislative problem-solver and a man whose fairness, wisdom, honesty and integrity helped to shape the State to which he dedicated his life.

His legacy is one of action, not only in the area of taxation policies, but also in the establishment of a program for state aid to schools; in the growth of educational opportunities in Nebraska’s university system; in the development our state’s highway planning and construction process; and in providing property tax relief to Nebraskans while maintaining local control.

¹⁶⁴⁰ LB 269, Session Laws, 1997, § 56, p. 25 (454).

¹⁶⁴¹ Id., § 59, p. 28 (457).

¹⁶⁴² Id., § 60, pp. 29-30 (458-59).

¹⁶⁴³ NEB. LEGIS. JOURNAL, 30 May 1997, 2499.

¹⁶⁴⁴ Id., 5 June 1997, 2699.

In building this record, Senator Warner used few words to make his point. Instead, he relied on listening to others, studying the issues, debating the merits and avoiding political games. It is a measure of the greatness of this quiet, simple farmer that both those who called him friend and those that did not know him well thought him a decent, fine man.

It is with honor and pride that I take this opportunity to sign the final priority bill authored during the distinguished career of our friend and fellow Nebraskan, Jerome Warner. In Senator Warner's own words, "I guess we're done now."¹⁶⁴⁵

Table 87. Summary of Modifications to TEEOSA
as per LB 269 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
60	79-1008	School fiscal years before 1998-99; equalization aid; amount	Technical change. Merely clarifies the section of law [§13-508(1)] in which can be found the deadlines for school districts to certify budget statements together with the amount of the tax required to fund the adopted budget (by August 1 each year for Class Is and by September 20 each year for all other districts).
61	79-1024	Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect	Technical change. Similar to section 60 of LB 269 (1997), section 61 merely clarifies the exact section of law for the filing deadlines.

Source: Legislative Bill 269, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 60-61, pp. 29-30 (458-59).

Property Taxes, Generally

LB 270 (1997) cannot be classified as a mere revenue-related, technical cleanup bill. It did contain many, seemingly technical changes to laws concerning property taxes, but the background of the legislation would require it to be examined in a different light.

The bill was introduced on behalf of the Nebraska Department of Revenue, but more specifically, on behalf of the department's newly created Property Tax Division. The new division was created under LB 490 in 1995, along with the creation of a gubernatorial appointed Property Tax Administrator. The first designee for the position

¹⁶⁴⁵ Id., 18 June 1997, 2761-62.

was Catherine Lang-Morrissey, who had been appointed by Governor Nelson but not yet confirmed by the Legislature at the time of the public hearing for LB 270. True to her reputation and diligence, she had already begun a comprehensive review of all state laws relating to property taxation. And the comprehensive review was literally conducted at a grassroots level with the participation of county assessors, along with staff from the Property Tax Division. Their mission was to examine every pertinent statute and compare actual practice to express provisions of law. The result was LB 270.

Technical bills are usually uncontested at the public hearing stage, but again, LB 270 was not wholly a technical-oriented bill. During the public hearing, LB 270 received opposition testimony by several groups, including the Nebraska Catholic Conference. Their concern was largely focused on any possible changes to the exempt status of property owned by religious organizations. Many of their concerns were addressed in the committee amendments to the legislation as it emerged from the Revenue Committee.

The only set of changes under LB 270 that directly affected the school finance formula were provisions to eliminate a notice requirement, then incumbent upon the Department of Revenue, and a provision to clarify the process to request a nonappealable correction of adjusted valuation. Both changes occurred within the same section of the school finance formula relating to the process by which adjusted valuations are computed and certified to NDE and to individual school districts.¹⁶⁴⁶

The first change concerned a publication requirement created under LB 1290 in 1994.¹⁶⁴⁷ The provisions required the Department of Revenue, later changed to the Property Tax Administrator, to publish adjusted valuations of each school district in a newspaper of general circulation within the county at the same time adjusted valuations were certified to the Department of Education. The idea was to make the public aware of their respective school's adjusted valuation for the coming school fiscal year and generally to be open about the process involved. This was part of a broader goal outlined

¹⁶⁴⁶ Legislative Bill 270, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 103, pp. 28-29 (498-99).

¹⁶⁴⁷ LB 1290, Session Laws, 1994, § 7, p. 5 (1299).

in LB 1290 (1994) to ensure a level playing field in the area of assessment of taxable property.

It must be remembered that the intent of LB 1059 (1990) was to use adjusted valuation for purposes of calculating state aid to schools, but there were difficulties encountered by the Department of Revenue in making the transition. In fact, LB 1290 (1994) was originally introduced to impose another one-year delay in order to give the Department of Revenue more time (and more funding). By the time LB 1290 passed, however, the delay was removed, more funding was granted to hire staff, and adjusted valuation would be used for the first time beginning with the 1994-95 school year.

Therefore, the publication requirement was added to LB 1290 in order to further the goal, perhaps even overreach the goal, to conduct an open and public process of assessing taxable property and adjusting it for purposes of state aid computation. This was, after all, a new process, and lawmakers believed the public had to be made aware. By 1997, however, it was clear to the newly appointed Property Tax Administrator Lang-Morrissey that this particular publication requirement may be over doing it. “We believe that that requirement should be removed,” Lang-Morrissey said during the public hearing.¹⁶⁴⁸ “[T]he only people who can protest or the only entities that can protest adjusted valuations are school districts and they are required by law and are getting specific notice as to their adjusted valuations,” she added.¹⁶⁴⁹ In addition, she noted, the notice did not list all districts and their respective adjusted valuations, and the overall value of the notice had to be questioned. The only way to enhance the value of the notice would be to include more information, but the cost would be greatly increased.

The other change to the school finance formula concerned the same statute that contained the publication notice discussed above. The existing statute at the time stated that a school district or county official could file a written request for a “nonappealable” correction of an adjusted valuation due to clerical error. The request must be filed with the Property Tax Administrator (PTA) by a specified date each year, but the decision of

¹⁶⁴⁸ Committee on Revenue, *Hearing Transcripts, LB 270 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 24 January 1997, 42.

¹⁶⁴⁹ *Id.*, 42-43.

the PTA may not be appealed. LB 270 changed this subsection to state that both clerical errors and changes in assessed value by reason of qualifying or disqualifying for greenbelt status may be appealed.

LB 270 passed with the emergency clause attached on June 3, 1997 by a 42-0 vote.¹⁶⁵⁰ Governor Nelson signed the bill into law on June 9th.¹⁶⁵¹

Table 88. Summary of Modifications to TEEOSA
as per LB 270 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
103	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	Eliminates a publication requirement for the Property Tax Administrator (PTA). Prior to LB 270 (1997), the PTA was required to publish notice of the school district adjusted valuations once they are certified to NDE. This requirement was eliminated under LB 270. Permits school district or county official to file an appeal with the PTA concerning assessed value changes by reason of land qualified or disqualified for special use valuation (greenbelt). NOTE: This section amended LB 342 (1997), § 4, and LB 713 (1997), § 3.

Source: Legislative Bill 270, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 103, pp. 28-29 (498-99).

Motor Vehicle Fee System

LB 271 (1997) was the subject of considerable debate and controversy during the 1997 Session and culminated in a less than united vote on Final Reading. The bill proposed to eliminate the existing motor vehicle personal property tax system and replace it with age-based tax and fee schedules. The idea was certainly nothing new. Similar legislation had been introduced in previous sessions, but the proposals never made it out of committee. Legislators and lobbyists alike referred to the proposal as the “clunker tax” because it usually involved increased taxes on older vehicles and reduced taxes for newer and more expensive models. But in 1997 circumstances had changed and the time was ripe for the so-called clunker tax to move forward.

¹⁶⁵⁰ NEB. LEGIS. JOURNAL, 3 June 1997, 2589.

¹⁶⁵¹ *Id.*, 9 June 1997, 2701.

LB 271 was a very important bill for public schools and, in fact, most political subdivisions because a good portion of their local revenue derived from motor vehicle taxes. In 1996, the motor vehicle property tax produced \$152 million in revenue to political subdivisions, and school districts received a substantial amount of the total proceeds.¹⁶⁵²

The system in existence prior to 1997 placed a value on motor vehicles and then the applicable real property tax rate for each political subdivision would be applied to that value to determine proportionate shares of revenue. However, the existing system also had its share of critics, including individual taxpayers, who claimed the system did not take into account actual value, and therefore was not fair. And at least one major Nebraska organization agreed with the critics. Loy Todd, Executive Vice President and Legal Counsel for the Nebraska New Car and Truck Dealers Association, testified at the public hearing for LB 271, and stated:

[T]he actual fair market value of your motor vehicle, in this state, has almost nothing to do with how it is taxed. You can't have a property tax system that is based on virtually nothing. What we have now is a schedule that is thought up by somebody in a back room, the Department of Revenue, that is based on some manufacturer's suggested retail prices set by my industry. Then, it is arbitrarily assigned some depreciation. A schedule is supposed to be published, I have never seen it, and sent out to the counties, and then what we do is we tax, based upon it.¹⁶⁵³

Todd said the state had been lucky up to that point to avoid a lawsuit challenging the existing system. "But you have got a system that doesn't work," Todd said, adding, "We have suggested many years now that you replace it with an age-rated system."¹⁶⁵⁴

The newly appointed Property Tax Administrator, Cathy Lang-Morrissey, had essentially the same message to offer the Revenue Committee. Lang-Morrissey offered supporting testimony and said the responsibility falls upon her office to determine values

¹⁶⁵² Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 271 (1997)*, prepared by Doug Nichols, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 24 February 1997, 1.

¹⁶⁵³ Committee on Revenue, *Hearing Transcripts, LB 271 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 27 February 1997, 65-66.

¹⁶⁵⁴ *Id.*, 66.

for motor vehicles under the existing system. And this was a responsibility she did not particularly care to have. “It is my firm belief, both from a legal perspective and a policy perspective, that the Legislature must specify the policy for the valuation of motor vehicles,” she testified.¹⁶⁵⁵ The existing law, Lang-Morrissey said, offered no direction for her office in terms of guidelines to perform the task.

However, the fairness issue was but one of the major policy issues that gave rise to LB 271. Testifying on behalf of the Revenue Committee, the majority of which sponsored the bill, George Kilpatrick, committee legal counsel, outlined three main issues that lead to the introduction of LB 271. The first related to the fairness problem addressed by Loy Todd and Cathy Lang-Morrissey. The second related to the recent enactment of levy limitations under LB 1114 a year earlier. Kilpatrick testified that, “[B]y adopting a uniform schedule of taxation ... it will remove essentially motor vehicles from the property tax equation in the sense that whatever relief is provided by 1114, whatever shortfall is caused by 1114, will have no impact on motor vehicle owners.”¹⁶⁵⁶ But there may, instead, be an impact on the real property owner since political subdivisions may be tempted to compensate for lost revenue by raising their property tax levies. This was a very real fear to Governor Nelson who would address the issue later in the session.

The third major issue involved in LB 271 had to do with the distribution of motor vehicle taxes to various political subdivisions. In fact, this became one of the key sticking points to final passage of the bill. As a matter of background, the Nebraska Constitution was amended in 1952 in part to establish a distribution system for motor vehicle taxes. Article VIII, Section 1 was amended to permit a different method of taxing motor vehicles so long as:

Such tax proceeds from motor vehicles taxed in each county shall be allocated to the state, counties, townships, cities, villages, and school districts of such county

¹⁶⁵⁵ Id., 64.

¹⁶⁵⁶ Id., 61.

in the same proportion that the levy of each bears to the total levy of said county on personal tangible property.¹⁶⁵⁷

This same section of the Nebraska Constitution would be amended in 1998 to change the system of allocation, but in 1997 this was the constitutional provision the Legislature had to abide.

Nevertheless, LB 271, as originally introduced, provided a different scheme for revenue distribution. The bill required 65% of the tax revenue to be channeled to the TEEOSA Fund for distribution through the state aid formula. Twenty percent of the revenue would be allocated to county governments and 15% would be allocated to municipalities.¹⁶⁵⁸ Some believed the proposed distribution system might create a constitutional challenge and the issue was brought up several times during the hearing.

However, as the bill slowly moved its way through the legislative process most of the issues were resolved, including the distribution of revenue. As passed by the Legislature, LB 271 would create separate schedules for a motor vehicle tax and a motor vehicle fee. The tax would be based upon the age and original selling price of the vehicle, except for certain vehicles such as trucks and mobile homes that are based on weight. The original selling price would be based upon the manufacturers' suggested retail price and would be established by the Property Tax Administrator (although the duty would later be transferred to the Department of Motor Vehicles). The fee portion would be graduated so that lower priced vehicles will pay a lower fee than higher priced vehicles, and older vehicles would pay a lower fee than newer vehicles.

The distribution of the motor vehicle tax would be similar to the old tax system. After each county treasurer deducts a 1% collection fee, the proceeds would be allocated to each taxing unit in the proportion of each unit's levy to the total levy on taxable property of all the taxing units in which the motor vehicle has situs. However, revenue generated from the fee would be distributed only to counties and municipalities. The

¹⁶⁵⁷ Attorney General Don Stenberg, "Constitutionality of the Method for Distribution of Motor Vehicle Taxes Under LB 271, as amended," Opinion 97032, 2 June 1997.

¹⁶⁵⁸ Legislative Bill 271, *Change motor vehicle taxation and fee provisions*, sponsored by Sen. Jerome Warner, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 13 January 1997, § 3, p. 5.

premise behind LB 271 all along was to create a measure as revenue neutral as possible, resulting in little or no fiscal impact on anyone. But LB 271 also brought at least initial considerations toward helping certain classes of local government to generate replacement revenue in light of the pending levy limitations. While schools were destined to receive substantial assistance under the appropriation bill to LB 806, other classes of political subdivisions were scrambling during the 1997 Session to corner any revenue mechanism they could. For the most part, the lobbying effort by public school interests was to simply ensure that LB 271 did not reduce funding for schools.

The bill was passed on June 4, 1997 by a 34-11 vote.¹⁶⁵⁹ However, by the time the bill passed, the Legislature had taken action to reduce the tax and fee schedules sufficiently to cause some doubt about the fiscal impact on political subdivisions, particularly school districts. The Legislature's Fiscal Analysis Office reported that the fiscal impact on political subdivisions was "indeterminate" and may result in a "shift to other taxable property."¹⁶⁶⁰ The concern was that certain local governments would raise their property tax levies in order to compensate for any lost revenue from the new motor vehicle tax/fee system. Perhaps no one was more concerned about this possibility than Governor Nelson. In a June 10, 1997 communication to the Legislature, the Governor made his concern very clear:

Today I signed LB 271 and LB 271A into law. LB 271 eliminates the property tax on motor vehicles and replaces it with a tax and a fee. LB 271A provides funding for the Department of Motor Vehicles to carry out the bill's provisions.

LB 271 is designed to implement a motor vehicle tax system more closely tied to vehicle value and age, and to provide motor vehicle owners with property tax relief. I do not believe it is the intention of the Legislature--nor is it mine--for local subdivisions to use passage of this bill to shift the local tax burden further onto real property taxpayers. If local subdivisions respond to any losses of revenue under LB 271 by attempting to increase real property taxes, rather than by reducing spending, taxpayers will rightly believe they have been betrayed.

¹⁶⁵⁹ NEB. LEGIS. JOURNAL, 4 June 1997, 2644.

¹⁶⁶⁰ *Fiscal Impact Statement, LB 271 (1997)*, 30 May 1997, 1.

I have previously voiced my support for caps on local subdivision spending once the LB 299 spending limits expire. It is my intent to work in developing legislation for consideration next year to impose spending limits and, where appropriate, adjust the current LB 1059 limits. Taxpayers and local officials should understand that the response of local subdivisions to LB 271 will play an important role in what types of limits will be included in that bill.

Owners of real property and motor vehicles deserve tax relief. That was the purpose of LB 299 and LB 1114. Any attempt by political subdivisions to circumvent the spirit of these tax relief measures; and LB 271 becomes unacceptable to me, the Legislature, and the taxpayers.¹⁶⁶¹

Governor Nelson's warning was obviously directed to the Legislature and at local governments, perhaps at school officials in particular.

Nevertheless, it was obvious to all concerned that the Legislature and the Governor would be watching to see what action school districts take in response to LB 271. The Governor's threat to extend the restrictive budget lids imposed under LB 299 (1996) was sufficient to gain everyone's attention. It effectively set the stage for the budget lid battles to follow in the 1998 Legislative Session.

For purposes of the school finance formula itself, LB 271 amended one section that referred to motor vehicle tax revenue for purposes of establishing adjusted valuation for each school district.¹⁶⁶² The existing law referred to motor vehicles and the method by which the "state aid value" would be determined. LB 271 eliminated these references because they would no longer be necessary. Motor vehicles would henceforth be treated as any other personal property for purposes of establishing adjusted valuation. And section 3 of the bill, which was codified as section 60-3003, would now govern the allocation of tax revenue to each school district.

¹⁶⁶¹ NEB. LEGIS. JOURNAL, 12 June 1997, 2704.

¹⁶⁶² Legislative Bill 271, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 53, pp. 28-29 (530-31).

Table 89. Summary of Modifications to TEEOSA
as per LB 271 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
53	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	Harmonizes the school finance formula with change under LB 271 (1997) to eliminate the existing motor vehicle property tax system and replace it with a vehicle age-based system. The change to this section involves the elimination of references to motor vehicles.

Source: Legislative Bill 271, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 53, pp. 28-29 (530-31).

Timelines to Establish Adjusted Valuation

The intent of LB 342 (1997), sponsored by Senator Warner, was to provide a procedure for correcting clerical errors in the process by which valuations are adjusted for purposes of school aid.¹⁶⁶³ The use of adjusted valuation in calculating state aid was one of the key components of the school finance formula created under LB 1059 (1990), but it was not until 1995 that adjusted valuation was actually implemented. In 1994 the Legislature passed LB 1290 to allocate additional funds to the Department of Revenue in order to hire necessary personnel and put the adjusted valuation system into place.

The problem, as ably explained by Dennis Pool, then School Finance Administrator for NDE, was that no process or authority existed to correct mistakes made in certifications of adjusted valuation. Pool testified at the public hearing for LB 342 on January 24, 1997 before the Revenue Committee. Pool explained that the department might very well have prior knowledge that the adjusted valuation for one or more districts is incorrect, but they have no power to change it. The incorrect adjusted valuation would then be used to compute state aid, which would then result in incorrect certifications of state aid. Some districts would receive less than they should while others would receive more than they are entitled. The mistakes, if they occur, would typically be made by county assessors who incorrectly place certain property within School District A into

¹⁶⁶³ Senator Jerome Warner, *Introducer's Statement of Intent, LB 342 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 24 January 1997, 1.

School District B or simply make mistakes in writing down the correct figures. Pool said the consequence of one clerical error in one district's adjusted valuation would essentially have a ripple effect, large or small, throughout the entire state aid certification. The mistake would cause some to lose and others to gain state aid funds.¹⁶⁶⁴

The existing law already provided for a formal process in which a school district may protest its adjusted valuation. LB 1290 (1994) provided that any school district may file with the Property Tax Administrator (PTA) written objections to the adjusted valuations that are certified by the PTA.¹⁶⁶⁵ The process requires the PTA to set a hearing date where either party may submit evidence on the matter at issue. The PTA must then submit an order to modify or decline to modify the adjusted valuations and must then certify the order to NDE. The final determination of the Property Tax Administrator may be appealed to the Tax Equalization and Review Commission (TERC).

LB 342, on the other hand, proposed what might be considered an informal process, a "nonappealable" process, to remedy clerical errors in adjusted valuations. The bill provided that, by October 31st each year, any school district or county official may file with the Property Tax Administrator a written request for a nonappealable correction of the adjusted valuation due to clerical error. The legislation defined clerical error as transposition of numbers, allocation of value to the wrong school district, mathematical error, and omitted value. The Property Tax Administrator must then approve or deny the request by November 30th. If approved, the PTA must then certify the corrected adjusted valuations to NDE.

LB 342 was placed on the legislative fast track due to an actual clerical error that occurred in Adams County between two difference school districts, one equalized and one non-equalized district. The error occurred on the 1996 certified adjusted valuation, so the bill contained a special allowance for filing nonappealable corrections from the year before. The special allowance provided that errors occurring on the 1996 adjusted

¹⁶⁶⁴ Committee on Revenue, *Hearing Transcripts, LB 342 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 24 January 1997, 3.

¹⁶⁶⁵ LB 1290, Session Laws, 1994, § 7, p. 5 (1299).

valuation had to be filed with the PTA by March 15, 1997. Even on the fast track, LB 342 passed just barely in time for the parties involved to take advantage of the new procedure. The bill passed on March 4th by a 43-0 vote.¹⁶⁶⁶ LB 342 was signed into law on March 10th, which made the effective date for the bill March 11th.¹⁶⁶⁷

Table 90. Summary of Modifications to TEEOSA
as per LB 342 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
4	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	Creates a new process by which any school district or county official may file with the Property Tax Administrator (PTA) a written request for a “nonappealable” correction of the adjusted valuation due to clerical error. Clerical errors would include transposition of numbers, allocation of value to the wrong school district, mathematical error, and omitted value. The PTA must approve or deny the requests by specified dates, and, if approved, certify the corrected adjusted valuations resulting from such action to NDE.

Source: Legislative Bill 342, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, 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 (703-04).

Tax Equalization Review Commission Cleanup

LB 397 (1997) represented the follow-up bill to a two-year process to fully implement the Tax Equalization Review Commission (TERC). The TERC was the brainchild of Senator Doug Kristensen of Minden, a member of the Revenue Committee in 1997, who would later be elected to the office of Speaker. The idea behind TERC was to replace the State Board of Equalization with a fulltime commission having oversight of the equalization process.

In 1995 the Legislature passed LB 490 and LR 3CA. LB 490 embodied the Tax Equalization Review Commission Act, which established the structure and duties of the commission. LB 490 also created the office of Property Tax Administrator to work

¹⁶⁶⁶ NEB. LEGIS. JOURNAL, 4 March 1997, 863.

¹⁶⁶⁷ *Id.*, 11 March 1997, 989.

closely with the commission. LR 3CA was a constitutional amendment to eliminate the old State Board of Equalization and replace it with the TERC. The amendment appeared on the 1996 Primary Election Ballot as Amendment Number 4 and was passed by the voters with a 54% to 46% margin.¹⁶⁶⁸

With all the pieces in place by 1997, it was time to fine-tune the TERC Act in order address issues that were discovered since the passage of LB 490. The bill also transferred the powers and duties from the State Board of Equalization to the Tax Equalization and Review Commission. The only change to the school finance formula under LB 397 involved the elimination of an outdated and obsolete reference to amounts paid by the state to refund litigated personal property taxes to school districts in 1988.¹⁶⁶⁹ These amounts were listed as receipts to school districts and counted as part of their formula resources for purposes of calculating state aid.

LB 397 passed with the emergency clause attached on March 10, 1997 by a 42-0 vote.¹⁶⁷⁰ The Governor signed the bill into law on March 13th.¹⁶⁷¹

Table 91: Summary of Modifications to TEEOSA
as per LB 397 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
49	79-1018	School fiscal years before 1998-99; district formula resources; other receipts included	Eliminate outdated references to amounts paid by the state to refund litigated personal property taxes to school districts in 1988.

Source: Legislative Bill 397, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 49, p. 14 (946).

¹⁶⁶⁸ NEB. BLUE BOOK, 2004-05 ed., 265.

¹⁶⁶⁹ Legislative Bill 397, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 49, p. 14 (946).

¹⁶⁷⁰ NEB. LEGIS. JOURNAL, 10 March 1997, 967.

¹⁶⁷¹ *Id.*, 13 March 1997, 1075.

Income Tax Rate Reduction

LB 401 (1997) was the subject of intense debate and controversy during the 1997 Session. The bill originally contained the Economic Growth Income Tax Reduction plan introduced on behalf of Governor Nelson by Senator Jerome Warner, chair of the Revenue Committee. This was one if not the most important objective for Governor Nelson during the 1997 Session. As introduced, the bill would provide an individual income tax cut of \$50 million annually. The average Nebraskan would receive a 5.5% income tax cut, equaling \$65 per average return.¹⁶⁷²

For guardians of the school finance formula, the potential issue with this plan related to the goal of LB 1059 (1990) to dedicate a portion of income tax revenue to fund public schools. If LB 401 proposes to reduce state income tax revenue, how would this impact the school finance formula? Anticipating this concern, the Governor's plan included a "hold harmless" provision to increase the appropriation to fund the income tax rebate to schools.

The concern with the Governor's proposal, as it relates to schools, was two-fold. First, the Legislature's Fiscal Office reported that the Governor's proposal, as submitted, would be anything but harmless to school districts. The initial Fiscal Note indicated that, "[T]his bill could reduce the total amount calculated to be available as state aid to schools under LB 1059 by an estimated \$9.6 million in FY1997-98 and \$7.9 million In FY1998-99."¹⁶⁷³ Second, the Legislature had taken action a year earlier to cap the income tax rebate to schools at the 1992-93 level under LB 1050 (1996).¹⁶⁷⁴ Under the new cap, schools could expect the dedication of approximately \$102 million each year for income tax rebate funding.

Both of these points were brought out during the public hearing for LB 401 on February 7, 1997 before the Revenue Committee. Neither point was entirely addressed

¹⁶⁷² Senator Jerome Warner, *Introducer's Statement of Intent, LB 401 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 7 February 1997, 1.

¹⁶⁷³ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 401 (1997)*, prepared by Doug Nichols and Don Yelick, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 3 February 1997, 1.

¹⁶⁷⁴ LB 1050, Session Laws, 1996, § 14, pp. 11-12 (1125-26).

by the Governor's emissaries present to testify and explain the legislation. It was, therefore, left to the members of the Revenue Committee to sort out the facts and produce a bill similar to what the Governor wished. And this alone was no small task. The committee was deadlocked (4-4) on advancement until Senator Wickersham, a member of the committee, proposed a compromise. The compromise would provide a 3% across-the-board income tax cut and a \$20 per dependent increase in the personal exemption credit, but these provisions would only apply to the 1997 and 1998 tax years.¹⁶⁷⁵ In other words, a two-year, temporary income tax reduction instead of a permanent reduction as proposed by the Governor. And a 3% rather than 5.5% across-the-board cut as originally proposed.

As for public schools, the committee amendments to LB 401 made no provision for any potential loss of funding due to the income tax cut. It was generally believed that, so long as the biennium budget accounts for approximately \$102 million in annual income tax rebate to schools, there would be no need to insert any kind of "hold harmless" provision. So long as the income tax cut was a temporary, two-year reduction.

At first the Governor was simply happy to have his bill advanced from committee. "We've gone from a dead-on-arrival bill to a bill on the floor," Governor Nelson said.¹⁶⁷⁶ He believed there was support among the body to restore provisions of his original bill during floor action. His real concern had more to do with whether the bill would even see floor action. Senator John Hilgert of Omaha had designated LB 401 as his individual priority bill, but he did so late. In fact, his priority filing came dead last among the 49 state senators. Since priority bills were placed on the agenda in the order they were filed with the Speaker's office, LB 401 did not stand much chance. Not much chance, that is, unless the bill received additional help. And here is the point at which LB 401 became a political football and would in fact have a bearing on the outcome of such important issues as LB 806, the comprehensive school finance bill.

¹⁶⁷⁵ Committee on Revenue, *Executive Session Report, LB 401 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 3 April 1997, 2.

¹⁶⁷⁶ Bill Hord, "Income-Tax Cut Moves To Next Stop, Nelson Plan Lacks Priority For Debate," *Omaha World-Herald*, 4 April 1997, 1.

Both Governor Nelson and Speaker Withem had fired shots across each other's bow during the 1997 Session. The political sparring was particularly evident at the time LB 401 was advanced from committee on April 3rd. "I don't see any assurance that it will be debated," Speaker Withem said, referring to the Governor's bill.¹⁶⁷⁷ However, he added, "If there is a sense of cooperation from the Governor's Office, there will be a reciprocal cooperation from the speaker's office."¹⁶⁷⁸

The Governor wanted an income tax cut as per LB 401 and the Speaker wanted the successful passage of LB 806, the school finance bill. The two politicians were potentially quite useful to one another, but for the time being the ball was in the Speaker's court. The Speaker had the authority to special order a bill to the top of the agenda, but this would not be fair to the other senator priority bills awaiting floor debate. The other alternative would be to make LB 401 a Speaker major proposal, a super priority bill for the 1997 Session. This would have the same effect as special ordering the bill for purposes of agenda setting, but it would also allow the Speaker more control over the order of amendments debated on the bill. And this is exactly what he did. On April 29th, LB 401 officially became a Speaker super priority bill.¹⁶⁷⁹ In the end, however, Speaker Withem would not be entirely happy with the final product in LB 806 and neither would Governor Nelson find LB 401 entirely to his liking. Both measures and both politicians endured compromises.

The debate on LB 401 may not have lasted quite as long as the school finance bill, but the debate was just as intense. The income tax cut bill just barely cleared the first stage of debate on a 27-4 vote.¹⁶⁸⁰ The bill was almost at the point of stalling once again during Select File debate. Once again, it took a compromise, suggested by Senator Wickersham, to move the bill forward. The compromise amendment provided for a 5% across-the-board income tax cut for both the 1997 and 1998 tax years, an increase in the

¹⁶⁷⁷ "Income-Tax Cut Moves To Next Stop, Nelson Plan Lacks Priority For Debate," *Omaha World-Herald*, 4 April 1997, 1.

¹⁶⁷⁸ *Id.*

¹⁶⁷⁹ NEB. LEGIS. JOURNAL, 29 April 1997, 1722.

¹⁶⁸⁰ *Id.*, 13 May 1997, 1967.

individual personal exemption credit by \$10 per individual, and a full deduction on the Nebraska income tax return for health insurance premiums paid self-employed individuals. The amendment also provided for a \$40 million transfer from the State's Cash Reserve Fund to, in part, make the fiscal status come out in an even balance.¹⁶⁸¹

The Wickersham amendment also provided some protection for schools in light of the income tax cut. It amended the section of law within the school finance formula that required the Governor to annually appropriate sufficient funds from income tax revenue to facilitate the income tax rebate to school districts. Specifically, the amendment required the Governor to set aside 20.28% of income tax revenue for tax year 1997 and 21.25% for tax year 1998.¹⁶⁸² The Wickersham amendment was adopted by a solid 34-2 vote.¹⁶⁸³ The Legislature passed LB 401 on June 4th by a 38-7 vote.¹⁶⁸⁴ Governor Nelson signed the bill into law one day later.¹⁶⁸⁵

Table 92. Summary of Modifications to TEEOSA
as per LB 401 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
4	79-1031	Department; provide data to Governor; Governor; duties	Accounts for the temporary income tax reduction as per LB 401 (1997) by requiring the Governor to submit budget proposals containing an increase in the appropriations from income tax revenue to schools in tax years 1997 and 1998.

Source: Legislative Bill 401, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 4, pp. 3-4 (951-52).

Adjusted Valuation for Greenbelt Land

LB 595 (1997) could fairly be classified as an anomaly given the many major legislative proposals debated in the 1997 Session. The bill was referred to the Government, Military & Veterans Affairs Committee for disposition and related to

¹⁶⁸¹ *Id.*, *Wickersham AM2565*, 29 May 1997, 2475-81.

¹⁶⁸² *Id.*

¹⁶⁸³ *Id.*, 29 May 1997, 2489.

¹⁶⁸⁴ *Id.*, 4 June 1997, 2658.

¹⁶⁸⁵ *Id.*, 5 June 1997, 2699.

election law for school boards, specifically Class III school boards. Introduced by Senator Bud Robinson of Blair, then chair of the Government Committee, the bill would simply permit, not require, the members of a Class III school board to be nominated by district or ward and elected at large.¹⁶⁸⁶ At the time, members were to be nominated and elected at large or by district or ward.

The bill was never prioritized and its prospects appeared bleak given the major agenda items waiting to be debated. Senator Robinson managed to place the bill on special consent calendar agenda for “non-controversial” legislation. LB 595 successfully made it through the first and second stages of debate. But when the legislation arrived on Final Reading, Senator Robinson asked his colleagues to expand the purpose of the bill to include an entirely different subject matter.

During Final Reading deliberation, Senator Robinson rose to ask that the bill be returned to Select File for specific amendment. Robinson explained that school administrators from his legislative district had approached him about an issue involving the use of adjusted valuation one year in arrears and the designation of land for special valuation (greenbelt). Some districts had encountered an unanticipated side effect of adjusted valuation for purposes of calculating state aid when the county involved adopts special valuation for qualifying property. The higher adjusted valuation resulted in a lower state aid certification because the school finance formula attributed a greater level of formula resources to the district.

As a matter of background, special valuation came about in the early 1970s. The Nebraska Constitution had long provided that, “Taxes shall be levied by valuation uniformly and proportionately upon all real property... .”¹⁶⁸⁷ But there were exceptions to this “uniformity” clause and one such exception was created in 1972 when voters approved an amendment to the Nebraska Constitution to permit the classification of

¹⁶⁸⁶ Senator C. N. “Bud” Robinson, *Introducer’s Statement of Intent, LB 595 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 28 February 1997, 1.

¹⁶⁸⁷ NEB. CONST. art. VIII, § 1.

certain agricultural land.¹⁶⁸⁸ In 1974, the Legislature took action to create necessary laws to implement the “special valuation” of agricultural land.¹⁶⁸⁹

Often referred to as “greenbelt,” these new provisions addressed the problem of land that is being used for agricultural production, but which has a much higher value than land used solely for agricultural production due to its proximity to urban development, which can have an economic impact on neighboring agricultural land. The actual purpose of the greenbelt laws was perhaps best stated in a March 1985 Attorney General Opinion in which was stated:

The purpose of the greenbelt provision was not only to allow preferential tax treatment for this particular agricultural land, but to promote the conservation of agricultural land and the orderly and controlled growth of urban areas.¹⁶⁹⁰

The laws enacted in 1974, and subsequently modified from time to time, allowed such land to be valued solely on the basis of its value for agricultural use and also contained a tax-related recapture provision when the land is subsequently developed.

Whatever good special valuation possesses to the overall property tax system, it also reduces the value base for property tax purposes and greenbelt land is included in the adjusted valuation used for purposes of calculating state aid. The Robinson amendment to LB 595 provided that when a county board adopts special valuation for qualifying property in the county, the adjusted valuation used to calculate state aid may not exceed 108% of the assessed valuation for the property tax year on which the adjusted valuation is based. The new provision would take effect in the 1997-98 school year.¹⁶⁹¹

The amendment would affect the valuations used by some counties for state aid purposes. It would lower the adjusted valuation of property for some counties, which will decrease the yield of a school district from the local effort rate in the state aid

¹⁶⁸⁸ Amendment No. 7 appeared on the 1972 General Election Ballot and passed by a 53% to 47% vote margin. NEB. BLUE BOOK, 2004-05 ed., 261.

¹⁶⁸⁹ NEB. REV. STAT. §§ 77-1343 - 1348 (Cum. Supp. 1974).

¹⁶⁹⁰ Attorney General Robert M. Spire, *Opinion No. 85578*, req. by Senator Jerome Warner and Senator David Landis, 21 March 1985, 2.

¹⁶⁹¹ NEB. LEGIS. JOURNAL, *Robinson AM2731*, 27 May 1997, 2327-28.

formula. In turn this would decrease the formula resources of a school in the state aid calculation and potentially increase the district's equalization aid. Overall, the effect of the amendment would be a shift in state aid between school districts, albeit just slight.

Table 93. Summary of Modifications to TEEOSA
as per LB 595 (1997)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
6	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	Provides that when a county board adopts special valuation for qualifying property in the county pursuant to sections 77-1343 to 77-1348 (greenbelt land), the adjusted valuation used to calculate state aid to schools may not exceed 108% of the assessed valuation for the property tax year on which the adjusted valuation is based, beginning in the 1997-98 school year. Provides that when a county board adopts special valuation for qualifying property in the county pursuant to sections 77-1343 to 77-1348 (greenbelt land), the adjusted valuation used to calculate state aid to schools may not exceed 108% of the assessed valuation for the property tax year on which the adjusted valuation is based, beginning in the 1997-98 school year.

Source: Legislative Bill 595, in *Laws of Nebraska, Ninety-Fifth Legislature, First Session, 1997*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 6, pp. 3-4 (1111-12).

E. Review

LB 806 (1997) was undoubtedly an historic measure. It would become the subject of analysis by both critics and proponents for years to come. Not unlike many major initiatives, the legislative life of LB 806 had a number of twists and turns along the way. LB 806 was introduced by a majority of the Education Committee and was advanced out of committee by a unanimous vote, which included Senators Bromm, Stuhr, and Wickersham. These three senators would later become the backbone of the opposition to the legislation, although Senator Wickersham would ultimately vote in favor of passage of the legislation.

The original version of LB 806 did not contain a provision to force consolidation of Class I school districts. It was not until the bill emerged from committee that the issue of consolidation once again raised. Then, on General File, one of the major concessions

by the proponents was to give up the consolidation mandate and thereby make the opponents feel as though a victory had been scored. In truth, the proponents were giving up something they never originally intended to achieve, at least by the standard of the original bill.

Both the proponents and opponents of the legislation accused one another of politicizing school finance issues in order to meet their own agenda. In truth, both sides seemed to have the best of interests of children in mind, but simply had different viewpoints on the state's role in public education.

In the end, one of the great advantages of the proponents was their collective knowledge of the existing school finance formula along with the proposed changes to the formula. They were consistently able to articulate the strengths of their own proposals while exposing the weaknesses of the opponents' proposals. The proponents had the advantage of an historical policy perspective from Senator Ron Withem, who just happened to also serve as Speaker at the time. Several times during the debate, Speaker Withem recalled the original intent of LB 1059 (1990) in order to add credibility to the changes proposed under LB 806.

However, the overriding advantage for proponents of LB 806 was likely the action of the Legislature to enact levy caps a year earlier along with the perceived need to change the formula in order to facilitate the new limitations on local resources. Senator Bohlke used this argument time after time during debate on LB 806 to draw her colleagues' attention back to the need to move the legislation forward. Governor Nelson also used this argument as a basis for signing the legislation into law. Without the levy limitations looming over the Legislature, the changes to the formula proposed under LB 806 may have been exposed as a clear attempt to shift state aid funding away from smaller, rural schools. Proponents may have had a more difficult time justifying their proposal even if they had argued that LB 806 was intended to move the state closer to a true equalization formula.

Lids and Guaranteed Funding, 1998-1999

A. Introduction

The final year of Governor Ben Nelson's administration and the first year of Governor Mike Johanns' administration would both be remembered for significant legislation concerning public education.

Continuing with the mission toward accountability, Governor Nelson would propose to further reduce the base spending limitation for schools. His first successful attempt at spending control came in 1995 through the passage of LB 613. His second attempt, in his last year as Governor, would also prove successful. Without intervention by the Legislature, school districts were expecting to have the old "1059" spending limits reinstated following the sunset of provisions imposed under LB 299 (1996). This would not happen.

The year 1998 also marked the first year for implementation of the levy limits imposed under LB 1114 (1996), but technical and substantive problems with the levy lids had already been discovered. The Legislature would wrangle with multiple changes to the levy limit laws in 1998 and 1999. One of the most pressing issues before the Legislature in 1998 would correct an error in drafting that would otherwise prohibit a district from attempting to exceed the levy lid in the first year of implementation.

In 1999, the Legislature would make Governor Johanns' debut as Governor a nightmare to remember. The issue was guaranteed funding for schools under the state aid formula, and the pain experienced by Governor Johanns was equal only to the joy felt by school officials for the vote of confidence afforded to them by the Legislature over the Governor's objections.

B. The 1998 Legislative Session

LB 989 - Spending Lid

"Single most important bill"

As he sat before his fellow members of the Revenue Committee, Senator George Coordsen of Hebron concluded his opening remarks to a bill that would help define the

1998 Session. “My analysis of it,” he said, “is that it is the single most important bill of the year.”¹⁶⁹² And he was not too far off the mark in his analysis. At the beginning of the 1998 Session, Governor Ben Nelson was on a personal mission to ensure the property tax relief promised under the levy limitations of LB 1114 (1996). The Governor asked Senator Coordsen to serve as chief sponsor of what became LB 989, the spending limit bill of the 1998 Session. Demonstrating the seriousness of the proposal, the Governor asked the remaining seven members of the Revenue Committee to cosponsor the bill, giving it an all but guaranteed pass from committee to floor debate.

As introduced, LB 989 proposed to limit budget growth for all political subdivisions, including school districts and educational service units. The bill provided for an annual revenue lid of 2.5% for all political subdivisions other than school districts since schools are the only class of local government that operate under an expenditure lid.¹⁶⁹³ For school districts, the bill set a 2.5% base growth rate on general fund expenditures other than expenditures on special education, and permitted a lid range of 2% (i.e., 2.5% to 4.5%).¹⁶⁹⁴ The bill required NDE to certify the allowable growth percentage to each Class II through V district (K-12 districts) and Class VI district (high school only district) by December 1st.¹⁶⁹⁵ The old provision required the allowable growth percentage to be certified by July 1st.

Perhaps more troubling to school officials were provisions in the original bill that restricted flexibility in the spending lid due to extenuating circumstances. The bill eliminated the power of the State Board to approve applications for a district to exceed its growth rate for expenditures involving new programs required by state or federal law, orders by the Commission of Industrial Relations (CIR), and payment of judgments

¹⁶⁹² Committee on Revenue, *Hearing Transcripts, LB 989 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 22 January 1998, 2.

¹⁶⁹³ Legislative Bill 989, *Change budget limits for political subdivisions and school districts*, sponsored by Sen. George Coordsen, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 8 January 1998, §§ 1-4, pp. 2-8.

¹⁶⁹⁴ *Id.*, § 6, p. 10.

¹⁶⁹⁵ *Id.*, § 7, pp. 10-13.

against a district by a court of competent jurisdiction.¹⁶⁹⁶ These were provisions originally contained in LB 1059 (1990).

Just as troubling for school officials was a provision in the original bill to reduce the amount a district may exceed its growth rate due to student growth. Under the existing law, a district could apply to the State Board of Education to exceed its applicable allowable growth rate by a specific dollar amount if the district projected an increase in formula students in the district over the current school year. LB 989 proposed to change the student growth allowance by increasing the expected percentage growth that triggers an adjustment by the State Board of Education.¹⁶⁹⁷ In essence, it raised the threshold for the student growth provision to become accessible by a school district.

Finally, the bill, as introduced, proposed to limit the amount a district could carry over from the previous budget year. LB 989 stated that unused budget authority could not exceed 30% of a district's general fund budget of expenditures if its general fund budget is less than \$500,000, 25% if the district's general fund budget is between \$500,000 and \$1 million, and 15% if over \$1 million.¹⁶⁹⁸ The idea behind the change was to prevent what the administration believed was excessive reserves in district coffers.

The way it was

In order to understand the nature of the Governor's proposal, it must be remembered what school officials had endured in terms of spending limits for the prior two years and what school officials had hoped to regain in the 1998-99 school year.

School districts had existed under very stringent spending limitations leading up to the 1998 Legislative Session. The Legislature passed LB 299 in 1996 as a companion piece to the levy limitation bill (LB 1114). LB 299 was intended to force school districts to change spending patterns and make necessary operational changes in preparation for the levy limitations that would become operative for the 1998-99 school year. LB 299

¹⁶⁹⁶ Id., § 8, pp. 14-17.

¹⁶⁹⁷ Id., pp. 14-15.

¹⁶⁹⁸ Id., § 10, p. 19.

imposed a 2% spending lid for 1996-97 and a 0% lid for 1997-98.¹⁶⁹⁹ The 1996 law permitted some leeway for student growth and also provided for some specific lid exceptions. The “299 lids” represented the most severe restrictions on spending that Nebraska school districts had faced in modern times.

For school officials, the only good thing about the lids under LB 299 was that they were temporary. The lid provisions would automatically sunset after the 1997-98 school year and the former “1059 lid” provisions would once again govern school budgets. Prior to 1996, school districts enjoyed a 3% base-spending lid with a lid range up to 5.5%. If school officials had to endure levy limits, they thought, at least they would be able to spend as much of their revenue as the “1059 lid” would allow. But any hope that school officials may have had going into the 1998 Session quickly evaporated with the Governor’s spending lid proposal.

In truth, most school officials assumed the Legislature would likely move to prevent the old spending limits from returning in the same fashion and shape as they had been prior to 1996. Many were aware of the Governor’s warning at the conclusion of the 1997 Session upon the passage of LB 271, which changed the motor vehicle tax system. Governor Nelson was concerned that school districts would attempt to raise their property tax levies to recapture any lost revenue due to the change in the way motor vehicles (personal property) were taxed. In a letter to the Legislature, the Governor acknowledged his approval of LB 271, but issued this ominous warning:

I have previously voiced my support for caps on local subdivision spending once the LB 299 spending limits expire. It is my intent to work in developing legislation for consideration next year to impose spending limits and, where appropriate, adjust the current LB 1059 limits. Taxpayers and local officials should understand that the response of local subdivisions to LB 271 will play an important role in what types of limits will be included in that bill.

Owners of real property and motor vehicles deserve tax relief. That was the purpose of LB 299 and LB 1114. Any attempt by political subdivisions to circumvent the spirit of these tax relief measures; and LB 271 becomes unacceptable to me, the Legislature, and the taxpayers.¹⁷⁰⁰

¹⁶⁹⁹ LB 299, Session Laws, 1996, § 28, p. 9 (92).

¹⁷⁰⁰ NEB. LEGIS. JOURNAL, 12 June 1997, 2704.

If school officials were paying attention, and most were, they would have known that the Governor was not about to let the “1059 lids” reactivate without modification.

Governor Nelson obviously realized that many local government officials would not react positively to his proposal to place additional limits on their operations. He respected their collective capacity to lobby the Legislature enough to at least give representatives of local governments a “heads up” about his intentions. Accordingly, at the beginning of the 1998 Session he dispatched his staff to meet with lobbying organizations representing local governments. Lobbyists were given a preview of the legislation and a not-so-disguised admonition that the parameters of the measure could yet become more restrictive depending upon the level of cooperation from association representatives. For most but not all associations, this translated to a position of “play along” or suffer the consequences. This was particularly evident during the public hearing for LB 989 on January 22, 1998 before the Legislature’s Revenue Committee.

Again, it has to be remembered that the entire Revenue Committee signed onto LB 989. Lobbyists may have had some hope to influence a delay or even defeat the measure in committee if the entire committee had not agreed to cosponsor the bill. But the Governor had this base covered. Therefore, for some groups the best choice of action was to support the legislation “with reservations” or “with concerns.” Other representative groups, however, believed they had nothing to lose by outright opposing the bill and putting up a full fledged lobbying campaign to prevent its passage. In the final analysis, the division among groups and the lack of a unified, uniform voice on the matter only served to promote the bill’s advancement.

The public school lobby was divided. Associations representing school boards and school administrators voiced support for LB 989 but also expressed concern with specific provisions in the bill. John Bonaiuto, Executive Director for the Nebraska Association of School Boards, testified in support of the measure with some reservations. Said Bonaiuto:

The student population growth area is an area of concern because, in the Governor’s bill, it is more restrictive than what is in law currently, and for

growing districts, the students are going to arrive. And they're going to require the board to make decisions that will ultimately cost more money.¹⁷⁰¹

The Nebraska Council of School Administrators also supported the bill while voicing concerns over specific provisions, including the restrictions on unused budget authority.

The Nebraska State Education Association, representing teachers, testified in opposition. Executive Director Jim Griess succinctly stated the problem posed by bills such as the one proposed by Governor Nelson:

Bills like LB 989 present organizations like ours with a dilemma. I think it's true for school boards, administrators, cities, counties. To be politically correct, does one testify in support with reservations, or do you just be honest and say, we don't like the bill, and testify in opposition? Our organization has chosen to oppose this bill because we have a number of serious concerns about it.¹⁷⁰²

Griess said his organization could support reasonable limitations on growth and spending, and even reasonable limitations on property tax growth. But equally important, Griess said, was the pursuit of quality education and, generally, the quality of services provided by local governments. "Efficiency is important, but so is effectiveness," he said.¹⁷⁰³

The League of Nebraska Municipalities also opposed LB 989. Executive Director Lynn Rex testified that the measure represented a "major shift from the philosophy of LB 299 and LB 1114."¹⁷⁰⁴ In fact, her sentiment resembled what many thought but dared not say aloud at the public hearing. Rex recounted the plan proposed under the 1996 property tax relief package:

[T]he whole theory of (LB) 1114 and (LB) 299 was LB 299 will be in effect for two years, to control the spending side, and then the public policy of LB 1114 would take place, and that public policy being that there would be a uniform levy, if you will, across the state. That was the plan. What you're saying today is, now that's not really the plan. The plan here is now we're going to be looking at some other things.¹⁷⁰⁵

¹⁷⁰¹ *Hearings Transcripts, LB 989 (1998)*, 20.

¹⁷⁰² *Id.*, 26.

¹⁷⁰³ *Id.*

¹⁷⁰⁴ *Id.*, 30.

¹⁷⁰⁵ *Id.*, 31.

The “other things” to which she referred involved many of the same issues brought forward by other testifiers. Similar restrictions on unused budget authority and the elimination of certain exceptions were applied to the revenue lid under which municipalities are governed.

As it turned out, both the proponents and opponents voiced many of the same concerns. Organizations chose to use one tactic or another to pursue the same general goal, which was to make an unpalatable yet inevitable bill as tolerable as possible. And to a certain extent the strategy paid off, or at least the representative groups would like to believe it paid off. As the bill emerged from committee on March 2nd, it was clear that some of the points made by proponents and opponents had been heard. In addition, between the time of the public hearing and the time LB 989 was advanced from committee, a considerable grassroots lobbying effort had been waged to influence changes to the bill.

For school districts, the bill that emerged from committee was far more acceptable than the original version. The power of the State Board of Education to grant additional spending authority to a district due to student growth was left in tact. This was particularly welcome news to growing school districts where unanticipated growth in student populations might cause additional expenditures for personnel and other needs. In addition, the existing provisions relating to unused budget authority were allowed to remain in tact, which was another major victory for school districts.

As advanced from committee, the bill proposed the same spending lid (2.5% to 4.5%) for schools as originally introduced.¹⁷⁰⁶ Several lid exclusions from the original school finance formula would be eliminated. These involved exclusions under which each individual district had to apply to the State Board of Education to obtain and included amounts to pay for CIR orders, new program mandates by virtue of state and federal law, and certain judgments against a district.¹⁷⁰⁷

¹⁷⁰⁶ NEB. LEGIS. JOURNAL, *Com AM3370*, printed separate, 2 March 1998, 847. Committee Amendments to LB 989 (1998), *Com AM3370*, §§ 7, 12, pp. 12, 20.

¹⁷⁰⁷ Committee Amendments to LB 989 (1998), *Com AM3370*, § 9, pp. 15-16.

The lid exemptions available to local school boards remained virtually in tact. These were the spending lid provisions enacted under LB 299 (1996) that did not require prior approval from the State Board of Education in order to utilize.¹⁷⁰⁸ Local boards were vested with the authority to access these particular lid exemptions by a simple majority vote of the board, and included:

- (1) Interlocal Agreements - expenditures in support of a service which is 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;
- (2) Disaster Emergency - expenditures to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act;
- (3) Judgments - expenditures to pay for judgments, except orders from the Commission of Industrial Relations 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 liability insurance coverage of a school district; and
- (4) Early Retirement - expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment.¹⁷⁰⁹

A fifth lid exemption, relating to lease purchase contracts, would be added during Select File debate.

The committee amendments to LB 989 did not impinge upon the existing authority of a local school board to exceed its basic allowable growth rate by up to an additional 1% with the affirmative vote of at least 75% of the board. Although it did clarify that only school boards of Class II-VI districts may utilize such authority.¹⁷¹⁰ The amendments also assisted school districts in one crucial respect by changing the law relevant to exceeding the spending lid by election ballot. The existing law permitted a local board to submit, by adoption of a resolution, a ballot question to exceed its spending limit. The law also permitted such a question to appear on a ballot by petition of the

¹⁷⁰⁸ LB 299, Session Laws, 1996, § 30, p. 10-11 (93-94).

¹⁷⁰⁹ Id. NEB. REV. STAT. § 79-1028 (1996).

¹⁷¹⁰ Committee Amendments to LB 989 (1998), *Com AM3370*, § 10, p. 19.

voters. The committee amendments added a new provision to state that such a ballot question to exceed the spending lid may appear on the same election ballot to exceed the levy limits if so desired.¹⁷¹¹

Another feature of the committee amendments, which was not contained within the original bill, was a provision to require the Revenue Committee to annually review the base limitation for political subdivisions. The committee imposed this new requirement upon itself in order to determine whether changes in prices of services and products warrant an adjustment to the base limitation. It also served to create good will between the Legislature and political subdivisions on the issue of spending authority. The amendments required the Revenue Committee to hold a public hearing by January 15th each year to receive and consider testimony, evidence, and reports.¹⁷¹² Interestingly, this annual requirement would be subsequently repealed in 2001.¹⁷¹³

Debate and Passage

General File debate on LB 989 occurred on March 5, 1998. Senator Coordsen had designated the bill as his individual priority, which gave it the proper status to ensure consideration.¹⁷¹⁴ Senator Coordsen and Senator Wickersham, Vice Chair and Chair of the Revenue Committee respectively, guided the relatively short first-round debate. The committee amendments were adopted, as amended by several amendments, on a very strong 40-0 vote.¹⁷¹⁵

Interestingly, the drama of first-round debate occurred at the very end when the time had arrived for closing comments prior to a vote for advancement. While the bill had been sponsored or co-sponsored by all eight members of the Revenue Committee, one member chose to oppose its advancement from committee. Senator Dave Landis of

¹⁷¹¹ *Id.*, p. 20.

¹⁷¹² *Id.*, § 12, p. 21.

¹⁷¹³ Legislative Bill 365, in *Laws of Nebraska, Ninety-Seventh Legislature, First Session, 2001*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of John Gale, Secretary of State), § 1, p. 1 (653).

¹⁷¹⁴ NEB. LEGIS. JOURNAL, 21 January 1998, 352.

¹⁷¹⁵ *Id.*, 5 March 1998, 932.

Lincoln was the lone dissenting vote.¹⁷¹⁶ And, while perhaps not scripted or planned beforehand, Senator Landis would wind up sharing time for closing remarks prior to advancement.

As first-year chair of the Revenue Committee, Senator Wickersham began his remarks by characterizing LB 989 as “an extension of the LB 299 limitations on local governments.”¹⁷¹⁷ He continued:

It is an attempt to assure the citizens of the state that if there are increases in valuation in their individual political subdivisions, that those increases in valuations do not translate into additional spending, at least not spending that they have not specifically authorized by the escape valve that’s in the amendment, and that is for either special elections or, in the case of miscellaneous political subdivisions, the possibility of a town ... of a town hall type meeting.¹⁷¹⁸

Wickersham called the legislation “an appropriate expression of policy” in the quest to reduce reliance on property taxes.¹⁷¹⁹

At this point, Senator Coordsen was meant to be the next speaker to conclude the closing remarks prior to advancement. But Senator Landis also had something to say, and was recognized to have his turn. Landis said he supported the lids imposed under LB 299 (1996) as a necessary transition leading to the effective date of the levy limitations, but LB 989 was a different story. Said Landis:

(LB) 989 is not the extension of the property tax package of the Revenue Committee over the last two years. It is the Governor’s agenda. It’s a political agenda. It’s an anti-spending agenda. It’s the normal reason for a lid. But since we’re back to the traditional reasons for a lid, I’m back to being the traditional opponent that I am here.¹⁷²⁰

¹⁷¹⁶ Committee on Revenue, *Executive Session Report, LB 989 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 25 February 1998, 3.

¹⁷¹⁷ Legislative Records Historian, *Floor Transcripts, LB 989 (1998)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 5 March 1998, 12877.

¹⁷¹⁸ *Id.*, 12878.

¹⁷¹⁹ *Id.*

¹⁷²⁰ *Id.*, 12879.

Landis labeled lid bills the “nemesis of local control” and called his own opposition to LB 989 “a gesture of my faith in local political subdivisions.”¹⁷²¹ “I return to my skepticism of our shackling local political subdivisions and their leaders in how they attend to local governments’ business,” he said, “I oppose 989.”¹⁷²²

For his part, Senator Coordsen wanted to characterize the bill from a larger perspective:

(LB) 989 provides not an extension of 299 but an extension of the idea and the requirement of local governments to continue to be modest in their approach to how they provide service, to continue to be modest in their uses of the tax resources that they collect from the citizens of their unit of government through property taxes.¹⁷²³

Coordsen disagreed that the bill was entirely based on the Governor’s agenda. He chose to think of LB 989 as an outgrowth of the many and long discussions among members of the Revenue Committee over the years.

The remarks made by Senator Landis on that first day of debate were particularly poignant to local government officials, at least those who may have heard or read about the event. Such speeches are certainly not unusual during floor debate, in fact, far from it. Often, however, when the attack is waged against the executive branch it is due to differences in political parties. However, this was not the case with Senator Landis, at least on this occasion, since both he and Governor Nelson hailed from the same political party, both are Democrats. And while one might ask why Landis had signed onto the bill in the first place, he did, true to his word, oppose advancement of LB 989 at each stage of debate. His opposition alone, however, would not be enough. The measure would be advanced to second-round consideration by a solid 36-4 vote.¹⁷²⁴

¹⁷²¹ Id.

¹⁷²² Id.

¹⁷²³ Id., 12880.

¹⁷²⁴ NEB. LEGIS. JOURNAL, 5 March 1998, 932-33.

Table 94. Record Vote: LB 989 (1998)
Advancement to E&R Initial

Voting in the affirmative, 36:

Beutler	Cudaback	Janssen	Pederson	Schrock
Bohlke	Dierks	Jensen	Peterson	Suttle
Brashear	Elmer	Jones	Preister	Thompson
Bromm	Engel	Kiel	Raikes	Wehrbein
Brown	Hartnett	Kristensen	Robak	Wesely
Bruning	Hilgert	Lynch	Robinson	Wickersham
Coordsen	Hillman	Pedersen	Schellpeper	Willhoft
Crosby				

Voting in the negative, 4:

Chambers	Landis	Schimek	Tyson	
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Present and not voting, 6:

Matzke	Schmitt	Stuhr	Vrtiska	Will
Maurstad				

Excused and not voting, 3:

Abboud	Hudkins	Witek		
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Source: NEB. LEGIS. JOURNAL, 5 March 1998, 932-33.

LB 989 returned to the agenda for second-round floor action on March 23rd. It was this stage of debate that consumed the majority of time and produced some of the more interesting discussions. Most of the pending amendments related to municipalities and various attempts to carve more flexibility under the lids. The League of Nebraska Municipalities, the principle lobbying organization for villages and cities, had been quite active in the background to affect changes to the measure. Perhaps the main item of contention involved some form of lid exception for municipalities concerning orders by the Commission on Industrial Relations (CIR).

Senator Gene Tyson of Norfolk lead the debate, although several other senators offered, then withdrew, CIR-related amendments for municipalities. Senator Tyson was a former member of the Norfolk City Council and a proponent of reform to the CIR.¹⁷²⁵ He had both sponsored and prioritized LB 1075 (1998), cosponsored by 20 other

¹⁷²⁵ NEB. BLUE BOOK, 2002-03 ed., 310.

senators, to adopt the Nebraska Municipal Comparability Act.¹⁷²⁶ The bill was intended to change the manner by which the CIR examines labor issues related to municipalities. Interestingly, the bill found considerable opposition from various labor organizations that believed the bill would tilt labor cases in favor of management.¹⁷²⁷ The bill was referred to the Business and Labor Committee, which eventually took action to kill the bill.¹⁷²⁸

However, once LB 989 emerged from the Revenue Committee, Senator Tyson had an opportunity to revive at least part of his priority bill by amending certain portions into the lid bill. The portions Tyson had in mind did in fact relate to a lid exception solely for municipalities. The Tyson amendment essentially provided that municipalities would be eligible to exclude payments for CIR orders depending upon whether the CIR adhered to certain criteria listed in the bill.¹⁷²⁹ Tyson called it “a very simple amendment, very straight forward,” which it may or may not have been, but the ramifications were anything but simple.¹⁷³⁰ The amendment was certainly germane since it related to lids, but it also opened the door to a very contentious debate on the standards by which the CIR uses to decide labor issues. It would also open the door to an issue of fairness for other political subdivisions that would not benefit from the Tyson proposal.

The Tyson amendment survived a challenge on the germaneness of the subject matter, and also created the most spirited debate of any amendment offered to the bill. Speaking on behalf of the majority of his committee, Senator Wickersham voiced his concern about the amendment and noted that the Revenue Committee had discussed the impact of a lid exception pertaining to CIR orders. “The judgment in the Revenue Committee was that we did not, in broad frame, want to provide that kind of an incentive,” he said.¹⁷³¹ Wickersham said such a lid exception had the potential to produce

¹⁷²⁶ Legislative Bill 1075, *Adopt the Nebraska Municipal Comparability Act*, sponsored by Sen. Gene Tyson, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, title first read 12 January 1998. NEB. LEGIS. JOURNAL, 13 January 1998, 273.

¹⁷²⁷ Leslie Reed, “Wage Exemption Cut as Lid Bill Advances,” *Omaha World-Herald*, 24 March 1998, 11.

¹⁷²⁸ NEB. LEGIS. JOURNAL, 25 February 1998, 770.

¹⁷²⁹ *Id.*, Tyson AM3769, 17 March 1998, 1098.

¹⁷³⁰ *Floor Transcripts, LB 989 (1998)*, 23 March 1998, 14220.

¹⁷³¹ *Id.*, 14231.

“unusual results” within the CIR and would “gently coerce” the commission to make decisions it might not otherwise make in light of the available lid exception to cities.¹⁷³² Wickersham also believed the amendment would encourage municipalities to take their labor disputes to the commission rather than resolving them via negotiations.

After a lengthy debate, the Tyson amendment failed on a 15-24 vote, but it garnered more support than some had thought it would.¹⁷³³ This vote really represented a collapse of any subsequent movement on other pending CIR-related amendments. Immediately after the vote on the Tyson amendment, no less than ten municipality/labor-related amendments were withdrawn one after another. All that remained on the Select File docket was one last amendment.

The amendment, offered by Senator George Coordsen, pertained to lease purchase contracts undertaken by local governments. As a matter of background, LB 1114 (1996) created a levy exclusion for preexisting lease-purchase contracts approved prior to July 1, 1998.¹⁷³⁴ The companion piece to the levy limit bill, LB 299 (1996), did not provide for any corresponding spending lid exception for lease purchase contracts. This would be remedied to some degree by the Coordsen amendment to LB 989. The amendment added a new lid exception for expenditures to pay for lease-purchase contracts approved on or after July 1, 1997, and before July 1, 1998, but only to the extent the lease payments are not budgeted expenditures for fiscal year 1997-98.¹⁷³⁵ The amendment provided identical provisions for school districts (expenditure lid) and for all other political subdivisions (resource lid). The Coordsen amendment was adopted on a 28-0 vote.¹⁷³⁶

Immediately after adoption of the Coordsen amendment, the Legislature advanced LB 989 on a voice vote.¹⁷³⁷ On April 2, 1998 the Legislature took final action to pass LB

¹⁷³² Id.

¹⁷³³ NEB. LEGIS. JOURNAL, 23 March 1998, 1256.

¹⁷³⁴ LB 1114, Session Laws, 1996, § 1, p. 2 (1246).

¹⁷³⁵ NEB. LEGIS. JOURNAL, *Coordsen AM4057*, 23 March 1998, 1263.

¹⁷³⁶ Id.

¹⁷³⁷ Id.

989 with the emergency clause attached on a 39-5 vote.¹⁷³⁸ Governor Nelson signed the bill into law on April 7th.¹⁷³⁹

Table 95. Record Vote: Vote to Pass LB 989 (1998)

Voting in the affirmative, 39:

Abboud	Crosby	Hudkins	Peterson	Thompson
Beutler	Cudaback	Jensen	Raikes	Vrtiska
Bohlke	Dierks	Jones	Robinson	Wehrbein
Brashear	Elmer	Kristensen	Schellpeper	Wesely
Bromm	Engel	Lynch	Schimek	Wickersham
Brown	Hartnett	Matzke	Schrock	Willhoft
Bruning	Hilgert	Pedersen	Stuhr	Witek
Coordsen	Hillman	Pederson	Suttle	

Voting in the negative, 5:

Chambers	Landis	Robak	Schmitt	Tyson
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Present and not voting, 2:

Maurstad	Preister
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Excused and not voting, 3:

Janssen	Kiel	Will
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Source: NEB. LEGIS. JOURNAL, 2 April 1998, 1676-77.

For school districts, LB 989 could have been far worse if it had passed as introduced. The grassroots lobbying effort yielded some improvements to the bill. One might speculate whether the bill would have been introduced at all if Governor Nelson had not decided to do so. Would a state senator have introduced the bill on his or her own initiative, or would the Legislature have allowed the pre-LB 299 spending lids to be reinstated? If the intent was not to allow the old lids to return, why did the Legislature leave these provisions in place, effectively suspending but not eliminating the old law? These questions relate back to what Lynn Rex of the League of Nebraska Municipalities had said during the public hearing for LB 989 when she referred to the bill as an unfair change in plans. In the final analysis, one cannot help but lend some credibility to the

¹⁷³⁸ Id., 2 April 1998, 1676-77.

¹⁷³⁹ Id., 7 April 1998, 1818.

words spoken by Senator Landis on General File when he referred to the bill as the Governor's own political agenda. And it may have been the Governor's agenda, but the vast majority of legislators bought into that agenda.

There is, however, another perspective on the genesis of LB 989 that should not be overlooked, and this perspective requires an inward look at the activities of local governments and their representative organizations. Since the passage of the property tax relief package in 1996, it was widely believed that groups adversely affected by the levy and spending limits would attempt to improve their circumstances even before the levy limits took effect. LB 306, introduced in 1997, was a prime example of the effort to create more levying authority for schools (in this case for school building construction). The result of these efforts was a heightened awareness and resistance among certain lawmakers and the administration to carefully guard the underlying goal for real and lasting property tax relief. This guardianship would be encountered time after time, particularly within the Revenue Committee, when proposals to carve more room within the levy limits were systematically turned away.

As passed and signed into law, LB 989 implemented a permanent budget lid on expenditures for schools and on restricted funds for all other political subdivisions effective for 1998-99 and beyond. For school districts, the new law lowered the basic allowable growth rate for general fund expenditures (other than special education) to 2.5%, with a growth range up to 4.5%. The new law required NDE to determine and certify the applicable allowable growth percentage for each local system by December 1st of each year rather than July 1st. LB 989 required the Revenue Committee to annually review the base limitation to determine whether changes in prices of services and products warrant an adjustment to the base limitation. The Revenue Committee was required to hold a public hearing on or before January 15th of each year to receive and consider testimony, evidence, and reports.

LB 989 returned the student growth allowance provided under law prior to the implementation of LB 299 (1996). It allowed a school board of a Class II-VI school district to exceed the basic allowable growth rate by up to an additional 1% with the

affirmative vote of at least 75% of the board. While existing law already permitted a district to exceed the lid by submitting the issue to the voters within the district, LB 989 inserted new language to state that the issue may be approved on the same ballot as a vote to exceed the levy limits. LB 989 permitted unused budget authority to carry forward.

Table 96. Expenditure Lid Exclusions Allowed under
LB 989 (1998) for Class II-VI School Districts

- (1) Interlocal Agreement - expenditures in support of a service which is 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;
- (2) Disaster Emergency - expenditures to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act;
- (3) Judgments - expenditures to pay for judgments, except CIR orders, 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 liability insurance coverage of a school district;
- (4) Early Retirement - expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment, or
- (5) Certain Lease Purchases - expenditures to pay for lease-purchase contracts approved on or after July 1, 1997, and before July 1, 1998, to the extent the lease payments are not budgeted expenditures for fiscal year 1997-98.

Source: Legislative Bill 989, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), § 11, p. 7 (311).

Table 97. Summary of Modifications to TEEOSA
as per LB 989 (1998)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
6	79-1007.02	School fiscal year 1998-99 and thereafter; cost groupings; average formula cost per student; local system's formula need; calculation	Changes one of the components used to calculate the cost growth factor that is then used to calculate total estimated general fund operating expenditures for each cost grouping. LB 989 changes the component to include in the cost growth calculation one-half of any additional growth rate allowed by special action of school boards for the school fiscal year when the aid is to be distributed as determined by December 1st of the school fiscal year immediately preceding the school fiscal year when aid is to be distributed. This provision was added on Select File to provide stability in budget setting for Class Is.

Table 97—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
7	79-1008.01	Equalization aid; amount	Amends the minimum levy adjustment to conform with the changes made in 79-1007.02.
8	79-1023	Class II, III, IV, V, or VI district; general fund budget of expenditures; limitation	Provides that no Class II, III, IV, V, or VI district may increase its general fund budget of expenditures more than the local system's applicable allowable growth percentage.
9	79-1025	Basic allowable growth rate; allowable growth range	Eliminates obsolete language that refers to the old spending lid (3 - 5.5%); establishes the new base limitation rate under a separate section of law (§77-3446) and allows a growth range of 2%. The base rate established in §77-3446 under LB 989 is 2.5%.
10	79-1026	Applicable allowable growth percentage; determination; target budget level	Eliminates obsolete language and requires NDE to certify the allowable growth percentage calculated to four decimal places for each Class II-VI district by December 1st. Previously, the allowable growth percentage was calculated for each district by July 1st. The allowable growth percentage for each district is a linear interpolation which places schools with average or above average spending at the minimum growth rate and lower spending school districts arrayed above that figure with the very bottom spender at the maximum. A 3/4s vote of the school board would be necessary for any increase greater than 2.5%.
11	79-1028	Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated	Eliminates obsolete language and an exception for capital improvements and bonded indebtedness. Since the lid is on general fund expenses, building fund expenditures are considered outside by definition. Eliminates an exception for expenditures for new programs required by state or federal law and an exception for Commission of Industrial Relations orders. Provides a new exception for expenditures to pay for lease-purchase contracts approved on or after July 1, 1997, and before July 1, 1998, to the extent the lease payments are not budgeted expenditures for fiscal year 1997-98.
12	79-1029	Basic allowable growth rate; Class II, III, IV, V, or VI district may exceed; procedure	Maintains existing language permitting a school board to exceed its applicable allowable growth rate by up to 1%. Provides that a popular vote to exceed the levy limits and a vote to exceed the budget limits may be placed before the voters on the same ballot question.
13	79-1030	Unused budget authority; carried forward	Permits unused budget authority but clarifies that such authority applies to Class I through VI schools only.

Source: Legislative Bill 989, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 6-13, pp. 4-9 (308-13).

LB 306 - Levy Lid Modifications

LB 306 was one of the last bills sponsored by Senator Jerome Warner. The bill was introduced in the 1997 Session and carried over to the 1998 Session where it was finally passed, but with an entirely different purpose.

As originally introduced, LB 306 proposed to create an efficiency commission consisting of the Commissioner of Education and four members appointed by the Governor.¹⁷⁴⁰ The commission was to be given authority to approve or deny capital construction projects of local governments. The measure found support from such groups as the Nebraska Association of School Boards and the Nebraska Association of Hospitals and Health Systems.¹⁷⁴¹

When the bill emerged from the Revenue Committee and placed on General File on April 1, 1997, it had retained essentially the same mission but with much more detail about the duties of the commission. More importantly, it also included a levy exclusion of up to 12¢ for school districts. The levy exclusion could only be accessed if the commission approved the building project.¹⁷⁴² The addition of the levy exclusion, while certainly appealing to school officials, was a shock to many who believed the levy limits, which had yet to become operative, carried a promise to taxpayers for property tax relief. The new levy exclusion appeared to be a major reversal in policy just one year after the passage of LB 1114 (1996).

General File debate on LB 306 began on April 30, 1997, just ten days after the death of its sponsor, Senator Jerome Warner. Senator Warner was well respected in the area of revenue-related legislation and his absence from the scene would no doubt have a bearing on LB 306. Senator Stan Schellpeper, a member of the Revenue Committee, had designated the bill as his individual priority for the 1997 Session. Senator Schellpeper

¹⁷⁴⁰ Legislative Bill 306, *Require state approval of certain capital construction projects proposed by political subdivisions and create the Government Efficiency Commission*, sponsored by Sen. Jerome Warner, Nebraska Legislature, 95th Leg., 1st Sess., 1997, title first read 14 January 1997.

¹⁷⁴¹ Committee on Revenue, *Committee Statement, LB 306 (1997)*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, 1.

¹⁷⁴² *Id.*, 2.

would find himself carrying much of the weight to sell the bill to other members of the Legislature. And almost immediately the deck appeared stacked against him.

Senator Schellpeper made a good effort to demonstrate that LB 306 represented part of the Revenue Committee's overall plan to put the property tax package into place. Other pieces of the 1997 property tax package included:

- LB 180, prioritized by Senator Coordsen, to create the Property Tax Relief Incentive Fund to help local governments cope with lids that take effect in 1998;
- LB 269, prioritized by Senator Warner, to make changes in the property tax relief package of 1996, including to lid changes for community colleges; and
- LB 271, prioritized by Senator Robinson, to change the motor vehicle property tax to a fee-based system.

However, some members of the Legislature were not entirely impressed with the need to include LB 306 as a part of the overall property tax package of 1997.

The criticism focused on two issues. First, some legislators criticized the concept of a state efficiency commission as being something akin to Orwell's "Big Brother" overlooking what should be local decisions to construct or renovate buildings.¹⁷⁴³ The second criticism should not have been a surprise to anyone. Lawmakers generally disliked the idea of granting schools a new levy exclusion even if it did require the approval of the state commission in order to access. Senator John Hilgert of Omaha was one of the outspoken critics of the new levy authority. "Frankly, to the taxpayer this is a 12-cent retreat on the 1114 commitment we made last year," Hilgert said.¹⁷⁴⁴

Within a short period of time, Senator Schellpeper realized his priority bill was in trouble. The following day, May 1st, Schellpeper requested to have the bill passed over on the agenda so he could confer with other members of the Revenue Committee on possible compromises.¹⁷⁴⁵ "We needed to get off on some other bills to allow the body time to negotiate what to do on some of these issues," Schellpeper later said.¹⁷⁴⁶ In truth,

¹⁷⁴³ Bill Hord, "Fight Delayed; Senators Advance Tax-Lid Bill," *Omaha World-Herald*, 1 May 1997, 17sf.

¹⁷⁴⁴ *Id.*

¹⁷⁴⁵ NEB. LEGIS. JOURNAL, 1 May 1997, 1770.

¹⁷⁴⁶ Bill Hord, "Revenue Bill Moves; Tax-Lid Changes Sit," *Omaha World-Herald*, 2 May 1997, 13sf.

LB 306 had no hope of being revived in the 1997 Session, and, in fact, no further action would be taken on the measure that year. LB 306 would become the single piece of the 1997 property tax package that did not pass. It would, however, carry over to the 1998 Session for disposition.

For many school officials, the failure of LB 306 was a bitter disappointment. The levy caps under LB 1114 (1996) did allow for an exclusion for building funds but only if the fund was “commenced” prior to April 1, 1996.¹⁷⁴⁷ Any building project and corresponding building fund established after this date would be subject to the maximum levy provision. The existing law permitted schools to levy up to 14.5¢ for building construction and renovation and another 5¢ for compliance with the Americans with Disabilities Act (ADA) or for abatement of hazardous materials such as asbestos. Nevertheless, by the start of the 1998 Session it appeared very likely that LB 306 would not pass so long as it contained the existing provisions. “It seems like every time we discuss the building levy we don’t get anywhere,” Senator Schellpeper said of the decision to abort the legislative effort.¹⁷⁴⁸

By the start of the 1998 Session, a new and more pressing issue arose concerning the levy limitations. The issue involved the ability of local governments, particularly school districts, to place a levy override question on an election ballot in time for the first year of implementation of the maximum levies. LB 1114 (1996) stated that the maximum levy provisions would become operative for fiscal years beginning “after July 1, 1998.”¹⁷⁴⁹ Given this operative date, some attorneys representing school districts questioned whether a levy override election could be held prior to the July 1st date. And a few school districts, particularly hard hit by the levy limits, had an immediate need to seek a levy override in order to sustain school operations.

This was an issue that probably should have been caught prior to 1998. The Legislature had made changes to the pending levy limitation provisions in 1997, so

¹⁷⁴⁷ LB 1114, Session Laws, 1996, § 1, p. 1 (1245).

¹⁷⁴⁸ Bill Hord, “School Bill’s Odds Long, Backer Says; A legislator says another issue is likely to take priority over the proposed building levy; Changes in LB 306,” *Omaha World-Herald*, 20 January 1998, 9sf.

¹⁷⁴⁹ LB 1114, Session Laws, 1996, § 1, p. 1 (1245).

legislation was available had the issue been discovered. Since it was not brought forward until the 1998 Session, there was a sense of urgency surrounding the matter, at least for some school districts. The urgency was not only related to the July 1st operative date for the levy lids, but also the April 15th deadline to provide reduction-in-force notices to school employees. Some school districts faced teacher layoffs unless additional levy authority could be obtained through an override ballot issue. All these issues combined would require a legislative initiative on the fast track in order to have any chance of helping these school districts.

The normal legislative process necessitated a public hearing on new subject matter, and this issue certainly qualified as new subject matter. Accordingly, a new bill was introduced in the 1998 Session to carry changes to the levy limitation laws. Senator Bob Wickersham, chair of the Revenue Committee, introduced LB 994 (1998) to serve as the legislative vehicle. Within this bill were not only provisions concerning the levy override elections but also cleanup provisions relating to the new motor vehicle tax and fee system. The bill also provided a timeline for the allocation process for sub-county units of government seeking levy authority from cities and counties. This would include such local governments as library districts and fire control districts that were not allotted specific levy authority under LB 1114 (1996).¹⁷⁵⁰

For school districts, however, the central focus of the bill was the levy override provisions. LB 994 provided a more specific election procedure and ballot language for elections to exceed the levy limits. It created a process for a local governing body to rescind or modify a previously approved levy override ballot issue, something not considered at the time LB 1114 (1996) was passed. The bill specified that a local governing body could only pursue one levy override attempt per calendar year, but the patrons of the district may bring forward any number of petition efforts to override the levy limit as they wish during a calendar year.¹⁷⁵¹ The idea was to avoid placing limits on

¹⁷⁵⁰ Senator William R. Wickersham, *Introducer's Statement of Intent, LB 994 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 21 January 1998, 1.

¹⁷⁵¹ Legislative Bill 994, *Change property tax levy, property tax valuation and motor vehicle tax provisions*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 9 January 1998, § 30, pp. 45-50.

the will of the people. Finally, the bill changed the operative date of the existing law concerning the ability to override the levy limits from July 1, 1998 to December 1, 1997.¹⁷⁵² The retroactive date would permit schools and other political subdivisions to exceed the levy limits in time for the first year of implementation (1998-99).

The public hearing for LB 994 was held before the Revenue Committee on January 21, 1998. Testifiers included representatives for city and county governments, and representatives from the public education community. Al Inzerello, Westside Community Schools (Omaha), Harry Weichel, Ralston Public Schools, Virgil Horne, Lincoln Public Schools, and Russ Hicks, Johnson-Brock Public Schools all testified in support of the legislation.¹⁷⁵³ Several of the districts represented at the hearing had, in fact, planned to pursue levy override elections in the immediate future. If the provisions of LB 994 became law, these districts would have the opportunity to pursue the levy overrides much sooner. Westside Community Schools in Omaha had intended to hold their special election on March 10th so long as the legal issues were resolved with the assistance of LB 994. The school board for Ralston Public Schools had voted not to pursue an override, but a petition circulated on behalf of the district had successfully achieved the necessary number of signatures. The Ralston election would also be held on March 10th assuming all legal issues were resolved.

Within five days of the public hearing, the Revenue Committee would act to advance the provisions of LB 994, but not LB 994 itself. The committee essentially had two available options. It could advance LB 994 and ask Speaker Kristensen to have the bill special ordered on the agenda. Or the committee could use an existing vehicle already on General File (such as LB 306) and amend the contents of LB 994, along with provisions of several other bills, into the “shell” bill. In fact, it would be the latter strategy that the committee chose to take, and for a very specific reason.

LB 306, as it existed at the end of the 1997 Session, posed a real threat in the minds of some lawmakers and perhaps to the administration. The idea of creating a new

¹⁷⁵² Id., § 35, p. 54.

¹⁷⁵³ Committee on Revenue, *Committee Statement, LB 994 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 1.

levy exclusion for school districts could have been seen by critics as a policy reversal even before the levy limits had a chance to be put into operation. And one way to put the issue to rest, at least for the time being, would be to “gut” LB 306 during floor action and replace the contents with the provisions of LB 994.

The urgency of the situation concerning the levy override provisions in effect had school officials and representatives over a barrel. If they wanted help on the override provisions, they had to give up the levy exclusion provisions currently pending on LB 306. As part of the agreed strategy, Speaker Kristensen would assist the effort to pass the revised version of LB 306 in an expedited manner. He agreed to designate the bill as a Speaker Priority and place it on the agenda for immediate action. The deal was sealed.

The Speaker placed LB 306 back on the General File agenda on January 29, 1998. Senator Wickersham explained the situation to his colleagues and the need to adopt the revised committee amendments to LB 306 in order to help school districts with the levy override elections. Senator Schellpeper, whose priority bill it had been in 1997, explained that the idea to forgo the levy exclusion provisions in the original committee amendment came about during the interim period. Schellpeper explained:

In hearings last summer with the Revenue Committee and Education Committee, basically, there was a lot of different ideas and a lot of different views of what that should be used for, how much it should be, whether it should be 15 cents, whether it should be 3 cents, or 5 cents. And the committee decided that maybe we’re not ready to move this forward yet this year.¹⁷⁵⁴

Schellpeper said the levy override provisions were simply more crucial at that particular time than the levy exclusion provisions. “But the building fund levy is not dead, it will come back, we will address it later on,” he added.¹⁷⁵⁵ In truth, the issue would not return.

Perhaps aided through a substantial lobbying effort by public school interests, the discussion on the new version of LB 306 progressed smoothly. Legislators were made aware prior to the debate of the importance to pass the bill as soon as possible. Senator

¹⁷⁵⁴ Legislative Records Historian, *Floor Transcripts, LB 306 (1998)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 29 January 1998, 10950.

¹⁷⁵⁵ *Id.*, 10951.

Ardyce Bohlke, chair of the Education Committee, spoke to her colleagues about “getting this done” as urgently as possible.¹⁷⁵⁶ And, after a very short discussion, the revised committee amendments to LB 306 were adopted by a unanimous 26-0 vote.¹⁷⁵⁷ The bill would be advanced as amended to second-round consideration on a 35-0 vote.¹⁷⁵⁸

Select File debate, occurring on February 5th, would move even faster than first-round debate. The Revenue Committee would add yet more provisions to the bill at this stage via a second omnibus committee amendment.¹⁷⁵⁹ While clearly on the fast track, LB 306 gave rise to an opportunity for members of the Revenue Committee to pile on a number of necessary revenue-related provisions. The legislation had become what Senator Jim Jensen of Omaha referred to as one of those “Heinz 57 bills, because it seems to be about 57 varieties in this one bill.”¹⁷⁶⁰ The bill advanced on a voice vote.¹⁷⁶¹

By the time LB 306 arrived at the third and final stage of consideration on February 12th, it had grown in both scope and length, and incorporated provisions from four different bills from the 1998 Session, including LBs 935, 994, 1054, and 1153. As amended, LB 306 contained provisions to eliminate the “preliminary” property tax levy, which was first enacted by LB 1085 (1996). It changed, from November 1st to October 15th, the date by which a county board of equalization must levy taxes each year for the current year. It also provided that the property “tax request” for the prior year would be the property tax request for the current year for purposes of the levy set by a county board of equalization, unless the governing body of a political subdivision passes by a majority vote a resolution or ordinance setting the tax request at a different amount. The bill provided that the property tax levy authority of certain miscellaneous districts would be determined by the county board of the county in which the greatest portion of the political subdivision’s valuation is located. The bill allowed a political subdivision (other

¹⁷⁵⁶ Id., 10956.

¹⁷⁵⁷ NEB. LEGIS. JOURNAL, 29 January 1998, 462.

¹⁷⁵⁸ Id.

¹⁷⁵⁹ Id., *Revenue Committee AM2968*, 3 February 1998, 518.

¹⁷⁶⁰ *Floor Transcripts, LB 306 (1998)*, 29 January 1998, 10953.

¹⁷⁶¹ NEB. LEGIS. JOURNAL, 5 February 1998, 544.

than a Class I school district) to exceed a final levy allocation with voter approval if the vote to exceed the allocation is approved prior to October 10th of the fiscal year that is to be the first to exceed the final levy allocation.¹⁷⁶²

As it relates to school finance law, LB 306 had both direct and indirect consequences. The changes to the levy override provisions did not directly modify the statutes comprising the TEEOSA. But these changes would naturally have a bearing on the calculation of state aid since the success of a levy override election would result in additional resources to the school district.

The direct changes to TEEOSA did not receive as much attention during the public hearing and floor debate stages. The sole substantive change to the formula itself involved the inclusion of motor vehicle tax receipts as formula resources. In fact, LB 306 served as a cleanup bill, of sorts, to LB 271 (1997), which eliminated the property tax-based motor vehicle tax system. The 1997 legislation imposed instead a tax and fee system based on the age and type of vehicle. LB 306 would serve nicely as a technical modification bill to LB 271 (1997) due, in part, to the expedited effort to pass the legislation early in the 1998 Session.

Table 98. Changes under LB 306 (1998) Relevant to the New Motor Vehicle Tax and Fee System

- Clarification that a county treasurer must distribute motor vehicle tax funds upon receipt from the State Treasurer to taxing agencies within the county in the same proportion that the levy of each such taxing agency bears to the total of such levies of all taxing agencies in the county.
- Resolution of the problem that if a taxing district has been annexed, merged, dissolved, or in any way absorbed into another taxing district, any apportionment of motor vehicle tax funds to which the taxing district would have been entitled would be apportioned to the successor taxing district that assumes the functions of the former taxing district.
- Requirement that the Department of Motor Vehicles annually furnish to the State Treasurer, by March 1st, a tabulation showing the total number of original motor vehicle registrations in each county for the immediately preceding calendar year, which will be the basis for computing the distribution of motor vehicle tax funds.

¹⁷⁶² Nebraska Legislative Research Division, "A Review: Ninety-Fifth Legislature, Second Session, 1998," June 1998, 100-103.

Table 98—*Continued*

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- Resolution of the problem that if a motor vehicle registration expired during 1997, the taxes and fees on renewal must be calculated under the law as it existed on December 31, 1997, regardless of when the taxes and fees are paid.
 - Elimination of references to the Property Tax Administrator with references to the Department of Motor Vehicles in relation to such duties as determining the value of vehicles weighing up to five tons and certifying such determinations to the proper county official of each county by November 15th (formerly September 1st).
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Source: Nebraska Legislative Research Division, “A Review: Ninety-Fifth Legislature, Second Session, 1998,” June 1998, 100-103.

For school districts, LB 306 provided that motor vehicle tax receipts constitute “other actual receipts” for purposes of calculating formula resources under the school finance laws.¹⁷⁶³ The existing law already included pro rata motor vehicle license fee receipts, which referred to the old property tax-based system. LB 306 clarified that motor vehicle tax receipts, referring to the new system, received by local school systems after January 1, 1998 would constitute “accountable receipts.” It was intended all along that these receipts be counted, but it had not been expressly provided under LB 271 (1997).

LB 306 passed with the emergency clause attached on February 12, 1998 by a 42-1 vote.¹⁷⁶⁴ It took only 14 days, from the time of first-round debate to Final Reading, to place the bill on the Governor’s desk. Governor Nelson signed the bill into law the same day he received it on February 12th.¹⁷⁶⁵ The addition of the emergency clause meant the bill would be operative one day after the Governor signed into law (i.e., February 13th). The passage of LB 306 effectively gave the green light to those school districts with pending levy override elections. As Table 99 illustrates, no less than 25 school districts set election dates for levy override questions prior to July 1, 1998, the former effective date for the excess levy limit authority. Had LB 306 not passed, these school districts would have had to wait until after July 1, 1998 to pursue levy override elections.

¹⁷⁶³ Legislative Bill 306, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 43-44, pp. 22-23 (67-69).

¹⁷⁶⁴ NEB. LEGIS. JOURNAL, 12 February 1998, 609.

¹⁷⁶⁵ *Id.*, 627.

Table 99. 1998 Levy Override Elections

[Passed=20; Failed=10]

<i>Public School</i>	<i>Date of Election</i>	<i>Levy asking / Number of years</i>	<i>Vote Result</i>	<i>Vote Count</i>
Omaha Westside	Mar. 10	\$1.32 / 5 yrs.	Passed	3,235-3,172
Ralston	Mar. 10	\$1.27 / 3 yrs.	Failed	1,507-2,270
Meridian	Mar. 10	\$1.36 / 3 yrs.	Passed	393-77
Chester-Hubbell-Byron	Mar. 10	\$1.45 / 3 yrs.	Passed	359-62
Hebron	Mar. 10	\$1.40 / 5 yrs.	Passed	608-251
Wausa	Mar. 17	\$1.30 / 3 yrs.	Passed	368-106
Scribner	Mar. 17	\$1.30 / 5 yrs.	Failed	373-376
Johnson-Brock	Mar. 24	\$1.60 / 3 yrs.	Passed	478-195
Bloomfield	Mar. 31	\$1.30 / 2 yrs.	Passed	468-307
South Platte	Mar. 31	\$1.25 / 3 yrs.	Failed	170-242
Chappell	Mar. 31	\$1.28 / 3 yrs.	Passed	279-201
Arthur	Mar. 31	\$1.35 / 3 yrs.	Passed	163-63
Nelson	Apr. 7	\$1.30 / 3 yrs.	Passed	285-113
Lawrence	Apr. 7	\$1.60 / 3 yrs.	Passed	294-42
Sandy Creek	Apr. 7	\$1.25 / 3 yrs.	Failed	384-417
Morrill	Apr. 7	\$1.30 / 5 yrs.	Failed	308-311
Hildreth	Apr. 7	\$1.25 / 3 yrs.	Passed	306-36
East Butler	Apr. 7	\$1.20 / 5 yrs.	Failed	330-363
Waterloo	Apr. 7	\$1.35 / 3 yrs.	Failed	172-264
Elmwood-Murdock	Apr. 7	\$1.25 / 3 yrs.	Passed	305-186
Culbertson	May 12	\$1.25 / 3 yrs.	Passed	204-133
Hershey	May 12	\$1.30 / 1 yrs.	Passed	438-333
Medicine Valley	May 12	\$1.30 / 3 yrs.	Failed	116-336
Emerson-Hubbard	May 12	\$1.30 / 3 yrs.	Failed	263-517
Republican Valley	May 12	\$1.39 / 3 yrs.	Passed	311-110
Allen	July 14	\$1.30 / 3 yrs.	Passed	193-89
Scribner (2nd try)	July 14	\$1.30 / 4 yrs.	Failed	415-430
Lodgepole	July 28	\$1.35 / 3 yrs.	Passed	305-30
Giltner	Aug. 4	\$1.25 / 2 yrs.	Passed	205-41
Beemer	Aug. 11	\$1.30 / 3 yrs.	Passed	299-83

Source: Nebraska Council of School Administrators, "NCSA Levy Override Monitor," Internet, available at <http://www.ncsa.org/links/override.htm>, accessed 8 August 2004.

Table 100. Summary of Modifications to TEEOSA
as per LB 306 (1998)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
42	79-1003	Terms, defined	Editorial change to definition of "special education allowance" in order to provide the correct subsection citation reference under § 79-1018.01 due to the addition of a new actual receipt category (motor vehicle tax receipts).

Table 100—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
43	79-1018	School fiscal years before 1998-99; district formula resources; other receipts included	Inserts “motor vehicle tax receipts” as a new category of actual receipts for purposes of calculating district formula resources.
44	79-1018.01	Local system formula resources; other actual receipts included	Inserts “motor vehicle tax receipts” as a new category of actual receipts for purposes of calculating formula resources beginning on January 1, 1998.

Source: Legislative Bill 306, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 42-44, pp. 20-24 (65-69).

LB 1134 and LB 1219 - Reorganization Incentives

LB 1134 (1998) modified a reorganization incentive program created under LB 1050, a comprehensive school finance measure passed in 1996. The program was created with the intent to “encourage consolidation” of school districts by offering monetary incentives for a three-year period in order to “reward the reorganized districts for their efforts to increase efficiency in the delivery of educational services.”¹⁷⁶⁶ To qualify, the reorganization had to occur within a five-year window of time (May 31, 1996 to August 2, 2001). The State Committee for the Reorganization of School Districts was given the authority to approve or deny applications for incentive funds if the reorganized district met certain requirements and would “most likely result in more efficiency in the delivery of educational services or greater educational opportunities.”¹⁷⁶⁷

The incentive payments were based upon the number of students in the consolidating districts being moved from one tiered cost to a lower tiered cost. An incentive payment schedule was inserted into LB 1050 for the purpose of calculating the total incentive payments due to each approved reorganized district. The incentive payments would be paid from equalization funds under TEEOSA such that each year 1% of the total amount of available equalization funds would be set aside for incentive

¹⁷⁶⁶ LB 1050, Session Laws, 1996, § 19, pp. 17-18 (1131-32).

¹⁷⁶⁷ *Id.*, p. 18 (1132).

payments.¹⁷⁶⁸ As an example, for the 1996-97 school year, the program required about \$3.34 million to be set aside from a total pool \$334 million in available equalization funds.¹⁷⁶⁹ Naturally, this meant a shift of funds to reorganized districts from other districts entitled to equalization aid.

In 1998, Senator Ray Janssen of Nickerson introduced LB 1134 to make several changes and additions to the reorganization incentive program based upon concerns brought to his attention by his own constituent school districts and others across the state. The bill, as originally introduced, had three major goals. First, and perhaps most important, it changed the timeline for first-year incentive payments. Prior to 1998, payments were not made until at least the second fiscal year following the reorganization. This translated into a significant lag time between the time incentive payments were approved and the time payments actually commenced.

LB 1134 required that payments be made the first year in which the district offers educational services beginning with reorganizations that occur during the 1997-98 school year.¹⁷⁷⁰ “Improving the timing of these incentives might make a big difference in encouraging a school district to reorganize,” Janssen said during the public hearing for LB 1134 on January 27, 1998.¹⁷⁷¹ Janssen argued that reorganized school districts potentially face immediate funding shortages at the time of reorganization. He listed the causes as hiring new staff, adjusting pay scales, and improving facilities. If the Legislature truly wished to encourage consolidation, Janssen said, then the incentive funds would be forthcoming sooner rather than later.

Second, the legislation proposed to double the reorganization incentives paid when the reorganization involved Class VI (high school only) and Class I (elementary

¹⁷⁶⁸ Id., p. 19 (1133).

¹⁷⁶⁹ *Fiscal Impact Statement, LB 1050 (1996)*, 1 April 1996, 2.

¹⁷⁷⁰ Legislative Bill 1134, *Change Tax Equity and Educational Opportunities Support Act provisions relating to reorganization incentives*, sponsored by Sen. Ray Janssen, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 13 January 1998, § 2, pp. 3-4.

¹⁷⁷¹ Committee on Education, *Hearing Transcripts, LB 1134 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 27 January 1998, 24.

only) school districts.¹⁷⁷² This policy change, Janssen alleged, was justified on several grounds. For one thing, he said, the existing incentive payment schedule seemed geared toward two or more K-12 districts reorganizing rather than a Class VI and one or more Class I districts. The existing schedule did in fact separate payments by grade ranges (i.e., K-6, 7-8, and 9-12). A Class VI district reorganizing with one or more Class I district might only qualify for incentive funds from two of the three grade ranges even though the newly formed K-12 would offer instruction in all grade ranges. Another consideration, particularly brought out by subsequent proponent testifiers at the public hearing, concerned the additional expense of paying teachers at comparable salary levels with other K-12 districts. Teachers from the former Class I districts, for instance, may require payment of higher salaries under negotiated contracts by the reorganized district.

The third major provision of LB 1134, as introduced, created a hold harmless provision for reorganized school districts. The provision would ensure that school districts forming a reorganized district would receive, for the first year as a reorganized district, at least 100% of the state aid that the individual districts would have otherwise received in the previous year.¹⁷⁷³ “This protection would allow the district to have certainty in planning as they go through the reorganization process,” Janssen said.¹⁷⁷⁴

Both the incentive funds and the cost of the hold harmless provision would be paid from a newly created Reorganized School Assistance Fund, which would be allocated an annual transfer of 1% of the TEEOSA funds.¹⁷⁷⁵ This would essentially maintain the existing process, except that, under the existing provision, any incentive funds remaining after each fiscal year were rolled back into the equalization formula.

There were no opponent testifiers at the public hearing for LB 1134. There were questions raised about whether some Class I districts were able to hold back significant cash reserves, which would, if true, require some measure of accountability within the reorganization process. Senator Janssen cast doubt about the claim:

¹⁷⁷² LB 1134 (1998), § 3, p. 16.

¹⁷⁷³ *Id.*, § 4, pp. 16-17.

¹⁷⁷⁴ *Hearing Transcripts, LB 1134 (1998)*, 25-26.

¹⁷⁷⁵ LB 1134 (1998), § 3, p. 15.

Cash reserves, I don't think the Class I schools out there, after the last few years, have any cash reserves left. If there is, it doesn't amount to anything. So I think the horror stories of the large cash reserves is not the situation in most of the consolidated districts anyway.¹⁷⁷⁶

Janssen stressed several times during the hearing that it was the responsibility of the Legislature to ensure proper operation of the incentive program. "I believe that it is time that we put our money where our mouth is and make the changes necessary to help make these incentives really work for the school districts," he said.¹⁷⁷⁷ He felt so strongly about the necessary changes that he designated LB 1134 as his individual priority bill for the 1998 Session.¹⁷⁷⁸

The Education Committee obviously agreed with at least some assertions made by Senator Janssen. Approximately two weeks after the hearing, the committee voted unanimously (8-0) to advance the bill to General File, but not exactly in the form Janssen would have preferred.¹⁷⁷⁹ During closed session, the committee voted to eliminate the provision that would double incentive payments to reorganizations involving Class VI and Class I districts. The committee also eliminated the hold harmless provision, which would have provided at least 100% of the state aid that the individual districts would have otherwise received in the previous year. But the committee did preserve what Janssen, himself, called the "main goal of the bill," which was to move up the timeline for payment of reorganization incentives.¹⁷⁸⁰ Under the committee amendments, reorganization incentives (for reorganizations in 1997-98 and beyond) would be paid beginning in the year following the year in which the reorganization occurs rather than in the second year after the reorganization as the law previously provided.¹⁷⁸¹

¹⁷⁷⁶ *Hearing Transcripts, LB 1134 (1998)*, 57.

¹⁷⁷⁷ *Id.*, 26.

¹⁷⁷⁸ NEB. LEGIS. JOURNAL, 15 January 1998, 336.

¹⁷⁷⁹ Committee on Education, *Executive Session Report, LB 1134 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 12 February 1998, 1.

¹⁷⁸⁰ *Hearing Transcripts, LB 1134 (1998)*, 21.

¹⁷⁸¹ NEB. LEGIS. JOURNAL, *Com AM3137*, 13 February 1998, printed separate, 639. Committee Amendments to LB 1134 (1998), *Com AM3137*, § 2, p. 3.

During first-round debate on February 24, 1998, the body was accepting of LB 1134, as proposed by the committee amendments. The only real item of controversy, perhaps confusion, involved a one-time transfer of \$2 million from the State's Cash Reserve Fund to the newly created Reorganized School Assistance Fund under LB 1134.¹⁷⁸² In truth, the transfer was necessary to make incentive payments for reorganizations occurring in 1997-98. Since state aid to schools had already been certified for 1998-99, there was no practical way to set aside \$2 million from equalization funds for the 1997-98 fiscal year. The transfer would be made from the Cash Reserve Fund and then repaid from equalization funds the following year. For 1999-00, 2000-01 and 2001-02, the committee amendments required \$2 million to be set aside for first year incentive payments from the amount appropriated for equalization aid.¹⁷⁸³ Any funds remaining from the annual set-aside amount would be funneled back into equalization aid the following year.

After an explanation of the proposed transfer process, the committee amendments were adopted by a unanimous 29-0 vote, and the bill was then advanced to second-round debate on a 30-1 vote.¹⁷⁸⁴

Select File debate occurred on March 10th. Senator Janssen would make a last unsuccessful bid to reinsert the hold harmless provision contained in the original bill.¹⁷⁸⁵ Janssen had several pending reorganization efforts within his own legislative district, and he was aware of other efforts across the state. Senator Bohlke pointed out, however, that at least one of the reorganized districts within Senator Janssen's legislative area had an increase in property valuation due to the reorganization. The increase in valuation, she said, meant more revenue from property taxes and, correspondingly, less state aid. Senator Wickersham came to Bohlke's assistance by distinguishing state policy to reduce the disincentives to reorganize and new state policy to afford "special treatment" just

¹⁷⁸² Committee Amendments to LB 1134 (1998), *Com AM3137*, § 3, pp. 9-10.

¹⁷⁸³ *Id.*, § 4, pp. 15-16.

¹⁷⁸⁴ NEB. LEGIS. JOURNAL, 24 February 1998, 751.

¹⁷⁸⁵ *Id.*, *Janssen AM3229*, 6 March 1998, 945.

because districts choose to reorganize.¹⁷⁸⁶ Wickersham and Bohlke would both argue that making special allowances for increases in valuation might lead to calls for special allowances due to other circumstances, such as reductions in enrollment or corrections in state aid from the previous year. The Janssen amendment, they argued, would lead to a slippery slope of endless special circumstances disserving of a hold harmless provision.

Janssen argued that the Legislature needed to determine how serious it was about encouraging consolidation. If, he alleged, the Legislature was serious about encouraging reorganization then it would do all it could to make the concept attractive to schools. Janssen reminded his colleagues that he was not advocating any new appropriations to fund the hold harmless provision. The hold harmless payments would derive from the same \$2 million pot of money set aside for base year incentive payments. And Senator Janssen was not alone in his fight for adoption of the hold harmless amendment. Senator Jones and Bromm were also helpful to his cause. In the end, however, the votes were simply not on Janssen's side. His amendment failed on an 11-25 vote.¹⁷⁸⁷

LB 1134 would pass on April 2nd by a 43-2 vote.¹⁷⁸⁸ Governor Johanns signed the bill into law on April 8, 1998.¹⁷⁸⁹

Table 101. Summary of LB 1134 (1998)
as Passed and Signed

- Change the reorganization incentive program created under LB 1050 (1996), which provides incentive payments to approved reorganized districts for three years;
- Allow reorganization incentives to be paid beginning in the year following the year in which the reorganization occurs rather than in the second year after the reorganization;
- Allow base year incentives to be paid in 1998-99, 1999-00, 2000-01 and 2001-02;
- Change existing law to allow incentive payments through July 1, 2004 rather than up to July 1, 2006, since the legislation moved up the payment of base year funds;

¹⁷⁸⁶ Legislative Records Historian, *Floor Transcripts, LB 1134 (1998)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 95th Leg., 2nd Sess., 10 March 1998, 13134.

¹⁷⁸⁷ NEB. LEGIS. JOURNAL, 10 March 1998, 987.

¹⁷⁸⁸ *Id.*, 2 April 1998, 1681.

¹⁷⁸⁹ *Id.*, 8 April 1998, 1874.

Table 101—*Continued*

- Establish a Reorganized School Assistance Fund from which first year reorganization incentives would be paid in 1998-99 since state aid for 1998-99 had already been certified;
- Transfer \$2 million from the State’s Cash Reserve Fund to the Reorganized School Assistance Fund to make payments in 1998-99;
- Require a \$2 million transfer by September 1, 999 from the State’s General Fund to the Reorganized School Assistance Fund, which amount would be immediately transferred to the Cash Reserve Fund to payback the \$2 million used to pay reorganization incentives in 1998-99;
- Terminate the Reorganized School Assistance Fund on September 2, 1999;
- Reduce the appropriation of state aid for TEEOSA by \$2 million in 1999-00 to offset the \$2 million transfer made from the General Fund to the Cash Reserve Fund;
- Require \$2 million be set aside in 1999-00, 2000-01 and 2001-02 for first year incentive payments from the amount appropriated for TEEOSA aid;
- Reappropriate any funds remaining from the annual set-aside for TEEOSA aid in the following year;
- Prorate the annual set-aside if the \$2 million is insufficient for first year incentive payments; and
- Exclude incentive funds from formula resources for purposes of calculating state aid.

Source: Legislative Bill 1134, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-5, pp. 1-6 (576-81).

Table 102. Summary of Modifications to TEEOSA
as per LB 1134 (1998)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
1	79-1001	Act, how cited	Change the citation of TEEOSA. A new section of TEEOSA was added to create the Reorganized School Assistance Fund and to provide for a transfer of funds from the State’s Cash Reserve Fund to the newly created fund.
2	79-1003	Terms, defined	Change definition of “base fiscal year” for school district reorganizations that occur during or after the 1997-98 school fiscal year to mean the first school fiscal year following the fiscal year in which the reorganization occurred.

Table 102—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
3	79-1010.01	Reorganized School Assistance Fund; created; use; investment; termination <i>[new section]</i>	Establish a Reorganized School Assistance Fund from which first year reorganization incentives would be paid in 1998-99 since state aid for 1998-99 had already been certified. Transfer \$2 million from the State's Cash Reserve Fund to the Reorganized School Assistance Fund to make payments in 1998-99. Require a \$2 million transfer by September 1, 1999 from the State's General Fund to the Reorganized School Assistance Fund, which amount would be immediately transferred to the Cash Reserve Fund to payback the \$2 million used to pay reorganization incentives in 1998-99. Terminate the Reorganized School Assistance Fund on September 2, 1999. Reduce the appropriation of state aid for TEEOSA by \$2 million in 1999-00 to offset the \$2 million transfer made from the General Fund to the Cash Reserve Fund.
4	79-1010	Incentives to reorganized districts and unified systems; qualifications; requirements; calculation; payment	Allow base year incentives to be paid in 1998-99, 1999-00, 2000-01 and 2001-02. Change existing law to allow incentive payments through July 1, 2004 rather than up to July 1, 2006, since the legislation moved up the payment of base year funds. Require \$2 million be set aside in 1999-00, 2000-01 and 2001-02 for first year incentive payments from the amount appropriated for TEEOSA aid. Re-appropriate any funds remaining from the annual set-aside for TEEOSA aid in the following year. Prorate the annual set-aside if the \$2 million is insufficient for first year incentives. Exclude incentive funds from formula resources for purposes of calculating state aid.

Source: Legislative Bill 1134, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-4, pp. 1-6 (576-81).

Legislative Bill 1219 (1998) represents an example of grassroots policy development, and what Senator Ardyce Bohlke called “a creative way” to address the issue of consolidation.¹⁷⁹⁰ The bill was sponsored and prioritized by Senator “Cap” Dierks of Ewing and sought to implement a new form of reorganization. Under LB 1219, two or more Class II or III (K-12) districts may form a “unified system” as a sort of trial consolidation.¹⁷⁹¹ If the trial period proved successful, the unified system may opt to

¹⁷⁹⁰ Committee on Education, *Hearing Transcripts, LB 1219 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 9 February 1998, 55.

¹⁷⁹¹ Legislative Bill 1219, *Provide for unified school systems and temporary mitigation funds*, sponsored by Sen. Ardyce Bohlke, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, title first read, 20 January 1998, § 8, pp. 8-9.

formally consolidate into one local system, one identity. However, during the unification period, the individual districts comprising the unified system would retain most of their own identity. The districts would retain their individual district names, athletic programs, curriculum, etc. Senator Bohlke quipped during the public hearing that the process was similar to “being engaged to get married,” a time to try out the feel of being consolidated without necessarily being consolidated.¹⁷⁹²

The idea originated from school officials within Senator Dierks’ legislative district. Representatives from the K-12 public school systems of Orchard, Clearwater, Ewing, and Elgin spoke to Senator Dierks during the 1997 interim about forming a type of “super district.”¹⁷⁹³ As Al Schleuter, superintendent of Orchard Public Schools, testified, “We believe the intent of the bill is to allow schools, such as our four districts, to unify under one central administrative district and still allow our districts to maintain their present facilities and K-12 status.”¹⁷⁹⁴ Each participating school system would retain its own school board, and at least one school board member from each system would comprise the unified system school board, the super board.¹⁷⁹⁵

As introduced, LB 1219 defined unified system as two or more Class II or III school districts participating in an interlocal agreement with approval from the State Committee for the Reorganization of School Districts. Class I districts also may be part of the interlocal agreement. The bill provided that state aid and property tax resources were to be shared by the unified system. The board of a unified system would determine the general fund levy for all participating districts and the distribution of tax resources and state aid.¹⁷⁹⁶

The interlocal agreement would also specify whether personnel would be employed by the individual districts or by the unified system. For any certificated staff employed by the unified system, tenure and seniority as of the effective date of the

¹⁷⁹² *Hearing Transcripts, LB 1219 (1998)*, 55.

¹⁷⁹³ *Id.*, 58.

¹⁷⁹⁴ *Id.*, 60.

¹⁷⁹⁵ LB 1219 (1998), § 8, p. 9.

¹⁷⁹⁶ *Id.*, § 8, pp. 8-11.

interlocal agreement would be transferred to the unified system and tenure and seniority provisions would continue in the unified system. If a district withdraws from the unified system or if the interlocal agreement expires, certificated staff employed by a participating district immediately prior to the unification would be reemployed by the original district and tenure/seniority as of the effective date of the withdrawal or expiration would be transferred to the original district. The interlocal agreement would address how certificated staff hired by the unified system, and not employed by a participating district immediately prior to the unification, would be treated if the interlocal agreement expires and is not renewed.¹⁷⁹⁷

Application for a unified system would be made to the State Committee for the Reorganization of School Districts. If the interlocal agreement complies with the provisions of the act and all school boards of the participating districts have approved the interlocal agreement, the state committee must approve the application. The “super board” established in the interlocal agreement may begin meeting any time after the application has been approved by the state committee. Upon granting the application for unification, NDE would be required to recognize the unified system as a single Class II or III district for purposes of state aid, budgeting, accreditation, enrollment of students, state programs, and reporting. The class of district would be the same as the majority of participating districts, excluding Class I districts. If there were an equal number of Class II and Class III districts in the unified system, the unified system would be recognized by NDE as a Class III district.¹⁷⁹⁸

Unified systems would be eligible for incentive payments through the state aid formula under the 1% set aside from TEEOSA funds. In order to encourage unification, incentive payments would be paid to each unified system based on grade ranges for a three-year period. Incentive payments would be calculated based on average daily membership in each affected district in the school year immediately preceding the first year of the unification. The unified system would receive 100% of the incentive

¹⁷⁹⁷ Id.

¹⁷⁹⁸ Id.

payments calculated for the base fiscal year, 75% for the second year, and 50% for the third year.¹⁷⁹⁹ The base fiscal year was defined as the first school fiscal year following the school fiscal year in which the unification occurred.¹⁸⁰⁰

The new local system would be allowed to maintain its unification status for a period of seven years. If the unified system discontinues its status as a unified system and does not consolidate prior to the beginning of the eighth year as a unified system, the districts in the unified system must pay back the incentives. The total incentives paid to the unified system would be divided between the districts based on the adjusted valuation of each district in the year prior to the discontinuation of the unified system, and each district's share must be paid back through reductions in state aid in equal amounts for five years. The bill provided that no incentive payments would be made after July 1, 2006, which created a limited window of opportunity for creation of unified systems.¹⁸⁰¹

LB 1219 was generally well received at the public hearing on February 9, 1998. Those offering support for the measure included the Nebraska Rural Community Schools Association, the Nebraska State Education Association, and the Commissioner of Education, Doug Christensen, who represented the State Board of Education.¹⁸⁰² “We need this model out there so that other schools can see how we can do this and how we can do it right,” Christensen said.¹⁸⁰³ The commissioner added that there were three equally important issues surrounding the unification theory: “unifying on the concept of governance, unifying on the concept of finance, and unifying on the concept of curriculum.”¹⁸⁰⁴ Christensen stated that he and his staff had recently conducted area meetings, in part, to speak with school officials about the unification process and to encourage them to contact the four schools that originated the idea. Said Christensen:

¹⁷⁹⁹ Id., § 10, pp. 20-26.

¹⁸⁰⁰ Id., § 9, p. 13.

¹⁸⁰¹ Id., § 10, pp. 25-26.

¹⁸⁰² Committee on Education, *Committee Statement, LB 1219 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 1.

¹⁸⁰³ *Hearing Transcripts, LB 1219 (1998)*, 69.

¹⁸⁰⁴ Id., 70.

We have talked to numerous other boards of education groups, administrative groups, and teacher groups about this same concept, getting a very favorable response. So once this particular union takes off, I would think that you will see a domino effect that others will look at it seriously. However, they need the incentives provided to make this happen.¹⁸⁰⁵

Incentive payments may have been an important element of the unification process, but it certainly was not the only consideration, especially for the group representing teachers.

Attorney Mark McGuire, representing the NSEA, called the legislation “innovative and creative” and said it presented “a great amount of opportunity,” but he also had some issues to address relevant to collective bargaining within the concept of unification.¹⁸⁰⁶ McGuire had been involved with many of the major labor-oriented legislative initiatives concerning collective bargaining agreements and related issues. One of his major clients was the designated labor organization for Nebraska teachers, the NSEA, which retained his services beginning in 1974. McGuire’s concerns with LB 1219 were embodied in several *friendly* amendments designed to clarify the relationship of the new unified system to certificated instructional staff.

The first proposed amendment involved clarification that the unified system would be the employer for purposes of collective bargaining. The second involved clearer language stating that certificated personnel would become employees of the unified system. The third and final suggestion by McGuire addressed the hiring of new staff by the unified system and what would become of them if the unified system dissolved at some point in time. McGuire asked that language be included to designate the reduction-in-force policy adopted by the unified system’s super board as the appointed instrument to serve these particular employees.¹⁸⁰⁷ Those certificated staff employed prior to unification by a participating district would retain employment within the participating district if the unified system dissolved.¹⁸⁰⁸

¹⁸⁰⁵ Id.

¹⁸⁰⁶ Id., 65.

¹⁸⁰⁷ Id., 65-66.

¹⁸⁰⁸ LB 1219 (1998), § 8, p. 9.

The Education Committee would take action to advance LB 1219 on March 3, 1998 by a unanimous 7-0 vote.¹⁸⁰⁹ The committee amendments incorporated many of the suggestions made during the public hearing. The amendments stipulated that the unified system would be the employer for all certificated staff. The certificated staff hired by the unified system without being employed by a participating district prior to the unification would be subject to the reduction-in-force policy of the system if the agreement expires and is not renewed. The amendments clarify that the unified system would be deemed an employer for purposes of the Industrial Relations Act.¹⁸¹⁰

The bulk of the committee amendments contained language to permit limited re-affiliation of Class I districts in contemplation of unification. The amendments clarified that Class I districts could only participate in a unified system if the entire valuation was included within the unified system. A Class I district with more than 50% of its valuation affiliated with a single Class II or III district participating in a unified system may re-affiliate so that the entire valuation is affiliated with the Class II or III district. Similarly, if there is not 50% of the valuation affiliated with a single Class II or III district, the Class I district may re-affiliate so that its entire valuation is affiliated with a Class II or III district participating in a unified system.¹⁸¹¹

Lastly, the committee amendments required a district withdrawing from a unified system prior to the beginning of the eighth year to repay incentives attributable to the district's participation. A provision was added to require interest to be calculated from the date the incentives were paid until the estimated repayment date for any repayments.¹⁸¹²

From the time the bill was introduced until the time it was advanced from committee, LB 1219 received strong support. It was a creative, innovative idea. It would encourage other districts to follow suit. It would enhance the educational opportunities of

¹⁸⁰⁹ Committee on Education, *Executive Session Report, LB 1219 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 3 March 1998, 2.

¹⁸¹⁰ NEB. LEGIS. JOURNAL, *Com AM3580*, 9 March 1998, 962-63.

¹⁸¹¹ *Id.*

¹⁸¹² *Id.*

students. But as the bill was prepared for first-round floor debate, the exuberance behind the legislative proposal would be tempered with skepticism by some and outright opposition from others. There were, after all, some serious policy issues to be addressed in the underlying proposition of unified school systems.

Unlike LB 1134, the other reorganization bill of the 1998 Session, LB 1219 would involve a much more lengthy deliberation due to the creation of an entirely new type of school organization. As one would expect, LB 1219 would foster general discussions on school finance and school organization. The very nature of the legislative proposal invited such philosophical discussion. Within these philosophical discussions, however, there also were discussions on the technical aspects of the legislation. Some of these debates lead to modifications of various components of the bill. As always, the art of compromise would win the day for LB 1219, but not necessarily to the full satisfaction of everyone concerned.

First-round debate would begin on March 26, 1998, just three days after Speaker Doug Kristensen designated LB 1219 a Major Proposal.¹⁸¹³ The super priority status would ensure that the bill had an opportunity to be debated, but not necessarily final passage. In hindsight, it may have been this enhanced status that gave the legislation a chance at all, particularly in a 60-day, short session.

General File debate primarily focused on the technical, philosophical, and political aspects of the duration and outcome of unification agreements. Two camps of thought sprang from these discussions and would define the remainder of the debate. Some senators, particularly those representing urban areas, wanted a shorter unification timeline, the elimination of authority to renew the unification agreement, and more pressure placed on the participating districts to go through with the final consolidation. The other camp of thought represented the exact opposite viewpoint. They wanted to allot plenty of time for the *engagement* period and also permit the opportunity to renew the unification agreement. The one item both camps seemed to agree upon was the

¹⁸¹³ NEB. LEGIS. JOURNAL, 23 March 1998, 1273.

notion that a district would repay, with interest, the incentive payments if the district withdraws from the unified system or if the unified system dissolves entirely.

The first amendment addressing the duration and outcome of unification agreements was brought forward by Senator Ron Raikes of Waverly. His amendment proposed to establish a minimum two-year requirement for interlocal agreements that created a unified system and required participating districts to either remain a unified system or consolidate at the beginning of the fifth year.¹⁸¹⁴ Under the Raikes amendment, districts would not be allowed to return to the status quo, as individual districts, following the fourth year of existence as a unified system. The idea would be supported by a number of legislators, but not by the chair of the Education Committee.

Senator Bohlke spoke to the Raikes amendment and admitted the minimum two-year requirement may have some justification. It would prevent any early bailouts and require at least a reasonable period of time to try out the unified arrangement. But Senator Bohlke could not agree with the idea of shortening the maximum duration of the unification agreement. She reminded her colleagues that the unified system would need a reasonable period of time to make structural and operational decisions, including decisions about retention of staff, facilities, curriculum, etc. “It gets very complicated and it’s going to cause people to make significant change in how they are reorganizing their schools,” Bohlke said.¹⁸¹⁵

The Raikes amendment resulted in one of the longer debates of any amendment offered on the bill, and would demonstrate the rural/urban split on the issue. The amendment failed by a 19-22 vote, but the narrow margin would serve to encourage further discussion on the matter.¹⁸¹⁶ In fact, the very next amendment addressed by the Legislature, offered by Senator Deb Suttle of Omaha, proposed to require all participating districts to repay incentive funds if the unification dissolves without taking the next step

¹⁸¹⁴ Id., *Raikes AM4165*, 26 March 1998, 1459.

¹⁸¹⁵ Legislative Records Historian, *Floor Transcripts, LB 1219 (1998)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 95th Leg., 2nd Sess., 26 March 1998, 14827.

¹⁸¹⁶ NEB. LEGIS. JOURNAL, 26 March 1998, 1470-71.

to formally consolidate.¹⁸¹⁷ The committee amendments simply required repayment of funds if a participating district drops away from the unification agreement. The Suttle amendment carried an extra hammer to force participating districts to consolidate. The Suttle amendment also failed, this time by a 12-25 vote.¹⁸¹⁸ Once again, the record vote demonstrated a largely rural/urban split on the issue.

The unification bill, as it came to be known, had survived any substantive changes during first-round debate, but the real battle was yet to come. Before the bill was advanced, however, LB 1219 would take on a secondary role to address an entirely different problem involving Class I districts. The focus of the issue concerned the budget setting process under the combined effects of the changes made to the state aid formula as per LB 806 (1997) and the levy limitations as per LB 1114 (1996). The recent changes in school law coupled with the affiliation and combined levy laws of the early 1990s had created an unintended and undesirable consequence.

As Senators Curt Bromm and Bob Wickersham explained during the debate, there were reported instances where the combined budgets of the primary high school district and the affiliated Class I districts would produce a levy asking that exceeded the property tax levy limitation. At the time, the levy limitation was \$1.10 for each local system, which included the primary high school district and all affiliated Class I districts. Each Class I district was required to submit its proposed budget to the high school district school board in order to establish a combined property tax asking. But nothing in existing law guaranteed a smooth process, as Senator Bromm explained:

When we have a district with a Class III that is the budget-setting district and we have several affiliated Class Is, if each entity submits their budget to the Class III and then the Class III absorbs that information and ... and adopts a budget, if that budget is over \$1.10, results in a levy over \$1.10, there is no process in the statute for how to resolve that problem. The only thing the Class III board has the authority to do is to not approve a budget for a Class I where they are proposing to spend more than the average cost per pupil when you average their cost and the Class IIIs cost for elementary students.¹⁸¹⁹

¹⁸¹⁷ *Id.*, *Suttle AM4099*, 1471.

¹⁸¹⁸ *Id.*, 1471-72.

¹⁸¹⁹ *Floor Transcripts, LB 1219 (1998)*, 26 March 1998, 14855.

The high school district was charged with the responsibility of overseeing the budget process, but it had no authority to resolve this type of problem.

In addition to the budget setting issue, another problem arose with regard to building funds established by Class I districts. LB 1114 (1996) provided an exclusion from the levy limits for building funds commenced prior to April 1, 1996. The building funds for any project commenced after this date would be subject to the maximum levy. But nothing precluded a district, including a Class I district, from initiating a building fund. This created the potential for what Senator Bromm called a “rogue building fund levy” initiated by a Class I district and forced upon the primary high school district.¹⁸²⁰

Neither the budget setting issue nor the building fund issue amounted to a sudden revelation to lawmakers. The issues were raised during the 1997 interim period and were the subject of a legislative proposal in the 1998 Session (LB 1008). However, as time elapsed during the session, LB 1219 became one of the few viable and relevant vehicles to attach an amendment and address the problems.

Jointly introduced by Senators Bromm, Wickersham, Raikes, and Bohlke, the amendment to LB 1219 would create what Bromm called a “road map” for local systems to deal with these issues if they arise.¹⁸²¹ The amendment added a new section to TEEOSA that provided a three-prong approach to resolving the issue if the total levy required for property tax requests for all general fund budgets in a local system exceeds the amount that can be generated by the maximum levy. In such cases, the high school district would be permitted to take “necessary steps” to comply with the maximum levy.¹⁸²² The first step would be to reduce the property tax request for each district up to the amount by which the district’s budgeted general fund cash reserve exceeds 15% of the district’s general fund budget of expenditures for the preceding school fiscal year. It was estimated that 15% cash reserves roughly equates to two to three months of the average district’s operational expenses.

¹⁸²⁰ Id., 14857.

¹⁸²¹ Id., 14856.

¹⁸²² NEB. LEGIS. JOURNAL, *Bromm AM4182*, 26 March 1998, 1472-73.

If the reductions under the first step do not resolve the problem, the primary high school district would utilize the second step. This step would reduce the property tax request for each district proportionately based on the amount of the difference between:

(Each district's general fund budget of expenditures — the special education budget of expenditures for the current budget year) — (a two-year average for the two preceding school fiscal years of the general fund budget of expenditures — the special education budget of expenditures).¹⁸²³

If the reductions under steps one and two do not reduce the levy to the appropriate level, a high school district may reduce the property tax request for each district by an amount proportional to the district's share of the total property tax request for the preceding school fiscal year.¹⁸²⁴

The second part of the amendment addressed the building fund issue. Under the amendment, the maximum building fund allowed for Class I districts would be reduced from 17.5¢ per \$100 million valuation to 5¢. This amount would include any amounts levied for environmental hazards or accessibility barriers. The amendment also required the approval by the primary high school board of any building fund for a Class I district within the local system.¹⁸²⁵

“I will probably make some of my friends in the Class Is uncomfortable to hear Senator Bromm and I stand up and make this proposal,” Senator Wickersham said during floor debate.¹⁸²⁶ “We were confronted last year with difficulties in finding ways to develop a structure so that the Class Is and the high schools that they were either affiliated with or a part of could develop budgets that met the 1114 objectives,” he said.¹⁸²⁷ Unfortunately, Wickersham added, some districts within certain local systems were simply not cooperating with one another in the budget process and thereby not

¹⁸²³ Id.

¹⁸²⁴ Id.

¹⁸²⁵ Id.

¹⁸²⁶ *Floor Transcripts, LB 1219 (1998)*, 26 March 1998, 14858.

¹⁸²⁷ Id.

doing what was “good and appropriate for the children of the district.”¹⁸²⁸ “I have been saddened that that does not always seem to me to be what has occurred and when that doesn’t occur then we have very little choice but to give the kind of direction that Senator Bromm’s amendment is now bringing to you for consideration,” Wickersham concluded.¹⁸²⁹

The amendment represented a fairly significant policy for school districts, and further enhanced the authority of the primary high school district. There was no debate on the amendment, only an explanation of the problem and the recommended solution. The Bromm amendment was adopted by a 27-0 vote.¹⁸³⁰ LB 1219 was then advanced to second-round debate by a 31-1 vote.¹⁸³¹

Second-round debate on LB 1219 commenced on April 1st, just six days after its advancement from General File. It was at this stage that the bill would take yet another twist. The issue, brought forward by Senator George Coordsen, involved the impact on some school districts due to the changes in the state aid formula under LB 806 coupled with the levy limitations under LB 1114. In essence, the Coordsen amendment was meant to buy time for certain districts in order for their local boards to evaluate their available options, including reorganization.

Senator Coordsen proposed to create a special “temporary mitigation” fund for local systems that have property tax and state aid resources for school fiscal year 1998-99 less than 90% of their property tax and state aid resources for the previous year (1997-98).¹⁸³² The funds would help those local systems particularly hard hit by the loss of state aid due to LB 806. The Coordsen amendment was actually the focus of a separately introduced bill (LB 1247), a bill sponsored by Senator Coordsen.¹⁸³³ LB 1247 was

¹⁸²⁸ Id.

¹⁸²⁹ Id.

¹⁸³⁰ NEB. LEGIS. JOURNAL, 26 March 1998, 1473.

¹⁸³¹ Id.

¹⁸³² Id., *Coordsen AM4312*, 1 April 1998, 1622-24.

¹⁸³³ Legislative Bill 1247, *Appropriate funds to school districts and local systems*, sponsored by Sen. George Coordsen, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 21 January 1998. LB 1247 (1998) was

introduced with the acquiescence of Governor Nelson, as Senator Coordsen explained during floor debate:

LB 1247 was an outgrowth of a number of meetings that the Governor had with school administrators and school board members around the state who were suffering from a dramatic reduction in available funds for the '98-99 year as a result of a combination of effects of (LB) 806 and (LB) 1114. The Governor felt or at least he indicated to me that he felt that we needed to do some temporary assistance to those schools that were the most disadvantaged by the loss of revenue.¹⁸³⁴

Coordsen said the original bill was expected to impact “about 61 schools,” although the precise number of schools that would ultimately qualify and take advantage of the mitigation funds was unknown.¹⁸³⁵ “I thought ... that 1247 could be an adjunct and an enhancement to 1219 in that it would provide a mechanism to tide a number of schools over ‘till they had a chance to look at this new way of organizing schools within an area, that is, unification,” Coordsen said.¹⁸³⁶

Under the Coordsen amendment, the local system would receive a one-time, lump-sum payment in an amount equal to 90% of the 1997-98 property tax and state aid resources minus the 1998-99 property tax and state aid resources if the following criteria were met:

- (1) The local system’s 1997-98 general fund budget of expenditures minus the special education budget of expenditures *did not exceed* the 1995-96 general fund budget of expenditures minus the special education budget of expenditures *by more than 2%* plus the percentage growth in students for the local system; AND
- (2) One of the three scenarios held true for the local system:

referred to the Education Committee and a public hearing was held on February 23, 1998. The committee had taken no action on the bill at the time Senator Coordsen proposed to amend its contents into LB 1219 (1998). NEB. LEGIS. JOURNAL, Chronology of Bills, 2163.

¹⁸³⁴ *Floor Transcripts, LB 1219 (1998)*, 1 April 1998, 15343.

¹⁸³⁵ *Id.*

¹⁸³⁶ *Id.*

- (a) The local system has “shown an intent to merge, consolidate, or unify” with at least one specified high school district by June 1, 1999, through a public affirmative vote by the school board of the high school district, and
 - a majority of the members of the school board sign an affidavit acknowledging that the intent of the signing board member is to proceed with a merger, consolidation, or unification, and
 - the affidavit is filed with NDE by August 1, 1998; OR
- (b) The local system is within the sparse cost grouping or the very sparse cost grouping; OR
- (c) The local system is subject to a loss of state aid due to clerical error.¹⁸³⁷

The Coordsen amendment provided that if the payments due to local systems exceed the amount of funds appropriated by the Legislature, the funds would be distributed on a pro rata basis. Payments would be made by September 15, 1998. Payments to local systems that include Class I districts would be divided proportionally among the districts in the local system based on the weighted formula students attributed to each district in the local system for the certification of state aid to be paid in the 1998-99 school fiscal year. NDE was required to identify the local systems qualifying for payments and distribute the funds accordingly. The financing for the mitigation funds would derive from the State’s Cash Reserve Fund in the amount of \$4.5 million, which would be transferred to the State’s General Fund by September 1, 1998.¹⁸³⁸

The principle critic of the Coordsen amendment was Senator Chris Beutler of Lincoln. Beutler expressed several concerns about the amendment, including the fact that the mitigation funds were outside the normal state aid distribution system. “The state aid formula is the system that this body agreed upon was the fair way to distribute money,” Beutler said.¹⁸³⁹ He was also concerned that the funds were not more directly tied to the intent on the part of the receiving districts to reorganize. He desired an “added measure of sincerity” on the part of the districts to form more efficient school systems if they were

¹⁸³⁷ NEB. LEGIS. JOURNAL, *Coordsen AM4312*, 1 April 1998, 1623.

¹⁸³⁸ *Id.*, 1623-24.

¹⁸³⁹ *Floor Transcripts, LB 1219 (1998)*, 1 April 1998, 15346.

to receive mitigation funds.¹⁸⁴⁰ Accordingly, Beutler filed several amendments to the Coordsen proposal, one of which required the temporary mitigation funds to be returned if the receiving district does not merge, consolidate, or unify prior to June 30, 2000.¹⁸⁴¹ “My amendment is to simply ensure that there is no way that the intent could be a subterfuge or treated in a frivolous manner by any school board,” he said.¹⁸⁴²

The differing viewpoints brought out by Senators Coordsen and Beutler instigated an interesting debate that lasted through the morning session and into the afternoon. The debate focused in part on the changes made to the state aid formula a year earlier. Many of the proponents of the Coordsen amendment were also former opponents of LB 806 (1997). They argued that the comprehensive changes to the formula coupled with the levy limitations had caused some districts to take a serious look at reorganization, but the reorganization process took time. It takes at least two willing districts to move forward with a reorganization plan, and not all districts desiring to merge can find a willing partner. The proponents of the Coordsen amendment argued that the mitigation funds should be granted with no absolute pressure to merge, consolidate, or unify. It was not the policy of the state, they argued, to force people and local governments into situations they do not desire.

Those resisting the Coordsen proposal relied on two central arguments. First, LB 806 (1997) and LB 1114 (1996) were measures passed and signed into law. It was the will of the majority speaking through these policy directives. Both measures carried an underlying intent toward efficiency of government, even if that meant reorganization. In fact, the 1996 property tax relief package intended for local governments to pursue efficiencies. And, if the first argument had any flaws, the second argument was more difficult to counter. The provisions of the levy limitation law, they argued, permitted a district to exceed the lid through a levy override. If the school districts in question had

¹⁸⁴⁰ *Id.*

¹⁸⁴¹ NEB. LEGIS. JOURNAL, *Beutler FA676 to Coordsen AM4312*, 1 April 1998, 1624.

¹⁸⁴² *Floor Transcripts, LB 1219 (1998)*, 1 April 1998, 15348.

reasonable claims to additional funding, they should pursue the appropriate spending and levy lid overrides.

Both sides put forward reasonably compelling arguments, but it may have been Senator Gerald Matzke of Sidney who put the issue into proper perspective using a nautical metaphor:

I think we have a decision to make. Is this bill going to be a penalty bill or is it going to be a life raft? We, when we passed 1114, we set in motion a Titanic of a property tax relief measure and then last year came along with another titanical bill in 806. And unfortunately, the two have collided. And the result is that we have a number of school districts floating in the freezing water about ready to be extinguished from being able to provide education. And that's all that this bill does. LB 1247 is a life raft proposed initially by the Governor, worked on by Senator Bohlke and Senator Coordsen to provide a life raft to certain school districts for a one-year transitional purpose.¹⁸⁴³

The transitional purpose of the Coordsen amendment was intended to include such options as unification, the principle goal of LB 1219, or another form of reorganization. But the districts receiving temporary mitigation funds would not be forced into reorganization by virtue of accepting the funds.

Ultimately, the Beutler amendment, which required the return of mitigation funds if the district did not reorganize, failed by an 11-19 vote.¹⁸⁴⁴ Several other proposals would come forward, but all were either withdrawn or failed. Finally, Senators Bromm, Coordsen, and Beutler proposed a compromise amendment. The amendment proposed that temporary mitigation funds must be returned if the receiving district does not merge, consolidate or unify prior to June 30, 2000. However, the funds need not be returned if, prior to June 30, 2000, the receiving district is unable to merge, consolidate or unify despite good faith efforts to do so. The State Committee on the Reorganization of School Districts would have the authority to determine whether the district actually made a good faith effort.¹⁸⁴⁵

¹⁸⁴³ Id., 15365.

¹⁸⁴⁴ NEB. LEGIS. JOURNAL, 1 April 1998, 1638-39.

¹⁸⁴⁵ Id., *Bromm FA675 to Coordsen AM4312*, 1649.

The Bromm-Coordsen-Beutler compromise amendment was adopted by a unanimous 27-0 vote after a short discussion.¹⁸⁴⁶ However, the main amendment, the Coordsen amendment to provide mitigation funds, took two votes before adoption. On the first attempt, the amendment failed by a 23-12 vote.¹⁸⁴⁷ A successful motion to reconsider the vote brought about a triumphant conclusion with a 26-6 vote.¹⁸⁴⁸

The main part of the bill, to permit unification agreements, would consume the remainder of second-round debate. Senators Bohlke and Raikes would successfully seek adoption of a compromise amendment concerning a minimum period of existence for unified systems. Senator Raikes had pursued such a proposal unsuccessfully on first-round debate. However, after speaking with some area superintendents, it was believed that a minimum three-year period would actually be beneficial to the participating districts.¹⁸⁴⁹ “I think it maybe gives the unification a better guarantee that it has some time to work,” Bohlke explained to her colleagues. The amendment was adopted by a 26-0 vote.¹⁸⁵⁰

LB 1219 was passed on Final Reading with the emergency clause attached by a 35-13 vote on April 14, 1998.¹⁸⁵¹ Governor Nelson would sign the bill into law on April 18th.¹⁸⁵² As passed, LB 1219 contained three major components: (1) provide for unification agreements; (2) provide a budget process to meet the maximum levy provisions; and (3) provide mitigation funds to certain local systems.

¹⁸⁴⁶ Id., 1649.

¹⁸⁴⁷ Id., 1649-50.

¹⁸⁴⁸ Id., 1652.

¹⁸⁴⁹ Id., *Bohlke-Raikes AM4256*, 31 March 1998, 1570.

¹⁸⁵⁰ Id., 1 April 1998, 1650.

¹⁸⁵¹ Id., 14 April 1998, 1946.

¹⁸⁵² Id., 1972.

Table 103. Review of LB 1219 (1998)

I. Unification Agreements.

A. *Definition.* A unified system is defined as two or more Class II or III school districts participating in an interlocal agreement with approval from the State Committee for the Reorganization of School Districts. The interlocal agreement may include Class I districts if the entire valuation is included within the unified system.

B. *Interlocal Agreement.* The agreement for unification would have a duration of at least three years. The agreement must provide that all state aid and property tax resources are shared by the unified system. The agreement must also provide that a “super” board be created and comprised of school board members from among the participating districts. The super board must include at least one school board member from each district but may include more if the agreement so provides.

The agreement must provide that certificated personnel will be employees of the unified system rather than the individual districts. If a district withdraws from the unification or if the agreement expires and is not renewed, certificated staff must be reemployed by the original district.

The super board will act as the collective-bargaining agent for the unified system and will have the authority to hire and terminate teachers and other staff.

C. *Application.* Application must be made to the State Committee for the Reorganization of School Districts. The application must contain a copy of the interlocal agreement signed by the president of each participating school board. The state committee must approve/disapprove applications for unification within 30 days after receipt. Unification agreements will become effective on June 1st following approval from the state committee or on June 1st of the year specified in the agreement. The super board established in the agreement may begin meeting any time after the application has been approved by the state committee.

D. *Recognition.* Upon granting the application, NDE must recognize the unified system as a single Class II or III district for state aid, budgeting, accreditation, enrollment of students, state programs, and reporting. The class of district will be the same as the majority of participating districts, excluding Class I districts. If there is an equal number of Class II and Class III districts in the unified system, the unified system will be recognized as a Class III district.

The school districts participating in a unified system will retain their separate identities for most purposes. For instance, districts within a unified system may retain their individual athletic and other extracurricular programs.

Table 103—Continued

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- E. *Incentive Payments.* To encourage unification, incentives will be paid to unified districts in certain size ranges for a three-year period. Incentive payments will be calculated based on average daily membership in each affected district in the school year immediately preceding the first year of the unification. The unified system may file an application with the state committee for incentive payments either following approval or in conjunction with the application for unification. For unification, 100% of the amount calculated will be included in the distribution of state aid in the base fiscal year, 75% for the second year, and 50% for the third.
- F. *Withdrawing.* If, prior to the beginning of the 8th year of operation, the unified system discontinues its status as a unified system and does not consolidate, the districts in the unified system must pay back the incentives plus interest. The total incentives paid to the unified system would be divided between the districts based on the adjusted valuation of each district in the year prior to the discontinuation of the unified system, and each district's share would be paid back through reductions in state aid in equal amounts for five years.

II. Budget Process.

LB 1219 provides procedures for a high school district to follow to reduce property tax requests when the total levy for a local system budget exceeds the amount that can be generated by the maximum levy. It also reduces the amount which may be levied by a Class I school district for school buildings, sites or repairs from 17.5¢ to five cents on each \$100 valuation. This cap also includes any amounts levied for environmental hazards or accessibility barriers.

III. Temporary Mitigation Funds.

The new law provides for a transfer of \$4.5 million from the Cash Reserve Fund to the General Fund on or before September 1, 1998. The funds transferred to the General Fund are appropriated to NDE in 1998-99 to distribute as one-time temporary mitigation funds to schools which have property tax and state aid resources in 1998-99 which are less than 90% of their 1997-98 property tax and state aid resources.

Systems must meet certain criteria in the new law in order to receive aid. First, the local system's 1997-98 general fund budget, minus expenditures made for special education, could not have exceeded its 1995-96 general fund budget, minus special education, by more than 2 percent plus the percentage growth in students. Second, the local system must fit into one of three categories: (a) it must be classified as sparse or very sparse for state aid purposes, (b) it must be subject to loss of state aid because of a clerical error in determining adjusted valuation, or (c) it must have shown an intent to merge, consolidate or unify with at least one specified high school district by June 1, 1999. This intent would be shown through a public vote of the board of the high school district, and a majority of board members would have to sign an affidavit acknowledging such intent.

Table 103—Continued

NDE is to calculate the systems eligible for aid and distribute the funds by September 15, 1998. Payments are to be prorated if the appropriation is not sufficient to fund all claims. The temporary mitigation funds must be returned if the receiving district does not merge, consolidate or unify prior to June 30, 2000. The funds need not be returned if the state reorganization committee determines a merger, consolidation, or unification is not possible.

Source: Legislative Bill 1219, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-23, pp. 1-13 (726-38).

Table 104. Summary of Modifications to TEEOSA
as per LB 1219 (1998)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
13	79-1001	Act, how cited	Adds a new section to TEEOSA (Section 14)
14	79-1027.01 <i>new section</i>	Property tax requests exceeding maximum levy; reductions; procedure	Beginning with 1998-99, if the total levy required for property tax requests for all general fund budgets in a local system exceeds the amount that can be generated by the maximum levy, the high school district would be entitled to take the necessary sequential steps to comply with the maximum levy by: <p>(1) Reducing the property tax request for each district up to the amount by which the district's budgeted general fund cash reserve exceeds 15% of the district's general fund for the preceding school fiscal year; or</p> <p>(2) Reducing the property tax request for each district proportionately based on the amount of the difference between the district's general fund minus the special education budget for the current budget year and a two-year average for the two preceding school fiscal years of the general fund budget minus the special education budget up to such difference; or</p> <p>(3) Reducing the property tax request for each district by an amount proportional to the district's share of the total property tax request for the preceding school fiscal year such that the required local system levy would be the maximum levy allowed.</p>
15	79-1003	Terms, defined	Defines base fiscal year for school district reorganizations or unifications that occur during or after the 1997-98 school fiscal year as the first school fiscal year following the school fiscal year in which the reorganization or unification occurred.

Table 104—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
16	79-1010.01	Reorganized School Assistance Fund; created; use; investment; termination	Amends Section 3 of LB 1134 (1998). The amended provision eliminates intent language to reduce the appropriation to the state aid for fiscal year 1999-00 by \$2 million. The provision was amended in order to harmonize with LB 1175, which essentially required full funding of the state aid formula. LB 1175 was subsequently vetoed based upon the full funding provision.
17	79-1010	Incentives to reorganized districts and unified systems; qualifications; requirements; calculation; payment	Provides for the establishment of unified school systems. A unified system is defined as two or more Class II or III school districts participating in an interlocal agreement with approval from the State Committee for the Reorganization of School Districts. Class I districts may also be part of the interlocal agreement if the entire valuation is included in the unified system. Agreements must last for a minimum of three years. Provides that state aid and property tax resources are to be shared by the unified system. The board of a unified system is to determine the general fund levy for all participating districts and the distribution of tax resources and state aid. Unified systems are eligible for incentive payments through the aid formula. Unified systems that discontinue the status prior to the eighth year of existence must repay incentives plus interest through a reduction in aid in equal amounts for five years.

Source: Legislative Bill 1219, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 13-17, pp. 5-12 (730-37).

LB 1229 - Gifted Education

The policy history of gifted education in Nebraska was not particularly noteworthy until the early 1990s. In 1967 the Legislature passed a bill to grant the Department of Education the authority to employ a “special consultant trained and experienced in the field of special education for gifted children.”¹⁸⁵³ The consultant, if employed, would have the duty to encourage, advise, and consult with each district in the development and implementation of plans for special education of gifted children. The bill defined gifted children as:

¹⁸⁵³ NEB. REV. STAT., Laws 1967, c. 512, § 1, p. 1718; R.S.1943, (1994), § 79-339; Laws 1996, LB 900 (§ 787), § 79-1105.

[C]hildren who excel markedly in ability to think, reason, judge, invent, or create and who need special facilities or educational services or both such facilities and services in order to assist them to achieve more nearly their potentials for their own sakes as individuals and for the increased contributions they may make to the community, state, and nation.¹⁸⁵⁴

The new law did not require the department to hire a consultant, nor did it appropriate funds to carry out the act. It only provided limited instruction for the department if it opted to hire a consultant. Generally speaking, the State of Nebraska did not place a particularly high level of concern on those students who required special services due to their gifted educational performance capacity. This would change in 1993.

On January 5, 1993, Governor Ben Nelson appointed Jan McKenzie of Harvard to replace Senator Rod Johnson, who resigned from office. McKenzie, a former teacher, had been very active in the cause of gifted education having been an honor student at the University of Nebraska-Lincoln. She had served as president of the Nebraska Association for the Gifted (NAG) from 1988-1990.¹⁸⁵⁵

Senator McKenzie would waste little time after her appointment to place the issue of gifted education on the public agenda. In 1993, her first year as state senator, she introduced legislation to mandate the identification of *learners with high ability*. The bill, LB 647, defined a learner with high ability as a “student who gives evidence of high performance capability in such areas as intellectual, creative, or artistic capacity or in specific academic fields and who requires services or activities not ordinarily provided by the school in order to develop those capabilities fully.”¹⁸⁵⁶

The bill was referred to the Education Committee and carried over to the 1994 Session where it was passed and signed into law.¹⁸⁵⁷ The stated purpose of the legislation was to assist and encourage school districts in the development, improvement, and

¹⁸⁵⁴ Id.

¹⁸⁵⁵ NEB. BLUE BOOK, 1996-97 ed., 297.

¹⁸⁵⁶ Legislative Bill 647, in *Laws of Nebraska, Ninety-Three 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), § 2, p. 1 (359).

¹⁸⁵⁷ LB 647 was passed on April 6, 1994 by a 36-0 vote. NEB. LEGIS. JOURNAL, 6 April 1994, 1735. The legislation was signed into law on April 12, 1994. NEB. LEGIS. JOURNAL, 6 April 1994, 1938.

implementation of educational programs or services that will serve the educational needs of learners with high ability at levels appropriate for their abilities.¹⁸⁵⁸ Beginning with the 1997-98 school year, each school district and educational service unit (ESU) was required to identify learners with high ability and to provide programs or services that would address the educational needs of the identified students.¹⁸⁵⁹ The requirement for provision of programs and services was contingent upon available local, state, or federal funding. In order to provide some financial assistance, the legislation permitted school districts and ESUs to apply for grants from the Education Innovation Fund (State Lottery) to be used for development and improvement of approved programs or services.¹⁸⁶⁰

LB 647 specifically directed the Department of Education to monitor the efforts of school districts and ESUs to implement approved programs or services. It also took the 1967 legislation a step farther by requiring the department to appoint a full-time professional employee and the necessary support staff.¹⁸⁶¹ This time, however, the Legislature would appropriate necessary funds to hire the additional staff.¹⁸⁶²

Even with the potential availability of grant funds, some school districts looked upon LB 647 as just another unfunded mandate. It was not necessarily that school officials opposed the concept of gifted education. It had more to do with finding the resources to create the necessary programs and provide the services. These considerations were certainly brought out during the debate on LB 647. It was for these reasons that the legislation mandated programs and services contingent upon the availability of financial resources. It was for these reasons that grant funds were made available to school districts, and it was for these reasons that the effective date for the programs and services was delayed until the 1997-98 school year.

¹⁸⁵⁸ LB 647, Session Laws, 1994, § 1, p. 1 (359).

¹⁸⁵⁹ *Id.*, § 3, p. 1 (359).

¹⁸⁶⁰ At the time LB 647 was introduced, the Nebraska State Lottery was in its first year of existence. Voters had approved a constitutional amendment to create a lottery in the 1992 General Election. The Education Innovation Fund was one of the major beneficiary funds created under the constitutional amendment.

¹⁸⁶¹ LB 647, Session Laws, 1994, § 4, p. 1 (359).

¹⁸⁶² *Id.*, § 6, p. 3 (361). LB 647 appropriated \$50,183 from the General Fund for FY1994-95 and \$43,513 for FY1995-96.

LB 647 would set in motion the promulgation of rules and regulations governing the approval process of gifted education programs and services and also the process of identifying students with high ability. The State Board of Education eventually adopted what became Rule 3 governing high ability learners.¹⁸⁶³ This regulation along with the state laws pertaining to high ability learners would be expanded four years later with the passage of LB 1229.

By the start of the 1998 Session, Senator McKenzie had resigned from her elected office and had become the consultant for gifted education under the Department of Education. While no longer a state legislator, her presence would still be known on the issue of high ability learners. In 1998, Senator Ardyce Bohlke, chair of the Education Committee, would introduce a series of financial incentive-based bills. The topics of the legislation ranged from encouraging certain districts to reorganize, to encouraging districts to adopt specific programs, such as programs for expelled students or teacher mentor programs. Another of Senator Bohlke's incentive-based bills would take up where LB 647 left off, and would further encourage the local adoption of programs for high ability learners.

LB 1229 (1998) was chiefly sponsored by Senator Bohlke and cosponsored by twelve other lawmakers.¹⁸⁶⁴ Six of the eight members of the Education Committee would sign on as co-sponsors with a seventh, Senator Chris Beutler, adding his name shortly after the bill was introduced. Senator Don Pederson of North Platte, another co-sponsor, took a personal interest in the legislation and designated LB 1229 as his priority bill for the 1998 Session.¹⁸⁶⁵

The original intent of LB 1229 was to mandate the provision of approved accelerated or differentiated curriculum programs for students identified as learners with high ability beginning with the 1998-99 school year. The bill also provided funds for

¹⁸⁶³ Title 92 Neb. Admin. Code Chapter 3, *Regulations Governing the Identification of High Ability Learners*.

¹⁸⁶⁴ Sponsors included Senators Bohlke, Abboud, Brashear, Brown, Hillman, D. Pederson, Raikes, Schimek, Schrock, Suttle, Wesely, Wickersham, and Willhoft.

¹⁸⁶⁵ NEB. LEGIS. JOURNAL, 2 February 1998, 505.

such programs and included those funds in the special education allowance. This represented a significant policy change since the existing state policy was to allow each district to determine for itself whether funds were available to provide such programs.

Under the bill, school districts would be required to annually provide the Department of Education with the criteria used to identify learners with high ability, the number of students identified and the number participating in an approved program.¹⁸⁶⁶ The State Board of Education was charged with the duty of adopting and promulgating rules and regulations to implement the provisions of the act. The regulation was to include criteria for the approval of accelerated or differentiated curriculum programs and data requirements for measuring academic progress of students participating in the accelerated or differentiated curriculum programs.¹⁸⁶⁷

LB 1229 required the Legislature to appropriate funds for high ability learner programs. The original bill directed the appropriation of \$6 million in 1998-99. In each year thereafter, the appropriation was to be increased by the percentage growth in identified participating students plus the basic allowable growth rate.¹⁸⁶⁸ The distribution of funds to schools would fall within two categories. First, local systems would be eligible to receive a percentage of the total appropriation if they provide at least a 50% local match. Second, local systems may apply for start-up funds to initiate programs for high ability learners. A small portion of the total annual appropriation would be set aside for start-up grants, but the bulk of the appropriation would be used for matching funds.¹⁸⁶⁹

LB 1229 would impact the state aid formula because the bill required that grant funds received by schools would be included as part of the special education

¹⁸⁶⁶ Legislative Bill 1229, *Change provisions relating to educational funding, kindergarten admissions, and postsecondary education awards*, sponsored by Sen. Ardyce Bohlke, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 20 January 1998, § 8, p. 21.

¹⁸⁶⁷ *Id.*, § 10, p. 23.

¹⁸⁶⁸ *Id.*, § 9, p. 21.

¹⁸⁶⁹ *Id.*, pp. 21-23. The bill provided that up to 5% of the appropriation for aid in 1998-99, 1999-00 and 2000-01 would be used for start-up costs for schools and would be distributed on a pro rata basis based upon eligible costs submitted by schools. Schools may also receive .1% of the appropriation as base funds plus a pro rate share of the remaining funds based on students participating in high ability learner programs.

allowance.¹⁸⁷⁰ The legislation would also classify the grant funds as local resources for purposes of calculating state aid.¹⁸⁷¹ LB 1229 would infuse an additional \$6 million in the school finance system for both equalized and non-equalized local systems.

In order to maintain eligibility for grant funds, LB 1229 required local systems to operate an approved accelerated or differentiated curriculum program (i.e., as approved by NDE). Local systems had to provide funds from other sources for the approved program greater than or equal to 50% of the matching funds received from the state. Schools had to provide an accounting of the funds received, the total annual cost of the program, and the data regarding the academic progress of students participating in the program. Local systems also had to include identified students from Class I districts that are part of the local system.¹⁸⁷²

At the public hearing on February 9, 1998, Senator Bohlke recognized the work of former Senator Jan McKenzie in the field of gifted education. McKenzie was present at the hearing in her new capacity as a consultant with the Department of Education. Bohlke proceeded to articulate what would become an often-used rationale for passage of the legislation. High ability learners, she said, were special education students although perhaps not in the traditional sense of the expression. “And I would say, as I think about special education, that students with high ability also could be looked as a part of special education; their needs are unique, as other student’s needs are unique,” Bohlke said.¹⁸⁷³

LB 1229 received no opposing testimony at the hearing. Such notable groups as the Nebraska Parent Network, the Nebraska Association for Gifted, the State Board of Education, the Nebraska Rural Community Schools Association, and the Nebraska Council of School Administrators all cast their support for the bill.¹⁸⁷⁴

¹⁸⁷⁰ Id., § 2, p. 14.

¹⁸⁷¹ Id., § 3, pp. 17-19.

¹⁸⁷² Id., § 9, p. 22.

¹⁸⁷³ Committee on Education, *Hearing Transcripts, LB 1229 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 9 February 1998, 4.

¹⁸⁷⁴ Committee on Education, *Committee Statement, LB 1229 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 1.

Undoubtedly, some of the more compelling testimony derived from parents and several very bright students who appeared in support of the legislation. Daniel Naber, a seventh grader at Westridge Middle School in Grand Island, spoke to the Education Committee about the lack of challenge in the classroom experience:

They don't challenge us. Sometimes a lot of people that are the smarter people will mess around, not listen, they get bored. The day just seems to wear on and in sixth grade I had a lot of problems with going to school. I often played hooky and stuff like that.¹⁸⁷⁵

Greg Bachman, also a seventh grader at Westridge Middle School in Grand Island, spoke of the disparities in educational opportunities for some students, although he did not quite use those terms. "I think that just because gifted people are talented, they shouldn't be neglected," he said, adding, "I think that the gifted people are just as important as the slower learners are."¹⁸⁷⁶

Interestingly, the Nebraska Farmers Union appeared in a neutral capacity at the public hearing. Union President John Hansen said his organization supported the underlying concept of the bill, but he also noted the difficulty that some rural schools might have in carrying out its mission. Said Hansen:

[A]t some point, and I guess that point came when the Nebraska Legislature chose to pass LB 806, there gets to be a need for those of us who represent the interests of rural education across the state of Nebraska, to do what approximates a reality check. And the reality check is that, unfortunately, as a result of LB 806, those schools who are in the bottom of the end of the standard classification are not likely to get the amount of state education needs of financial support from the distribution formula to meet just basic needs.¹⁸⁷⁷

Hansen spoke of the "double restrictions" imposed on schools due to the levy limitations under LB 1114 (1996) and the "shortfall" some districts received under LB 806 (1997).¹⁸⁷⁸

¹⁸⁷⁵ *Hearing Transcripts, LB 1229 (1998)*, 24.

¹⁸⁷⁶ *Id.*, 25.

¹⁸⁷⁷ *Id.*, 34.

¹⁸⁷⁸ *Id.*

Less than two weeks after the public hearing, on February 24th, the Education Committee met in executive session to consider the fate of LB 1229. On a 7-0 vote, the committee advanced the bill to General File in its original form (no committee amendments).¹⁸⁷⁹

“An island unto itself”

First-round debate would take place on the morning of Monday, March 9, 1998, the date of one of the worst winter storms in recent years. Schools and businesses were closed throughout southeast Nebraska. Almost one-third of the legislative body was absent from the Chamber due to weather-related reasons. In normal circumstances, this particular situation may not have had a significant impact. However, in the case of LB 1229, at least one senator forced to be absent on that day would take exception with the actions of his colleagues and would later seek a reversal.

The only item of controversy throughout General File debate was the first amendment considered on LB 1229. Senators Don Pederson and Ardyce Bohlke jointly filed an amendment to change a major provision of the legislation. LB 1229, as originally introduced and advanced from committee, would have *required* all school districts to offer gifted education programs. The sponsors felt they could justify the mandate because the legislation also provided funding to help defray the costs of implementing such programs. The Pederson/Bohlke amendment, however, proposed to strike the mandatory element, thereby allowing but not requiring schools to create and offer gifted programs.¹⁸⁸⁰

Senator Pederson introduced the amendment, he said, due to the realization that not all schools would be in a financial position to initiate a gifted program even with the help of the state. He and Senator Bohlke were well aware of the criticism that could befall such a move especially among those who strongly endorsed the idea of making gifted programs available to all children no matter where they might attend school. But, he argued, LB 1229 still makes a giant step forward in comparison to the surrounding

¹⁸⁷⁹ Committee on Education, *Executive Session Report, LB 1229 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 24 February 1998, 1.

¹⁸⁸⁰ NEB. LEGIS. JOURNAL, *D. Pederson-Bohlke AM3446*, 3 March 1998, 881.

states that already provided funding to schools for gifted programs. “Nebraska is virtually an island unto itself,” said Pederson concerning the issue of funding for such programs.¹⁸⁸¹ LB 1229 might at least encourage schools to launch a gifted program.

The Legislature would adopt the Pederson/Bohlke amendment by a unanimous 25-0 vote, but the issue was far from over.¹⁸⁸² The Legislature then advanced the bill by a 28-0 vote.¹⁸⁸³ But as the snow melted away and the roads became unclogged, the legislator most discontent with the new twist on LB 1229 would be available to make his concerns known in time for second-round consideration.

On March 23, 1998, the Legislature took up debate on LB 1229 once again. And Senator Ernie Chambers of Omaha was ready, having filed a floor amendment on the same day to effectively reverse the decision to make gifted programs a discretionary choice of individual school districts.¹⁸⁸⁴ The amendment, he said, was offered both in respect to those who had tirelessly promoted gifted education in the past and to set the record straight on the power of the state over political subdivisions. Chambers acknowledged the past and present work of individuals like former Senator Jan McKenzie on the issue. “My impression, because of the respect that I have for these people, is that these programs were designed to benefit youngsters,” he said, “They were not for the convenience of school boards, school districts, teachers or anybody else.”¹⁸⁸⁵

Senator Chambers used the age-old argument that political subdivisions, including school districts, were “creations of the state.”¹⁸⁸⁶ As such, Chambers argued, “They carry out the will of the state, and the state has the obligation to ensure that certain programs are available to every child in the state regardless of how backward and high bound the individual school board members are.”¹⁸⁸⁷ Obviously, Senator Chambers was less

¹⁸⁸¹ *Floor Transcripts, LB 1229 (1998)*, 9 March 1998, 13043.

¹⁸⁸² NEB. LEGIS. JOURNAL, 9 March 1998, 971.

¹⁸⁸³ *Id.*

¹⁸⁸⁴ *Id.*, *Chambers FA629*, 23 March 1998, 1263.

¹⁸⁸⁵ *Floor Transcripts, LB 1229 (1998)*, 23 March 1998, 14268.

¹⁸⁸⁶ *Id.*, 14275.

¹⁸⁸⁷ *Id.*, 14275-76.

worried about offending local officials and more concerned about equity of educational opportunities, which was, after all, one of the underpinnings of the TEEOSA in 1990. And, as far as local school officials, they could hardly call LB 1229, as originally proposed, an unfunded mandate if the state was prepared to fund at least part of the program implementation. They could, of course, call it an under-funded mandate if the state funding did not quite cover all necessary costs.

Nevertheless, Senator Chambers had a point to make and it related as much to the process of establishing state policy as it did the fair treatment of those affected by such policy. “LB 1229 is to establish a policy, a state policy, based on deliberation, facts and an understanding and conviction that there are children in the schools throughout this state who need programs in addition to or beyond those which are given as a part of the core curriculum,” Chambers said.¹⁸⁸⁸ “Either all children situated in this manner should be entitled to the same services or they should not,” he concluded.¹⁸⁸⁹

The rationale offered by Senator Chambers’ was difficult to refute. Of course, from the perspective of school officials, there are many programs and opportunities they wished to make available to their students if only funding were available. And contrary to what some may have thought, there were school boards that had the best of intentions in mind for the students under their care. They also had hard realities to face in terms of limited resources. The Chambers amendment failed on a 17-19 vote, which should have given all pause to think maybe he was on the right track after all.

Table 105. Record Vote: Chambers FA629 to LB 1229 (1998)
to Mandate Gifted Programs

Voting in the affirmative, 17:

Beutler	Hartnett	Kristensen	Raikes	Schmitt
Brown	Hilgert	Maurstad	Robak	Wesely
Bruning	Jones	Preister	Schimek	Witek
Chambers	Kiel			

¹⁸⁸⁸ Id., 14268.

¹⁸⁸⁹ Id.

Table 105—*Continued**Voting in the negative, 19:*

Bohlke	Engel	Landis	Schellpeper	Tyson
Brashear	Hillman	Lynch	Schrock	Wehrbein
Bromm	Janssen	Pederson	Stuhr	Wickersham
Coordsen	Jensen	Robinson	Suttle	

Present and not voting, 2:

Elmer Vrtiska

Excused and not voting, 11:

Abboud	Dierks	Matzke	Peterson	Will
Crosby	Hudkins	Pedersen	Thompson	Willhoft
Cudaback				

Source: NEB. LEGIS. JOURNAL, 23 March 1998, 1266.

Had the Chambers amendment succeeded, the fiscal impact on some schools might have been entirely different. As it turned out, the bill was allowed to advance under relative mandate-free provisions, excluding some minor reporting requirements upon school districts. LB 1229 advanced on a voice vote on March 24th, the day after Senator Chambers' attempt to amend the bill.¹⁸⁹⁰ The legislation received final passage on April 2, 1998 by a 36-9 vote.¹⁸⁹¹

In a final twist, Governor Nelson opted to line-item veto half the total funding originally proposed under LB 1229A, the appropriation bill to LB 1229. In a letter of explanation, Governor Nelson wrote:

With this letter, I am returning LB 1229A with line-item reductions. I believe LB 1229 is important in increasing quality educational opportunities; however, in lieu of recent increases in funding for education, I recommend appropriating \$3,025,500 for FY1998-99 and \$3,092,850 for FY1999-00 of the funds provided by the Legislature for accelerated and differentiated curriculum programs funded under LB 1229.

I believe that reducing the recommended appropriation of \$6,025,500 by \$3 million will leave intact adequate funding for local gifted education programs, taking into consideration that additional funding sources exist for these programs.

¹⁸⁹⁰ NEB. LEGIS. JOURNAL, 24 March 1998, 1302.

¹⁸⁹¹ *Id.*, 2 April 1998, 1684-85.

Since FY1996-97, state aid to schools has increased by \$145,445,902, and new spending for education I have supported this year equals \$11,725,000.

Under LB 1110A, local school districts and systems may receive assistance from Educational Service Units which received \$9.7 million for funding core services including instructional materials. New funding opportunities are also created under LB 1228 funded by the Education Innovation Fund, which allows schools to receive quality incentive payments which may be spent on programs for high ability learners. Schools may also apply for Education Innovation Fund competitive grants to receive funding to create accelerated and differentiated curriculum programs. Approximately \$9.4 million will be available for schools from the Education Innovation Fund for FY1998-99.

I believe increased educational funding from these sources and my recommendation for funding under LB 1229A will enable schools to provide quality educational opportunities for our state's best and brightest.¹⁸⁹²

The line-item veto was officially announced on April 8th, the 58th day of the 1998 Legislative Session. There was certainly time to stage an override, but the prevailing political wind was not in the proponents' favor. No motion to override was filed and the line-item veto was sustained by the Legislature.

Table 106. Review of LB 1229 (1998)

LB 1229 related to gifted education for high ability learners. The new law did not require districts to implement a gifted education program but did provide financial incentives to do so. LB 1229 also contained a provision concerning kindergarten enrollment.

I. Criteria for Identification. (mandatory)

A. *Reports.* School districts must annually provide NDE with a copy of:

- (i) criteria for identifying learners with high ability,
- (ii) the number of students identified according to the criteria, and
- (iii) the number of students participating in an approved accelerated or differentiated curriculum program.

B. *Inspection.* School districts must also have a list of the students identified and how the students compare to the criteria available for inspection by department personnel.

¹⁸⁹² NEB. LEGIS. JOURNAL, 8 April 1998, 1875-76.

Table 106—Continued

 II. Gifted Programs. (non-mandatory)

A. *Permissive Programs.* LB 1229 does not require school districts to offer gifted education programs, but it does provide an financial incentive to do so. In order to be eligible for funds to offset the cost of a gifted program, a district must adhere to the following items:

(a) Provide an approved accelerated or differentiated curriculum program for students identified as learners with high ability;

(b) Provide funds from other sources for the approved accelerated or differentiated curriculum program greater than or equal to 50% of the matching funds received;

(Note: If a local system will not be providing the necessary matching funds, the local system must request a reduction in the amount received such that the local system will be in compliance with the matching fund requirement.)

(c) Provide an accounting of the funds received and the total cost of the program on or before August 1st of the year following the receipt of funds in a manner prescribed by NDE, not to exceed one report per year;

(d) Provide data regarding the academic progress of students participating in the accelerated or differentiated curriculum program in a manner prescribed by NDE, not to exceed one report per year; and

(e) Include identified students from Class I districts that are part of the local system in the accelerated or differentiated curriculum program.

(Note: Local systems not complying with the foregoing requirements will not be considered eligible local systems in the following year.)

B. *Appropriation.* Beginning with school fiscal year 1998-99, the Legislature must appropriate funds to be distributed by NDE pursuant to local systems annually on or before October 15th.

Notes: The original intent of LB 1229 was to appropriate, for FY1998-99, \$6 million and, for FY1999-00 and each year thereafter, the amount of the previous year's appropriation increased by the percentage growth in identified participating students plus the basic growth rate. In a letter to the Legislature, Governor Nelson indicated his support for gifted education but his opposition to the amount of the annual appropriation.

The Governor recommended through his line-item veto that \$3,025,500 be appropriated for FY1998-99 and \$3,092,850 for FY1999-00. The Governor rationalized that additional resources to help operate local gifted education programs may potentially be offered through the ESU core services. The Governor also noted that another measure, LB 1228, was designed to offer incentive payments to those districts that meet certain criteria. The incentive payments could be used by a district to offset the expenses of a gifted education program.

Table 106—Continued

- C. *Distribution of Funds.* The new law provides that up to 5% of the appropriation for aid in 1998-99, 1999-00 and 2000-01 will be used for start-up costs for schools and will be distributed on a pro rata basis based upon eligible costs submitted by schools. School systems may also receive .1% of the appropriation as base funds. The remaining funds are to be distributed as a pro rata share based on the students participating in high ability learner programs. Up to 10% of the prior year's membership of students participating in accelerated or differentiated curriculum programs may be counted for aid purposes.

NOTES: Based on an appropriation of \$6 million in 1998-99, up to \$300,000 of the funds appropriated can be used for start-up costs. If all 286 school systems qualify for base funds, then \$1,716,000 of the appropriation will be distributed on this basis. The remaining \$3,984,000 will be allocated based on students participating in high ability learner programs. Once again, a 50% match must be provided by a local school system to receive any of these funds.

- D. *Special Education Allowance.* The inclusion of aid funds received for high ability learner programs as part of the special education allowance for state aid purposes and as an accountable receipt for purposes of determining local resources insures that school systems which receive aid for high ability learner programs will not be penalized by a loss in equalization aid.
- E. *Rules and Regulations.* The State Board of Education is authorized to adopt rules and regulations to implement LB 1229, including criteria for the approval of accelerated or differentiated curriculum programs and data requirements for measuring academic progress of students participating in the programs.

- III. *Kindergarten Enrollment.* Prior to LB 1229, a district could admit a child who will reach the age of five between Oct. 16 and Feb. 1 of the current school year if the parent/guardian requests such entrance and provides an affidavit stating that either the child attended kindergarten in another jurisdiction in the current school year, OR the family anticipates a relocation to another jurisdiction that would allow admission within the current year. LB 1229 added a third option to current law. Under the new law, a school board may approve "recognized assessment procedures" to determine whether a child is capable of carrying the work of kindergarten or the beginner grade. There is no requirement upon districts to adopt such a procedure.

Source: Legislative Bill 1229, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-13, pp. 1-9 (748-56).

Table 107. Summary of Modifications to TEEOSA as per LB 1229 (1998)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
3	79-1003	Terms, defined	Change definition of special education allowance by adding the amount of accelerated or differentiated curriculum program receipts included in local system formula resources.
4	79-1018.01	Local system formula resources; other actual receipts included	The inclusion of funds received for high ability learner programs as part of the special education allowance and as an accountable receipt for determining local resources insures that systems receiving aid for high ability learner programs will not be penalized by a loss in equalization aid.

Source: Legislative Bill 1229, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 3-4, pp. 4-7 (729-32).

LB 1228 - Quality Education Accountability Act

Unlike LB 1229, the gifted education bill, LB 1228 did not have a direct impact on the school finance formula. It would have an indirect impact, but it did not modify the actual statutes that comprise the TEEOSA. Nevertheless, the legislation should be classified among the other major proposals that shaped public school finance in Nebraska. From a policy perspective, the legislation brought out some important policy discussions, not the least of which was the true purpose of an equalization-based school finance system. LB 1228 was touted as a great achievement for public education with far reaching objectives. Although in recent times, most of the financial elements of the 1998 legislation have been set aside due to state budget shortfalls and economic troubles.

LB 1228 was the product of various contentious issues that arose in the previous four or five years. And some of the policy directives contained in LB 1228 represented attempts at resolving long standing debates and controversies. The bill was sponsored by Senator Ardyce Bohlke, chairwoman of the Education Committee, and co-sponsored by 20 other state senators.¹⁸⁹³ Senator Bohlke's commitment to the bill was such that she

¹⁸⁹³ Legislative Bill 1228, *Adopt the Quality Education Accountability Act*, sponsored by Sen. Ardyce Bohlke, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, title first read 20 January 1998. Cosponsors included Senators Abboud, Brashear, Bromm, Brown, Elmer, Hilgert, Hudkins, Janssen, Dw. Pedersen, D. Pederson, C. Paterson, Raikes, Schimek, Schrock, Stuhr, Suttle, Thompson, Wesely, Wickersham, and Willhoft.

designated the measure as her personal priority just one day after the bill was officially introduced on January 20, 1998.¹⁸⁹⁴ Being a 60-day, short session, Senator Bohlke wasted no time in letting her colleagues know where much of her attention would be spent. In fact, She had used the interim period to carefully prepare the proposal, building a collaborative network of support, and testing the idea with consultants and advisors.

Bohlke's position on the Education Committee gave her the authority to establish the public hearing schedule for bills under her committee's jurisdiction. And LB 1228 was among the first to be heard in a public forum. The public hearing was held on February 2, 1998 and most every major representative group was there to support the bill, in addition to a variety of rural and urban school district representatives.¹⁸⁹⁵ The only opponent of the measure was Ross Tegeler, who represented the Excellence in Education Council, the governing body having statutory authority to disperse funds from the Education Innovation Fund (a beneficiary fund under the State Lottery). So why would a state created governing body oppose such a bill?

"The heart of education"

The opposition by the Excellence in Education Council sprang from what its members considered a raid on the monies within their oversight. The funding source for LB 1228 would largely derive from monies distributed to the council from the state lottery proceeds. Since 1992 these funds had been used for grants to schools that make application and vow to make certain improvements or innovations in educational services to students. But ever since its creation, the beneficiary funds under the State Lottery had been the subject of countless grabs or attempted grabs by lawmakers in order to bypass the more difficult task of procuring appropriations from the state's General Fund. In short, the beneficiary funds were easy and convenient targets for funding sources.

¹⁸⁹⁴ NEB. LEGIS. JOURNAL, 21 January 1998, 357.

¹⁸⁹⁵ Committee on Education, *Committee Statement, LB 1228 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 1.

One year before the introduction of LB 1228, the Excellence in Education Council adopted a resolution, a set of guiding principles, to outline the mission of the council. As Ross Tegeler testified on February 2nd, the principles provide that:

- (1) the funds should be utilized to encourage innovation;
- (2) the funds should be considered as research and development resources for education in Nebraska;
- (3) the funds should be support local school improvement planning and the implementation of those local plans; and
- (4) the funds should be distributed through the grant application process as initially prescribed by the Legislature.¹⁸⁹⁶

Tegeler emphasized it was not the goals within LB 1228 that the council opposed but rather the funding source. He noted that LB 1228 was but one of many bills designed to utilize funds under the council's supervision. "We are also aware that a number of other bills before this session of the Legislature would also seek to utilize resources from the Education Innovation Fund," he said, "In fact, the aggregate of the proposals to reallocate funds from the Education Innovation Fund far exceed the receipts to that fund."¹⁸⁹⁷

In the case of LB 1228, Senator Bohlke believed the policy objectives justified usage of lottery proceeds. In fact, the objectives were so important, she felt, that both lottery proceeds and General Fund appropriations were justified. So what were these objectives that were so important as necessitate state appropriations along with a restructuring of the Education Innovation Fund?

Since coming to her position on the Education Committee, Senator Bohlke believed the dominant item of discussion had been the school finance formula. In 1995, her second year as chairwoman, the major piece of legislation was spending limitations and special education funding. In 1996, major modifications to the formula were enacted under LB 1050 while the Legislature also set about establishing levy limits under LB 1114. In 1997 the attention of the Legislature focused on major formula modifications

¹⁸⁹⁶ Committee on Education, *Hearing Transcripts, LB 1228 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 2 February 1998, 55-56.

¹⁸⁹⁷ *Id.*, 56.

under LB 806. Through most of this timeframe, very little actual discussion occurred on what Senator Bohlke called the real issues of education. “I think we’ve set the parameters on the funding,” she said, referring to the school finance formula.¹⁸⁹⁸ “Now we’re looking at the heart of education,” she added.¹⁸⁹⁹

As advanced from committee on February 24th by an 8-0 vote, LB 1228 proposed to create the Quality Education Accountability Act with four major components: (1) quality education incentives, (2) a financial reporting system, (3) a testing program, and (4) a mentor teacher program.¹⁹⁰⁰

Table 108. Summary of LB 1228 (1998) as Advanced Committee

1. Quality Education Incentives.

Quality education incentive payments would be provided to a local system each year it meets the qualifications. The first two years a system qualifies, the system must meet all of the “primary quality factors.” The third and fourth years, the system must meet all of the primary factors and at least two of the “premier quality factors.” The fifth and sixth years, the local system must meet all of the primary factors and at least three of the premier factors. The seventh year and each year thereafter, a local system must meet all of the primary factors and all of the premier factors.

The primary quality factors are:

- a. Adoption of state academic standards or standards approved by the State Board as being more rigorous;
- b. An alternative school, class, or educational program is available or in operation for all expelled students or there is a policy to have such a program available if any students are expelled;
- c. Each district has an approved program for learners with high ability or there is a policy to have a program available if any students are identified; and
- d. At least 60% of the graduating seniors have taken a standard college admissions test and the average most recent score is above the statewide average on any exam taken by at least 25% of the graduating seniors.

¹⁸⁹⁸ Leslie Reed, “School Bill Advances The plan aims to use testing and financial reporting to increase schools' accountability,” *Omaha World-Herald*, 6 March 1998, 1.

¹⁸⁹⁹ *Id.*

¹⁹⁰⁰ Committee on Education, *Executive Session Report, LB 1228 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 24 February 1998, 2.

Table 108—*Continued*

The premier factors are:

- a. At least one teacher certified by the National Board for Professional Teaching Standards;
- b. At least 36% of the certificated teachers in the local system have advanced degrees;
- c. Each district participates in the mentor teacher program and provides a mentor for each first-year teacher or has a policy to participate and provide mentors if any first-year teachers are hired; and
- d. The high school district improves the annual percentage dropout rate from the prior year or maintains a dropout rate of 4% or lower.

If at least 40% of the formula students qualify for the poverty factor as per the school finance formula and meets all of the qualifications except that the average test scores are not above the statewide average, the local system would receive payments equal to \$50 per formula student multiplied by 2 times the percentage of seniors who scored above the statewide average on any test is divided by the number of seniors who have taken a standard college admissions test.

Applications would be submitted to the Excellence in Education Council on or before July 1 of each year, using the most recent information and data available. If the criteria are met, the local system would qualify and receive payments from the Education Innovation Fund on or before September 1. The payments would be \$50 per adjusted formula student or \$100 per adjusted formula student for local systems in the very sparse cost grouping. If the unobligated balance in the fund is less than the amount calculated, each system would receive a pro rata amount.

The incentive payments may only be used for the purposes set forth for major competitive grants from the Education Innovation Fund. The payments would be made to the high school district, which would determine how the payments are to be used after consultation with all Class I districts in the system. Payments may be transferred to Class I districts. Payments are not included as formula resources. The Excellence in Education Council may audit the use of quality education payments.

2. Financial Reporting System.

The State Board of Education must provide a financial reporting system for all local systems beginning in 1999. The reporting system must:

- a. Provide for standardization and uniformity in the classification of all receipts and expenditures;
- b. Report all receipts and disbursements to the public and to NDE in a consistent format that easily explains to taxpayers how education funds are spent and where the funds are generated for the state, each local system, and each attendance center;

Table 108—*Continued*

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- c. Be adaptable to changing requests for information;
 - d. Be provided in an electronic format;
 - e. Provide for the inclusion of Class I data with the primary high school district in a manner that allows for analysis of the Class I and the primary high school district separately and as an aggregate;
 - f. Provide for electronic filing of reports with the department and the Auditor;
 - g. Provide for electronic access to reports; and
 - h. Maintain compatibility with existing accounting systems.

NDE must, by rule and regulation, prescribe the format and content of financial reports that are to be filed or made available to the patrons of each system. The system may be purchased from a private vendor or developed by the department after a cost analysis. NDE must also provide periodic training to district and ESU personnel and to school board members and interested members of the public. The department and each local system must provide defined financial reports to the media and other interested parties. The state information must also be available on a statewide public computer information network. Districts may also provide additional financial reports and data generated by the financial reporting system.

3. Testing Program.

The State Board must implement a statewide testing program for students in a selected grade in each of the grade ranges 4-6, 7-9, and 10- 12 each fall semester beginning in 2000 and responsible for the cost of the test materials and scoring. The testing program must consist of one test purchased from a recognized testing service that tests students in the areas of mathematics, reading, science, and social studies, plus one writing test, either developed within the state by educators with expertise in writing assessment or purchased as a part of the test for the other specified subjects.

The purposes of the testing program are:

- a. Evaluate whether or not students have acquired skills and knowledge to meet or exceed state academic standards;
- b. Measure progress of students toward meeting state academic standards;
- c. Provide information for analysis of standards and consideration of new standards;
- d. Allow comparisons between the achievement between local systems; and
- e. Allow comparisons between Nebraska students in other states.

All public school districts must participate, and all students in the designated grade levels must be tested, except the State Board must establish criteria that may exempt special education students from testing in any or all subject areas. The state board may also adopt alternative tests or scoring for special education students and students with limited English proficiency.

Table 108—*Continued*

<p>The individual scores must be confidential, must be reported to the district, and must not be reported to the department. Aggregate results for each district must be reported to the department by the testing service and writing test scorers. Districts may also make aggregate data available based on attendance centers.</p> <p>4. Mentor Teacher Program.</p>	<p>The state board must develop a mentor teacher program to for individuals entering teaching. The state board must conduct a comprehensive study of the needs of new teachers and how those needs may be met through a program of orientation and mentor support. The state board also must develop and coordinated mentor teacher training to be funded by the Education Innovation Fund and must develop criteria for selection excellent, experienced, and qualified teachers to be participants. The state board must report to the Legislature on or before December 1, 1998.</p>
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Source: Committee on Education, *Committee Statement, LB 1228 (1998)*, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 3-5.

The legislation proposed to amend the law relevant to the Education Innovation Fund in order to allocate up to 10% of the available funds first for mentor teacher training and another amount for quality education incentive payments. Any remaining money would be allocated by the Governor through the existing provisions for mini-grants to school districts.¹⁹⁰¹ At the time, the Education Innovation Fund received about \$9.4 million per year in lottery proceeds. This meant that about \$940,000 would be available for the teacher mentor program, and about \$6.5 million would be available for the quality incentive payment program.¹⁹⁰²

Debate and Passage

Unlike LB 1229 related to gifted education, LB 1228 would consume a large amount of time for floor debate and deliberation during the 1998 Session. Most of the heated discussion focused on the proposed assessment system, and whether there should be a single test or a multiple test system. There was discussion about the varying impact the legislation would have on different sized school systems and how many students and teachers would be benefited from the various proposed programs. Generally, the debate

¹⁹⁰¹ *Committee Statement, LB 1228 (1998)*, 5.

¹⁹⁰² Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 1228 (1998)*, prepared by Sandy Sostad, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 24 March 1998, 1-2.

was not so much whether the bill should become law, but exactly in what form. There was generally constructive, supportive dialogue among legislators on the outline of the proposal. “It is not often that a bill comes along that overall, in my opinion at least, has such a positive effect on the possible quality of education,” said Senator Chris Beutler.¹⁹⁰³ However, there were a few vocal dissenters among the body.

Those who opposed the legislation had various concerns, such as the proposed assessment system or the cost of the programs. At least at one point in the floor debate, Senator Ernie Chambers had a blanket complaint with the entire bill. “This bill is not about education,” Chambers warned.¹⁹⁰⁴ “This bill is about getting hold of some money and finding a way to implicate enough districts in this scheme to get enough votes to pass this bill into law,” he said, “It is very poorly considered legislation, and it is self-contradictory.”¹⁹⁰⁵ He believed that if funds were to be distributed by the state then programs should be mandated so that all children receive the benefit. This was a consistent argument that the Omaha senator voiced with regard to LB 1229.

The important item to note about LB 1228, as it relates to the school finance formula, is that the funds received for quality incentive payments or for the mentor teacher program were not considered as actual receipts. Equalized as well as non-equalized districts would be eligible for the funds and it would not be counted against the state aid they receive the following year. And this raises one of the more interesting questions about the legislation that did not come out during debate perhaps as much as it should have. The policy question might have been whether the funding programs contained in the bill were consistent with the concept of a true equalization formula.

LB 1059 (1990), LB 1050 (1996), and LB 806 (1997) all sought to implement or further implement an equalization aid-based formula. Those districts that need the funds most would receive them first. LB 1228, on the other hand, added another layer of state

¹⁹⁰³ Legislative Bill 1228, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), 3 March 1998, 12485.

¹⁹⁰⁴ *Id.*, 12575.

¹⁹⁰⁵ *Id.*

aid, albeit a smaller amount, to those districts that met certain criteria unrelated to such considerations as property valuation, tax levies, spending lids, and student population. A further criticism of the 1998 legislation might have been that the measure tended to be more easily accessible to those districts that possessed the existing resources, both labor and finances, to apply for the funds. The latter criticism was, in fact, brought out during the debate, both on the floor and behind the scenes.

The argument could have been made that if the intent of the Legislature was to tap into the resources of the Education Innovation Fund, the funds should have flowed through the equalization formula. This would have been in keeping with the work completed and the legislative intent already forged in developing an equalization-based formula for public schools. Of course, one of the other elements of school finance is the *political* — the will of a legislative body to meet a policy objective. In the case of LB 1228 there were, what the sponsors believed, some very important educational themes, services, and programs to be promoted. These included programs for expelled students, so that they were not without educational opportunities, and gifted education, so the other side of the special services equation was addressed. The Legislature, through LB 1228, wanted to establish some of the priorities it collectively wished for public education, such as adoption of academic standards, high college admission scores, low dropout rates, and more teachers possessing graduate level education. The presumption made by the legislation was that if schools achieve or at least pursue some or all these objectives then students would benefit and public education would be improved.

LB 1228 did produce some long over due discussion about the educational issues that may have been ignored in previous sessions. In fact, the previous two legislative sessions were largely used on school finance issues. Perhaps this was by necessity in light of the property tax policy changes. But in 1998, the discussion turned directly to issues that impacted public education, at least in the collective opinion of the Legislature.

Senator Bohlke's priority bill may not have sailed through the legislative process as fast as she had hoped, but it did receive strong approval at each stage of debate.

Finally, on April 2nd, the body passed LB 1228 by a 40-6 vote.¹⁹⁰⁶ Governor Nelson signed the measure into law on April 8th, but he line-item vetoed the companion appropriation bill. In a letter dated April 8th, Governor Nelson wrote:

With this letter, I am returning LB 1228A with a line-item veto. This legislation also provides for the implementation of an annual statewide assessment beginning in the school year 2000-2001. I am vetoing \$1,728,000 General Funds provided by the Legislature for Fiscal Year 1999-00 for carrying out the provisions of the assessment program in LB 1228.

My decision allows the Department of Education time to prepare a Request For Proposal (RFP) and receive bids from national testing services on the cost of potential testing instruments. The department can return to the Legislature with this information and a more precise estimate of the costs for the implementation of this testing program.

I believe the state will benefit from taking more time to collect and review data on the implementation of a statewide assessment before committing the funding for this program.¹⁹⁰⁷

Nelson's action may have been an annoyance to the department, and perhaps to Senator Bohlke, but he did have a point about getting the cart before the horse. It was simply not known for sure what the cost of the assessment instrument might be at that time.

On the whole, the passage of LB 1228 was a great victory for Senator Bohlke and other supporters. The bill caused a fairly significant collaborate effort by a variety of organizations and different sized school districts. Unfortunately, just a few years later the Legislature would find it necessary to siphon off the proceeds of the Education Innovation Fund to help the state with its budget difficulties following the "911" disaster and the economic chaos that ensued.

Table 109. Review of LB 1228 (1998) as Passed and Signed into Law

Introduced and prioritized by Senator Bohlke, and co-sponsored by 20 other senators, LB 1228 created the Quality Education Accountability Act. The new can be divided into four components: (i) quality education incentive payments, (ii) financial reporting system, (iii) statewide assessment, and (iv) teacher mentoring.

¹⁹⁰⁶ NEB. LEGIS. JOURNAL, 2 April 1998, 1682.

¹⁹⁰⁷ Id., 8 April 1998, 1874-75.

Table 109—Continued

1. Quality Education Incentive Payments.

- A. Criteria. Quality education incentive payments would be provided to local systems each year the local system meets the qualifications described below.

<i>Qualification Years</i>	<i>Qualifying Factors</i>
1st - 2nd	all primary quality factors
3rd - 4th.....	all primary quality factors and at least 2 premier quality factors
5th - 6th.....	all primary quality factors and at least 3 premier quality factors
7th & beyond	all primary quality factors and at least 4 premier quality factors

Primary Quality Factors:

- *Academic Standards*. Each district in the local system has adopted academic standards adopted and promulgated by the State Board of Education OR academic standards approved by the state board as generally more rigorous than the academic standards adopted and promulgated by the state board.
- *Alternative Education for Expelled Students*. Each district in the local system has an alternative school, class, or educational program available or in operation for all expelled students or, for districts that do not have any expelled students, an adopted school board policy to have an alternative school, class, or educational program available or in operation for all expelled students if any expulsions occur.
- *College Admissions Test*. At least 60% of the graduating seniors in the local system have taken a standard college admissions test and those students have an aggregate average score, using the most recent test score on each test taken for each student who has taken at least one of the tests, above the statewide average score on any of the standard college admissions tests which at least 25% of the graduating seniors have taken.

Premier Quality Factors:

- *National Certification*. The local system has at least one teacher who has received credentials from a national nonprofit organization the purpose of which is to establish high and rigorous standards in a broad range of educational areas for what accomplished teachers should know and be able to do and which issues credentials to teachers who demonstrate that they meet those standards;
- *Graduate Degrees/Courses*. At least 36% of the certificated teachers in the local system have advanced degrees or at least 30 graduate-level hours.
- *Teacher Mentoring*. Each first-year teacher in a local system is provided with a mentor participating in the mentor teacher program established under LB 1228 or a mentor teacher program established by a district in the local system and approved by the state board.

Table 109—Continued

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- *Dropout Rate.* The high school district improves the annual percentage dropout rate from the prior year or maintains a dropout rate not to exceed 4%.
 - *Gifted Education.* An approved program for learners with high ability is available to every student identified as a learner with high ability in the local system and there is at least one learner with high ability identified.
- B. Application Process. Local systems meeting the criteria may apply to the Excellence in Education Council for quality education incentive payments on or before October 1, 1998, for the 1998-99 school fiscal year and on or before July 1st of each fiscal year thereafter, using the most recent information and data available. If the information and data in the application indicate that the local system meets the criteria, the local system will qualify for quality education incentive payments.
- C. Payment Amounts. Incentive payments will be made from the Education Innovation Fund (State Lottery) on or before December 1, 1998, for the 1998-99 school fiscal year and on or before September 1st of each school fiscal year beginning with 1999-00 school fiscal year. The payments will equal \$50 per adjusted formula student or \$100 per adjusted formula student for local systems in the very sparse cost grouping based on the most recent certification of state aid. Pro Rata: If the unobligated balance in the fund is less than the amount calculated for quality education incentive payments due to qualified local systems, each qualified local system will receive a pro rata amount such that the amount of payments equals the unobligated balance in the fund.
- D. Permitted Uses for Incentive Payments. Incentive payments may only be used for pilot projects or model programs for the purposes set forth in section 9-812 for major competitive grants. Incentive payments may not be used to supplant federal, state, or local funds. The payments must be made to the high school district, and the high school district prior to the application must determine how the payments will be used after consultation with all Class I school districts in the local system. Incentive payments, or portions of such payments, may be transferred to the Class I school districts. (NOTE: Quality education incentive payments will not be included as local system formula resources. The Excellence in Education Council may audit the use of quality education incentive payments at the discretion of the council.)
2. Financial Reporting System.
- A. Feasibility Study. With NDE's assistance, the School Finance Review Committee is directed to complete a feasibility study and make recommendations for a financial reporting system for all K-12 local systems and report to the Legislature's Education Committee by December 1, 1998.

Table 109—*Continued*

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- B. System Specifications. The financial reporting system must:
- Provide for standardization and uniformity in the classification of all receipts and expenditures as a basis for preparing financial reports;
 - Report all receipts and disbursements to the public and NDE in a consistent format that easily explains to taxpayers how education funds are spent and where the funds are generated for the state, each local system, and each attendance center;
 - Be adaptable to changing requests for information;
 - Be provided in an electronic format;
 - Provide for the inclusion of Class I data with the data of its primary high school district in a manner that allows for analysis of the data for the Class I and the primary high school district separately and as an aggregate;
 - Provide for electronic filing of reports with NDE and the State Auditor;
 - Provide for electronic access to reports as filed; and
 - Maintain compatibility with existing accounting systems.
3. Statewide Assessment.
- A. Creation of Program. The State Board of Education is directed to implement a statewide assessment program for students in each of the grade ranges 4-6, 7-9, and 10-12 each fall semester beginning with the fall semester of 2000.
- B. Purchase/Development of Assessment Instrument. The assessment program will consist of one assessment purchased from an assessment service for each selected grade which tests students in the areas of mathematics, reading, science, and social studies, plus one writing assessment, either developed within the state by educators with expertise in writing assessment or purchased as a part of the assessment for the other specified subjects.
- C. Purposes of Assessment Program.
- Evaluate whether or not students in a school have acquired skills and knowledge that allow them to meet or exceed academic standards established by the state;
 - Measure progress of students in a school system toward meeting academic standards established by the state board;
 - Provide information for analysis of adopted standards and consideration of new standards;
 - Allow comparisons to be made between the academic achievement of students in a local system and students in another Nebraska local system; and
 - Allow comparisons to be made between the academic achievement of Nebraska students with the academic achievement of students in other states.

Table 109—*Continued*

- D. Participation. All public school districts are required to participate in the assessment program, and all students enrolled in the designated grade levels in such districts must be assessed except as follows: (i) the state board must establish criteria that schools may use to exempt special education students from assessment in any or all subject areas; and (ii) the state board may also adopt alternative assessments or means of scoring for special education students and students with limited English proficiency.
- E. Reporting. The individual assessment scores will be confidential, will be reported to the school district for educational purposes, and will not be reported to NDE. Aggregate results for each school district will be reported to the department by the assessment service and writing assessment scorers. School districts may also make aggregate data available based on attendance centers.
- F. Cost of Assessment Program. NDE is responsible for the cost of the assessment materials and scoring.

Notes: The Governor line-item vetoed a portion of the appropriation bill, LB 1228A, concerning the funding for the statewide assessment program. LB 1228A would have appropriated \$1,728,000 for FY1999-00 to fund the program. The Governor argued that the funds were not needed at this time since the program would not be implemented until the fall of 2000.

The Legislature's Fiscal Office estimates a General Fund cost of approximately \$1,945,000 (\$28.20 per test) for a multiple choice test and a writing assessment which is purchased from a major test publisher. If only a multiple choice test is purchased from a testing company and the writing assessment is developed and administered by educators in the state, then annual testing costs may be closer to \$1,511,000 (\$21.90 per test).

4. Teacher Mentoring.

- A. Guidelines. The State Board of Education is directed to develop guidelines for mentor teacher programs in local systems in order to provide ongoing support for individuals entering the teaching profession.
- B. Funding. Funding for mentor teacher programs will be provided to local systems that provide a mentor for each first-year teacher in the local system. The mentor teacher programs will be funded by the Education Innovation Fund and must identify criteria for selecting excellent, experienced, and qualified teachers.
- C. Report. The state board must report to the Legislature on or before December 1, 1998, on its progress.

Final Notes on LB 1228: The quality education incentive payments and teacher mentoring programs are to be funded through the Education Innovation Fund. In 1998-99 the estimated receipts to the Education Innovation Fund is \$9.4 million. LB 1228 amends existing law to create the following order of priority to draw funds from the Education Innovation Fund: First Priority - up to 10% to fund mentor teacher programs; Second Priority - up to 70% for quality education incentive payments; and Third Priority - up to 20% for competitive grants (the original purpose of the Fund).

Table 109—*Continued*

Using estimated annual receipts of \$9.4 million to the Education Innovation Fund, approximately \$6.58 million will be available in 1998-99 and 1999-00 for quality education incentives. If half of the adjusted formula students in the state qualified for incentive payments, then approximately \$8.3 million (332,000 adjusted formula students x \$50) would be needed for incentive aid, which would necessitate the prorating of available funds.

Source: Legislative Bill 1228, in *Laws of Nebraska, Ninety-Fifth Legislature, Second Session, 1998*, Session Laws, comp. Patrick J. O'Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State), §§ 1-7, pp. 1-6 (741-46).

LB 1175 - Full Funding

LB 1175 (1998) was introduced as a technical clean-up bill for statutes pertaining to schools. The lengthy bill contained modifications to various sections of law in order to update them or otherwise edit them, but in most cases not produce substantive policy changes.

Clean-up bills are offered each year by just about every standing committee of the Legislature having jurisdiction over a specific area of law, whether it is criminal law, banking, health, education, etc. In many cases, once advanced from committee these clean-up bills become what lobbyists and legislators alike call “Christmas tree bills,” since interested parties attempt to attach ornaments (amendments) to them throughout the legislative process. The bills usually have such a broad scope that issues of germaneness are seldom raised. LB 1175 would befall the fate of all such bills and numerous amendments would be attached to the bill. But unlike most technical cleanup bills, LB 1175 would become known as the technical cleanup bill that caused a special session.

Among the provisions of the bill, LB 1175 sought to change the calculation of special education allowances in the state aid formula to include receipts for wards of the state and wards of the court.¹⁹⁰⁸ The bill changed the calculation of total adjusted formula students for local school systems qualifying for the extreme remoteness factor in the state aid formula.¹⁹⁰⁹ The bill changed the parameters and qualifications for local systems within the very sparse cost grouping so that additional systems would be eligible for such

¹⁹⁰⁸ Legislative Bill 1175, Final Reading, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, § 25, p. 58.

¹⁹⁰⁹ *Id.*, § 17, p. 39.

cost grouping.¹⁹¹⁰ The bill also outright repealed several sections of existing law that provided for the Special Education Accountability Commission and the termination of the existing special education funding formula.¹⁹¹¹ Without the repeal of these sections, Nebraska simply would not have a funding formula for reimbursement of special education costs to school districts.

In all, the bill contained 71 sections and was comprised of 107 pages. But it was one portion of the bill in particular that would escape the careful attention of the Legislature and the administration, and ultimately lead to its veto and later a special session. This chain of events would also lead to further legislation in the 1999 Session concerning the issues raised by LB 1175.

The event that set off a chain reaction in legislative activity was the adoption of an amendment to LB 1175 on the evening of April 6, 1998. The Legislature occasionally extends a session day into the evening in order to accomplish more business and make some headway on the overall legislative agenda. This often occurs toward the end of a legislative session when senators are desperate to finish as much business as possible. On April 6th, the Legislature was just eight days away from the end of the session, and there was a heightened sense of urgency to work through a number of bills, including LB 1175. By this point in time, the bill already had been amended seven times and also survived a motion by Senator Ernie Chambers to recommit to the Education Committee for further review.¹⁹¹²

By the time the bill arrived for debate on Select File, the tedium of the intricate educational issues being addressed had taken its toll on most members of the body. To be certain, members of the Education Committee were quite aware and knowledgeable about the amendments under discussion. But to other members of the body, LB 1175 represented just another cleanup bill. By the next morning, all this would change.

¹⁹¹⁰ Id., § 18, p. 40.

¹⁹¹¹ Id., § 70, pp. 106-107.

¹⁹¹² NEB. LEGIS. JOURNAL, 20 March 1998, 1219.

The amendment at issue was introduced and filed on March 30th, a week before it was to be debated, by Senator Bob Wickersham of Harrison. Wickersham, a member of the Education Committee, had filed the amendment for the purpose of incorporating the intent and language of another bill, LB 1124 (1998), into LB 1175. This is a common practice among legislators and it provides the opportunity to advance legislative proposals that might not otherwise have a chance for passage.

The Wickersham amendment to LB 1175 would change the method of calculating the amount of state aid to schools. The local effort rate in the school aid formula would be established at 90.97% times the maximum levy allowed schools under the property tax lid.¹⁹¹³ The Legislature would then be required to provide sufficient annual appropriations to fully fund the amount of state aid certified by NDE based on the local effort rate established under the bill. In essence, there would finally be a guarantee, of sorts, by the Legislature to ensure complete funding from year to year. The formula would function without political influences. As Wickersham explained to his colleagues, “There is after, if this amendment is adopted, a clear, direct process formula for calculating the amount of money that should be appropriated to fund TEEOSA.”¹⁹¹⁴

The amendment established the local effort rate at \$1.00 (\$1.10 multiplied by .9097) for the state aid distribution in school years 1999-00 and 2000-01, which was the same local effort rate used in the distribution of state aid for the 1998-99 school year. Upon the reduction of the maximum levy to \$1.00 in 2001-02, as prescribed by LB 1114 (1996), the local effort rate would reduce to approximately 91¢. The Legislature’s Fiscal Office anticipated this would require an additional \$70 million in state aid appropriations once the maximum levy dropped to \$1.00.¹⁹¹⁵

Interestingly, only one legislator questioned Senator Wickersham about the automation of funding that would be set in place by the amendment. Senator Pam Brown

¹⁹¹³ Id., *Wickersham AM4207*, 30 March 1998, 1548.

¹⁹¹⁴ Legislative Records Historian, *Floor Transcripts, LB 1175 (1998)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 95th Leg., 2nd Sess., 6 April 1998, 15830.

¹⁹¹⁵ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 1175 (1998)*, prepared by Sandy Sostad, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, 8 April 1998, 2.

of Omaha asked Wickersham, “This is the amount that we will then automatically put into the TEEOSA amount for state aid?”¹⁹¹⁶ To which Wickersham answered in the affirmative even though at the time of debate no one knew for sure what the future increases in state aid appropriations would entail. During his exchange with Senator Brown, Wickersham elaborated:

I’m not attempting to increase funding. It’s true that I did introduce a bill that had this formula in it that would in fact have increased funding and increased funding fairly significantly. It is not our expectation that this actually increases the level of funding that we would receive under the current estimating process.¹⁹¹⁷

Wickersham hastened to add, “I can’t tell you that that’s a hundred percent accurate, but that’s my intention.”¹⁹¹⁸ Brown would later say that her colleagues simply did not understand what they were voting for.¹⁹¹⁹ But this is certainly not the fault of Senator Wickersham who carefully explained the purpose of the amendment and offered to answer any questions posed to him.

In truth, the Wickersham amendment, which was adopted by a 25-0 vote, would have accomplished what Wickersham set out to achieve.¹⁹²⁰ It would have simplified the process of determining an annual appropriation to fund the formula from year to year. It would have eliminated some of the educated guesswork by legislative and department staff. Whether intended or not, it would have also increased state appropriations for public schools once the maximum levy dropped to \$1.00. And this became the catching point not only for the amendment but also for the bill itself.

The Governor’s office, which often takes an active role in shaping legislation, failed to take immediate note of the amendment. However, within a few days the administration had begun distancing itself from what it perceived as a blank check for

¹⁹¹⁶ *Floor Transcripts, LB 1175 (1998)*, 6 April 1998, 15831.

¹⁹¹⁷ *Id.*, 15832.

¹⁹¹⁸ *Id.*

¹⁹¹⁹ Leslie Reed, “School-Aid Entitlement? Senators’ Commitment Would Start at \$70 Million,” *Omaha World-Herald*, 12 April 1998, 1.

¹⁹²⁰ NEB. LEGIS. JOURNAL, 6 April 1998, 1762.

public education. Leslie Reed, reporter for the *Omaha World-Herald*, said perhaps what the administration wanted to say when she wrote on April 12th, “With a five-minute debate and a 25-0 vote, the Nebraska Legislature has committed itself to an additional \$70 million a year for public schools beginning in the next few years.”¹⁹²¹

A Final Reading vote on LB 1175 was set for the very last day of the session, April 14, 1998. While the last day of most regular sessions usually entails ceremonial activities and perhaps final passage of non-controversial bills, the 1998 Session would end with drama, a few hard feelings, and perhaps a lesson to all about seemingly technical-related bills. During Final Reading discussion, Senator Ardyce Bohlke, chair of the Education Committee, filed a motion to recommit the bill to committee.¹⁹²² The motion was not meant seriously, but rather to offer her and Senator Wickersham a chance to respond publicly to the controversy generated by the Wickersham amendment.

Bohlke noted several sections of the bill that required the Legislature’s immediate action and therefore justification for passage, but it was the termination of the existing special education formula that rose above all others. Bohlke admitted that special education cost reimbursement would continue for the current school year but the same would not be true for the following school year if LB 1175 did not pass. Said Bohlke:

The question is next year, next September when school begins until we would come into session, if we would not pass this, we would not have a special ed formula in place. Therefore, schools would not know what the state will be reimbursing them for special ed costs. That obviously would cause a great deal of confusion not only to schools as they try to determine which services they should offer, but more importantly to students in those special education programs and certainly to the parents of those students in those special education programs.¹⁹²³

Bohlke said the lack of a special education formula would be particularly difficult for smaller, rural schools that might not have the resources or reserves to make up the difference.

¹⁹²¹ Reed, “School-Aid Entitlement?” 1.

¹⁹²² NEB. LEGIS. JOURNAL, 14 April 1998, 1951.

¹⁹²³ *Floor Transcripts, LB 1175 (1998)*, 14 April 1998, 16409.

Bohlke then allowed Senator Wickersham to offer his comments on the situation. Wickersham said he was surprised by the controversy surrounding his amendment and adamantly denied any intent to create a “new spending issue.”¹⁹²⁴ He said the idea of accounting for the lost revenue to schools, due to the reduction in the maximum levy from \$1.10 to \$1.00, was an item of discussion dating back to the passage of LB 806 (1997). Said Wickersham:

I am glad that the controversy now surrounding [AM]4207 has perhaps brought it to the front of your consciousness because it is something we need to be aware of. It is something that we need to plan for. It is something in my opinion that we need to provide for because it will happen. I will not vote to raise the levy limitations. And I will not vote to deprive schools of the resources that they need to provide an adequate education for students in this state.¹⁹²⁵

Wickersham said the Legislature made a policy decision when it passed LB 806 (1997) committing major modifications to the school finance formula. Part of the policy decision was to infuse more funds into the formula to account for the newly imposed levy limitations under LB 1114 (1996). The loss of local revenue would be made up by increased state aid. His amendment to LB 1175, he said, was simply a continuation of the goals set out in that policy.

Bohlke withdrew her motion in order to permit a final vote, but the discussion would continue through the remainder of that morning and resume in the afternoon. A number of legislators rose to speak in favor of the bill as it stood and endorsed the idea proposed by the Wickersham amendment. Others, including Senator Brown, rose to encourage a reconsideration of the Wickersham amendment and permit the remainder of the bill to pass. Ultimately, all attempts to stall the bill failed and a final vote for passage was allowed to happen. The bill passed by a surprisingly wide margin with 34 in favor and only eight opposed.¹⁹²⁶

¹⁹²⁴ Id., 16410.

¹⁹²⁵ Id., 16411.

¹⁹²⁶ NEB. LEGIS. JOURNAL, 14 April 1998, 1957.

Governor Nelson vetoed the bill, as expected, four days after the Legislature had adjourned sine die.¹⁹²⁷ In a letter to the Legislature, Nelson wrote that he understood the significance of the bill to Nebraska's schools. However, Nelson wrote:

I cannot support language in LB 1175 which changes the intentions of the State regarding policy to create greater efficiencies in political subdivisions and provide property tax relief for the citizens of Nebraska. I am always concerned with "Christmas tree" bills, and in this case, unfortunately, the last ornament collapsed the whole tree.

LB 1175 changes the formula to calculate state aid to schools and states the Legislature shall "fully fund" the amount certified. This formula alters what I believe Nebraskans expect in encouraging government to explore ways in which to become more efficient. Spending limitations were put into place to provide property tax relief, not to create a tax shift to the State. LB 806 was designed to address the changing financial challenges schools will face, and current statute allows the flexibility the State needs to determine the appropriate spending obligations of the State in the future.¹⁹²⁸

Nelson reminded legislators that state aid to schools had increased by 86% since 1992. But increases in state aid were not the only priority of state government. Nelson wrote, "The answer to providing tax relief and creating efficiencies in government cannot be answered by increasing the obligations of the State."¹⁹²⁹ He urged, if not chided, the Legislature to give more consideration before committing the state to a "policy shift" such as that found in LB 1175.¹⁹³⁰ Governor Nelson was not insensitive to the other important elements of LB 1175, at least as he viewed them, and he would call the Legislature back into session to address the less controversial items contained in the bill.

C. The 1998 Special Legislative Session

Governor Nelson and his staff may have been caught off-guard briefly during the debate on LB 1175 (1998). But they would ultimately have the final word. On May 4, 1998 the Governor exercised his constitutional prerogative to call the Legislature into

¹⁹²⁷ Id., 20 April 1998, 1988.

¹⁹²⁸ Id.

¹⁹²⁹ Id.

¹⁹³⁰ Id.

special session for the purpose of addressing the matter.¹⁹³¹ The Legislature would be convened in special session for the first time in six years.

The Nebraska Constitution gives the Governor the authority to convene the Legislature in extraordinary circumstances, and also gives the Governor the authority to limit the scope of the special session.¹⁹³² The idea is to prevent the Legislature from enacting legislation beyond the original purpose set forth by the Governor. In this case, the Governor established a very narrow agenda. The Legislature was to meet beginning on May 13th and enact provisions of LB 1175 with the exception of the Wickersham amendment (AM4207) relating to “fully funding” the state aid formula.¹⁹³³

For a legislative body that receives very little pay in terms of salary, special sessions are often viewed as intrusive to what little time legislators have away from the Capitol. Special sessions are not necessarily an economic hardship for all senators, but they are intrusion nonetheless. Therefore, when the Legislature convened on May 13th the general mood was one of anxiousness to finish its work, and quickly. The exception, perhaps, was Senator Ernie Chambers who used the special session to further his political agenda on the issue of closing Peru State College. The issue had been raised in the 1998 regular session, but the disposition, or perhaps lack of disposition, was not to Senator Chambers’ satisfaction.

Accordingly, one of the three bills introduced in the 1998 Special Session, LB 3, related to the closing of Peru State College. One of the bills, LB 2, related to necessary appropriations for the operation of the Legislature in special session. And the other bill, LB 1, pertained to the stated purpose of the special session as proclaimed by the Governor. Legislative Bill 1 would enact LB 1175 (1998) minus the controversial provisions contained in the Wickersham amendment.¹⁹³⁴

¹⁹³¹ Id., 13 May 1998, 2.

¹⁹³² NEB. CONST. art. IV, § 8.

¹⁹³³ NEB. LEGIS. JOURNAL, 13 May 1998, 2.

¹⁹³⁴ Legislative Bill 1 (1998), *Change provisions related to education*, sponsored by Sen. Ardyce Bohlke, req. of Gov., Nebraska Legislature, 95th Leg., 1st Spec. Sess., 1998, title first read 13 May 1998.

The Peru State College bill, LB 3, did have a public hearing on May 14th, but even Senator Chambers knew the bill would go no further. In fact, the bill was never advanced from committee. The public hearing for LB 1, also held on May 14th, was the real focal point of the special session. In truth, more words would be spoken and more time would be consumed at the hearing for LB 1 than the entire floor debate for the bill in the succeeding days of the special session. The public hearing would also make history in that it was the first such hearing to be broadcast via the Internet for public viewing.

Interestingly, Senator Bob Wickersham, whose amendment initiated the special session, would have the opportunity to face those who testified that day due to his membership on the Education Committee. And one of the individuals to testify on the bill would be the man who called the special session. Governor Nelson chose to testify personally at the hearing rather than delegating the duty to one of his staff. His comments were carefully crafted to avoid giving the impression that he was anti-education in light of his opposition to a provision that would fully fund the state aid formula. “Education continues to be a top priority of my administration,” Governor Nelson said in his opening comments.¹⁹³⁵

He went on to defend his support for education, citing the major increases to public education within the past year. Said Nelson:

This past session we approved a significant increase in the amount of state aid going to benefit public schools, including \$9.7 million for educational service units, \$200,000 for school nursing services, and \$3 million for programs with students with high abilities. In the 1998-1999 fiscal year, the state will provide nearly \$744 million in general funds for state aid to education; an increase of more than \$143 million over the previous year.¹⁹³⁶

Governor Nelson said his administration “addressed the demand for property tax relief” by adding a spending lid to the levy limits enacted in 1996, referring to LB 299 (1996), the companion bill to LB 1114 (1996).¹⁹³⁷

¹⁹³⁵ Committee on Education, *Hearing Transcripts, LB 1 (1998)*, Nebraska Legislature, 95th Leg., 1st Spec. Sess., 1998, 14 May 1998, 49.

¹⁹³⁶ *Id.*

¹⁹³⁷ *Id.*

The Governor was careful not to directly attack the merits of the Wickersham amendment to LB 1175, especially with the senator present at the hearing. He referred only briefly to the amendment saying, “A debate over the more controversial school funding issues for the future can and, I’m sure, will be dealt with at a later date.”¹⁹³⁸ The important thing, he said, was to take on the pressing issues within LB 1 and, specifically, to remove “the uncertainty regarding reimbursement for special education.”¹⁹³⁹

LB 1 mirrored LB 1175 in that it repealed several existing sections of law that would have otherwise eliminated the existing special education cost reimbursement system. The sunset date of the special education funding formula was August 31, 1999, but it was believed that waiting until the 1999 Session would have left school officials in limbo as to funding expectations and budgeting.

Also testifying was Steve Milliken, Special Services Director for Westside Community Schools. Milliken spoke on behalf of the Nebraska Association of Special Education Supervisors and said his association supports the continuation of the existing funding formula as a means of funding special education programs. Said Milliken:

Although the current funding formula is not a perfect system, it’s a system which we believe has not only guaranteed that students with special needs become identified, but also assisted the state in providing quality services which we believe to be some of the best supports in the nation for students with disabilities.¹⁹⁴⁰

Milliken and other testifiers wanted assurances that the Legislature would not re-evaluate its decision to maintain the existing system. But the Education Committee and the Legislature as a whole had no intention of taking on new substantive issues in this particular special session.

LB 1 was advanced from committee the very day of the hearing on a unanimous 8-0 vote.¹⁹⁴¹ The bill then proceeded to advance and ultimately pass by unanimous votes

¹⁹³⁸ Id.

¹⁹³⁹ Id.

¹⁹⁴⁰ Id., 58.

¹⁹⁴¹ Committee on Education, *Committee Statement, LB 1 (1998)*, Nebraska Legislature, 95th Leg., 1st Spec. Sess., 1998, 14 May 1998, 1.

throughout the legislative process. Governor Nelson signed the bill into law and the controversy was put to rest, at least for 1998, but the issue of fully funding the state aid formula would not disappear for very long. In fact, Senator Wickersham would take up the mantle of full funding once again during the 1999 Legislative Session.

Table 110. Summary of Modifications to TEEOSA
as per LB 1 (1998 Special Session)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
15	79-1003	Terms, defined	<p>Eliminated obsolete language and updated terminology to “school fiscal year,” “local system,” and “school board.”</p> <p>The definition for “formula students” was amended by moving the memberships used in calculating the adjustment to fall membership up one year to make the memberships closer to the year when the calculated aid would be distributed.</p> <p>The definition for “transportation allowance” was amended to clarify the procedures for calculating the transportation allowance for the final calculation of state aid. For the certification of aid, the transportation allowance was adjusted by the change in the two school fiscal years preceding the most recently available complete data year. With these changes, the transportation allowance for the final calculation, or recalculation, was not adjusted because the most recently available complete data year used was one year closer to the aid distribution. The adjustments were a mechanism for estimating the data to be used in the final calculation of aid.</p>
16	79-1005.01	School fiscal year 1998-99 and thereafter; income tax receipts; disbursement; calculation	Required the Tax Commissioner to certify income tax liabilities by November 15 for the preceding tax year, instead of the second preceding tax year.
17	79-1007.01	School fiscal year 1998-99 and thereafter; adjusted formula students for local system; calculation	Replaced the term “adjusted formula membership” with “adjusted formula students.” Provided that for local systems qualifying for the extreme remoteness factor, the total adjusted formula students would be greater than or equal to 150. The adjustments for the extreme remoteness factor would not be included in the calculation of the average formula cost per student in each cost grouping, but would be included in the calculation of local system formula needs.

Table 110—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
18	79-1007.02	School fiscal year 1998-99 and thereafter; cost groupings; average formula cost per student; local system's formula need; calculation	Amended LB 989 (1998) to clarify what data sources were used to determine cost groupings. The annual financial reports continue to be for the most recently available complete data year. The annual statistical summary reports and fall membership reports (including supplements) were for the school fiscal year immediately preceding the school fiscal year in which aid was to be paid. The district census was for the second year immediately preceding the year in which aid was to be paid. The cost grouping determination would be completed prior to the certification of state aid and would not be revised for the certification of state aid.
19	79-1008.01	Equalization aid; amount	Added the absolute value of any negative prior year adjustment to the maximum aid under the "lop-off" provisions. Language was also reworded to clarify that small school qualifications apply to distributions, which allowed amounts that were not distributed to "lop-off" systems to be distributed first to systems with less than 900 formula students with below average costs.
20	79-1008.02	Minimum levy adjustment; calculation; effect	Clarified that the levy used to determine the minimum levy adjustment was the general fund common levy.
21	79-1009	Option school districts; net option funding; calculation	Deleted obsolete language; harmonized provisions consistent with other changes.
22	79-1010	Incentives to reorganized districts and unified systems; qualifications; requirements; calculation; payment	Deleted obsolete language; harmonized provisions consistent with other changes.
23	79-1015.01	Local system formula resources; local effort rate; determination	Deleted obsolete language; harmonized provisions consistent with other changes.
24	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	Changed deadlines for nonappealable requests to correct adjusted valuations. Districts and county officials are allowed to file a request with the PTA for a nonappealable correction due to clerical error or assessed value changes due to the qualification status for special use valuation. The previous deadlines for filing the requests were March 15, 1997 for valuations certified in 1996 and October 31 thereafter. Changed the date to June 15, 1998 for valuations certified in 1997. The previous deadlines for the PTA to act on the requests were March 31, 1998 and November 30 thereafter.

Table 110—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
24	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited <i>Continued</i>	Another appeal process with a July 31 date was contained in this section for any type of objection to the adjusted valuations. A new procedure was established to allow lump-sum payments that were postponed due to failure to calculate aid correctly under the special valuation provisions or clerical errors.
25	79-1018.01	Local system formula resources; other actual receipts included	Amended LB 1229 (1998). Clarified other actual receipts to include special education receipts and non-special education receipts from the state for wards of the court and wards of the state.
26	79-1020	Aid allocation adjustments; department; duties	Deleted obsolete language; harmonized provisions consistent with other changes.
27	79-1021	Tax Equity and Educational Opportunities Fund; created; investment	Deleted obsolete language; harmonized provisions consistent with other changes.
28	79-1022	Distribution of income tax receipts and state aid; effect on budget	Deleted obsolete language; harmonized provisions consistent with other changes.
29	79-1024	Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect	Required the Auditor of Public Accounts to notify the commissioner of Education of any Class I district failing to submit the items required by such subsection to its high school districts by the date established in section 79-1083.03.
30	79-1025	Basic allowable growth rate; allowable growth range	Deleted obsolete language; harmonized provisions consistent with other changes.
31	79-1027	Budget; restrictions	Moved the date for certification of the applicable allowable reserve percentage from July 1 to December 1 each year.
32	79-1030	Unused budget authority; carried forward	Amended LB 989 (1998). Clarified that only high school districts may carry over budget authority if expenditures were not increased by the full amount of the local system applicable allowable growth rate.
33	79-1031	Department; provide data to Governor; Governor; duties	Moved the deadline for the department to provide data to the Governor from December 1 to December 15. The requirement for the Governor to establish a basic allowable growth rate and growth range was amended to clarify that they apply to local systems and limit the budgets of high school districts.

Table 110—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
34	79-1031.01	Legislative intent	Deleted obsolete language; harmonized provisions consistent with other changes.
35	79-1032	School Finance Review Committee; created; members; duties	Replaced membership tier terminology with cost grouping terminology for the duties of the School Finance Review Committee. Equalization adjustments and minimum levy adjustments were added to the review duties.
36	79-1033	State aid; payments; reports; use; requirements; failure to submit reports; effect; early payments	Deleted obsolete language; harmonized provisions consistent with other changes.

Source: Legislative Bill 1, *Slip Law*, Nebraska Legislature, 95th Leg., 1st Spec. Sess., 1998, §§ 15-36, pp. 9-26.

D. 1998 General Election: Initiative 413

Eight separate constitutional amendments appeared on the November 3, 1998 Nebraska General Election ballot. Seven of the amendments sprang from legislative resolutions passed and forwarded by the Legislature, while one amendment derived from a citizen-based initiative petition. The latter measure, Initiative 413, will undoubtedly be remembered as one of the most hard-fought, expensive, and bitterly contested issues in the history of Nebraska.

Table 111. Nebraska Constitutional Amendments, 1998 General Election

<i>No.</i>	<i>Origin</i>	<i>Subject</i>	<i>For</i>	<i>Against</i>	<i>Voting</i>
1	LR 20CA (1997)	Provide that no person shall be denied equal protection of the laws	336,672 *****	126,951	463,623
2a	LR 45CA (1998)	Change the way vehicle tax proceeds are allocated	266,513 *****	188,390	454,903
2b	LR 45CA (1998)	Authorize legislation relating to mergers and consolidations by local governments	240,554 *****	189,077	429,631
2c	LR 45CA (1998)	Provide that government property is exempt from taxation to the extent the property is used for public purposes	248,179 *****	181,220	429,399
2d	LR 45CA (1998)	Repeal references to townships and towns	150,394	255,093 *****	405,487
3a	LR 303CA (1998)	Allow Supreme Court judges to reside anywhere in the state	222,659 *****	213,458	436,117

Table 111—*Continued*

<i>No.</i>	<i>Origin</i>	<i>Subject</i>	<i>For</i>	<i>Against</i>	<i>Voting</i>
3b	LR 303CA (1998)	Provide for statewide votes on whether Supreme Court or appellate court judges should be retained in office	198,656	222,991 *****	421,647
413	Initiative Petition	Limit government spending by limiting state and local tax revenue increases	191,046	340,862 *****	531,908

Sources: Secretary of State Scott Moore, comp., *Official Report of the State Canvassers of the State of Nebraska, 1998 General Election, November 3, 1998* (Lincoln, Nebr.: Office of Sec’y of State); Nebraska Legislative Research Division, “A Review: Ninety-Fifth Legislature, Second Session, 1998 and First Special Session, 1998,” June 1998, *passim*.

The sheer number of voters participating in the vote on Initiative 413 in comparison to the other ballot issues is testament to the strong feelings on the issue. It may also be testament to the power of big budget television campaigns, both for and against a given issue. Voters were inundated with advertisements from both sides, and both sides accused the other of false statements, distortions, and misleading information.

The initiative petition drive was launched by a group calling itself the “Citizens for Nebraska’s Future,” and included the involvement of tax activist Ed Jaksha of Omaha. In fact, the movement was ostensibly funded and directed by the Omaha-area business community, particularly by a group calling itself the “Business Leaders Summit.” The opposition to the movement initially derived from a group calling itself the “Nebraskans for the Good Life,” which included professional associations representing political subdivisions. Groups representing school boards, school employees, county officials, municipal officials, and postsecondary institutions were among the members of the opposition group.

Many state legislators were also aligned against the initiative effort since the proposed constitutional amendment would similarly affect state government. Eventually, an opposition coalition would be formed in the name of “Agriculture, Mainstreet and Education Against Measure 413.” The group was comprised of the same local government groups but also included various business interests, including agricultural and banking associations. So what did the initiative measure propose to do, and why would government interests be so concerned about it?

Initiative 413 was unquestionably one of the largest amendments ever proposed to the Nebraska Constitution. The language of the amendment consisted of 3,525 words and, if adopted, would constitute 11% of the entire Constitution.¹⁹⁴² The measure proposed to stem government spending by limiting the amount of tax revenues available for the state and local governments to expend. The “tax lid” was affixed to the prior year’s tax revenue multiplied by the Consumer Price Index (CPI) plus (i) population (or student) growth, (ii) temporary emergencies (if applicable) and (iii) unfunded federal mandates (if applicable). Voters would also be allowed to exceed the applicable lids.¹⁹⁴³

The proposal gave any taxpayer and also the State Auditor standing in court to sue the state or any local government for enforcement of the provisions. The measure prohibited any court from issuing temporary or permanent injunctions while cases were pending. And a plaintiff who was successful must be reimbursed reasonable attorney fees and expenses, payable by the state or applicable local government.¹⁹⁴⁴

The measure permitted the Legislature to change the methods or allocations of tax revenues on state aid to local governments. However, the measure prohibited the Legislature from disproportionately reducing state aid while not proportionately reducing spending of tax revenues on other matters.¹⁹⁴⁵ This seemed to be an attempt to require the Legislature to reduce its overall spending rather than just reducing state aid, which is only one segment of the state’s budget.

The measure contained an effective date of July 1, 1999, and also a conditional sunset date. The measure provided that at any time after January 1, 2004, the Legislature may enact legislation to “indefinitely suspend” the operation of the measure if the legislation enacts the same limitations set forth in the measure.¹⁹⁴⁶ A three-fourths vote of

¹⁹⁴² “Ballot Issues,” *Omaha World-Herald*, 25 October 1998, 1k.

¹⁹⁴³ The initiative petition was called the “Taxpayers Relief Amendment” and proposed to create a new Article XIX with the title, “Government Spending Limit by Limiting Taxation and Revenue,” which consisted of four separate sections.

¹⁹⁴⁴ *Id.*

¹⁹⁴⁵ *Id.*

¹⁹⁴⁶ *Id.*

the Legislature was required for such legislation, which also must be signed by the Governor.¹⁹⁴⁷

On August 27, 1998, Secretary of State Scott Moore officially certified that the petition campaign had gathered sufficient signatures to place the issue on the November 1998 ballot. The petition organizers had gathered 125,310 valid signatures and had met all other statutory stipulations.¹⁹⁴⁸ Secretary of State Moore also officially assigned the measure as “Initiative 413,” a number in sequence with past initiative and referendum ballot issues.

The backers of the petition had certainly put together a well-organized effort to collect the necessary signatures. “Quite frankly, Citizens for Nebraska’s Future is the broadest coalition ever put together in Nebraska, because it represents 184,000 taxpayers from every county in the state,” said Steve Wolf, executive director for the petition movement.¹⁹⁴⁹ Wolf was referring to the number of unverified signatures gathered by petition circulators. The organization was also well funded. In October 1998, reports indicated that the mostly Omaha-area group had raise about \$2.7 million and expended \$2.6 million at that point in time. This was far and away more money than had ever been raised and spent on any previous ballot issue in Nebraska. Most of the funding came from major Nebraska corporations and individual corporate executives.¹⁹⁵⁰

The deep pocket for the opposition was primarily the Nebraska State Education Association (NSEA) and local education associations, including the Omaha Education Association (OEA). But the amount of total funds available to the opposition was substantially less than the pro-413 effort. The anti-413 group chose to expend some of its resources for television advertisements in carefully chosen timeframes prior to the election. They painted Initiative 413 as “poison” for Nebraska and the necessary services

¹⁹⁴⁷ Id.

¹⁹⁴⁸ Leslie Reed, “Phone, Tax Initiatives Set for Ballot The secretary of state certifies proposals on access charges and state and local revenues,” *Omaha World-Herald*, 28 August 1998, 17.

¹⁹⁴⁹ Leslie Reed, “Kerrey To Fight Tax Limits The senator is co-chairman of a new group seeking to block the ballot initiative,” *Omaha World-Herald*, 18 September 1998, 15.

¹⁹⁵⁰ Henry J. Cordes, “2 Initiative Campaigns Set Spending Records Both Sides on Initiatives Dig Deep Into Pockets,” *Omaha World-Herald*, 6 October 1998, 1.

provided by state and local governments.¹⁹⁵¹ As the election grew nearer, the opposition distributed lawn signs containing the “poison” message accompanied by the well recognized skull and cross bones image. They also recruited such notable political leaders as U.S. Senator Bob Kerrey and Congressman Bill Barrett to serve as co-chairpersons of the campaign. “This is the wrong solution to the right problem,” Kerrey said at a campaign rally in Omaha, “It might lead to tax savings for some, but it will lead to higher user fees, college tuition and property taxes for all.”¹⁹⁵²

Aside the obvious constraints of a constitutional revenue/spending lid, public school interests were particularly worried about the effect such a measure would have on recent strides made in capturing new appropriations for state aid. In 1997 the Legislature passed LB 806, which provided sweeping changes to the distribution formula and also appropriated \$110 million in additional state aid to schools. LB 806A appropriated \$110 million for 1998-99 in addition to the amount otherwise appropriated.¹⁹⁵³ The idea was to help schools compensate for the lost local revenue under the levy limitations set to be implemented in 1998. The opposition wondered how the 413 lids would treat this and other attempts by the Legislature to increase state aid to education. During the 1998 campaign, there was only conjecture about this and other questions, but no solid answers.

As occurred in previous gubernatorial election years, Initiative 413 would play a role, but not perhaps a deciding factor in the outcome of the Governor’s race. Democrat Bill Hoppner was a vocal critic of the constitutional amendment and attempted to use the issue to paint Republican Mike Johanns as being too supportive of corporate Nebraska. Johanns’ official position was somewhat unclear at times, but he seemed to believe that the lid proposal would inhibit the function of state government to react as necessary.

The major stir in terms of personalities in politics related to the position and actions taken by Kathleen McCallister, who served as President of the State Board of Education at the time. On October 1, 1998, the State Board of Education officially voted

¹⁹⁵¹ The opposition to Initiative 413 used the word “poison” in television advertisements, yard signs, and other materials distributed by the coalition.

¹⁹⁵² Reed, “Kerrey To Fight Tax Limits,” 15.

¹⁹⁵³ Legislative Bill 806A, *Slip Law*, Nebraska Legislature, 95th Leg., 1st Sess., 1997, § 2, p. 1.

5-3 to oppose Initiative 413.¹⁹⁵⁴ Nevertheless, McCallister appeared in television commercials under her official title in support of the constitutional amendment. There were calls for her resignation or at least an apology for providing what some thought was a misleading message about the board's official position.

McCallister fired back with charges that school employees had misused computer privileges by sending her email messages with complaints about her actions. The email issue gave the pro-413 camp new ammunition and cause to file complaints with the Political Accountability and Disclosure Commission. "The equipment in the school was put there for educational purposes," said J.L. Spray, legal counsel for the Citizens for Nebraska's Future, and a former employee of the Commission.¹⁹⁵⁵

Of course, spending, or more accurately over spending, was the main thrust of the pro-413 movement. And proponents of the amendment had some fairly powerful allies, including the Omaha World-Herald. Just a few days prior to the election, the newspaper released its official endorsement of Initiative 413. "Nebraskans cannot afford another 10 years of government growth," the editorial stated.¹⁹⁵⁶ The editorial did little to sway opinion. Voters overwhelmingly opposed the resource/spending lid at the November 3, 1998 General Election.

Table 112. Canvas Report: Initiative 413 (1998)

County	For	%	Against	%	County	For	%	Against	%
Adams	3,338	33.51%	6,623	66.49%	Jefferson	994	31.74%	2,138	68.26%
Antelope	785	25.03%	2,351	74.97%	Johnson	513	26.76%	1,404	73.24%
Arthur	46	21.90%	164	78.10%	Kearney	640	25.49%	1,871	74.51%
Banner	80	20.00%	320	80.00%	Keith	1,076	34.49%	2,044	65.51%
Blaine	43	13.83%	268	86.17%	Keya Paha	136	26.25%	382	73.75%
Boone	637	24.05%	2,012	75.95%	Kimball	433	28.01%	1,113	71.99%
Box Butte	1,101	27.39%	2,919	72.61%	Knox	794	22.12%	2,795	77.88%
Boyd	328	27.77%	853	72.23%	Lancaster	23,329	29.67%	55,297	70.33%
Brown	530	34.48%	1,007	65.52%	Lincoln	3,302	28.34%	8,351	71.66%
Buffalo	3,597	29.71%	8,509	70.29%	Logan	73	19.26%	306	80.74%
Burt	848	27.59%	2,226	72.41%	Loup	53	20.38%	207	79.62%

¹⁹⁵⁴ Nebraska State Board of Education, *Minutes of Board Meeting* (Lincoln, Neb.) 1 October 1998. Voting Yes - Endacott, Loschen, Mactier, K. Peterson, B. Peterson; voting No - Savage, Wilmot, McCallister.

¹⁹⁵⁵ Patrick Strawbridge, "E-Mails Critical Of Tax Lid Ad Spur Complaint," *Omaha World-Herald*, 23 October 1998, 13.

¹⁹⁵⁶ Editorial, "Our Recommendation; 20 Years of Government Income, Outgo," *Omaha World-Herald*, 30 October 1998, 24.

Table 112—Continued

County	For	%	Against	%	County	For	%	Against	%
Butler	1,069	31.05%	2,374	68.95%	Madison	3,106	32.03%	6,592	67.97%
Cass	3,384	44.36%	4,245	55.64%	McPherson	57	21.92%	203	78.08%
Cedar	813	22.36%	2,823	77.64%	Merrick	824	27.90%	2,129	72.10%
Chase	633	38.62%	1,006	61.38%	Morrill	449	25.08%	1,341	74.92%
Cherry	617	28.42%	1,554	71.58%	Nance	415	26.42%	1,156	73.58%
Cheyenne	742	23.35%	2,436	76.65%	Nemaha	982	33.40%	1,958	66.60%
Clay	585	22.08%	2,064	77.92%	Nuckolls	475	21.76%	1,708	78.24%
Colfax	837	30.15%	1,939	69.85%	Otoe	1,762	34.62%	3,328	65.38%
Cuming	866	23.93%	2,753	76.07%	Pawnee	440	30.86%	986	69.14%
Custer	1,040	23.89%	3,314	76.11%	Perkins	352	25.56%	1,025	74.44%
Dakota	1,987	42.59%	2,678	57.41%	Phelps	1,067	25.63%	3,096	74.37%
Dawes	523	19.24%	2,195	80.76%	Pierce	753	29.88%	1,767	70.12%
Dawson	1,728	28.05%	4,432	71.95%	Platte	3,423	35.82%	6,132	64.18%
Deuel	240	27.75%	625	72.25%	Polk	473	21.70%	1,707	78.30%
Dixon	613	25.81%	1,762	74.19%	Red Willow	1,238	31.06%	2,748	68.94%
Dodge	3,797	35.64%	6,856	64.36%	Richardson	1,134	39.12%	1,765	60.88%
Douglas	61,276	47.83%	66,835	52.17%	Rock	218	27.66%	570	72.34%
Dundy	317	34.68%	597	65.32%	Saline	1,086	25.49%	3,174	74.51%
Fillmore	629	23.51%	2,047	76.49%	Sarpy	14,845	49.70%	15,024	50.30%
Franklin	437	29.55%	1,042	70.45%	Saunders	2,618	36.40%	4,574	63.60%
Frontier	214	18.69%	931	81.31%	Scotts Bluff	3,247	28.03%	8,339	71.97%
Furnas	608	28.65%	1,514	71.35%	Seward	4,080	72.02%	1,585	27.98%
Gage	2,532	30.88%	5,667	69.12%	Sheridan	466	22.82%	1,576	77.18%
Garden	296	27.85%	767	72.15%	Sherman	418	27.20%	1,119	72.80%
Garfield	157	19.01%	669	80.99%	Sioux	201	28.51%	504	71.49%
Gosper	202	24.46%	624	75.54%	Stanton	572	27.79%	1,486	72.21%
Grant	74	22.36%	257	77.64%	Thayer	605	22.35%	2,102	77.65%
Greeley	219	17.86%	1,007	82.14%	Thomas	84	24.07%	265	75.93%
Hall	5,286	34.47%	10,047	65.53%	Thurston	607	32.37%	1,268	67.63%
Hamilton	945	26.06%	2,681	73.94%	Valley	605	30.82%	1,358	69.18%
Harlan	461	29.03%	1,127	70.97%	Washington	2,827	40.18%	4,208	59.82%
Hayes	156	31.33%	342	68.67%	Wayne	799	26.91%	2,170	73.09%
Hitchcock	420	30.88%	940	69.12%	Webster	461	27.25%	1,231	72.75%
Holt	1,549	34.36%	2,959	65.64%	Wheeler	83	19.26%	348	80.74%
Hooker	106	25.00%	318	75.00%	York	1,584	29.42%	3,800	70.58%
Howard	656	25.34%	1,933	74.66%	TOTAL	191,046	35.92%	340,862	64.08%

Source: Secretary of State Scott Moore, comp., *Official Report of the State Canvassers of the State of Nebraska, 1998 General Election, November 3, 1998* (Lincoln, Nebr.: Office of Sec’y of State).

There may have been several explanations for the 64% to 36% margin of defeat of Initiative 413. Some credited the grassroots effort of the coalition organized to oppose the amendment. “In their cafes, across the backyard fence, in their service clubs, the people of Nebraska were talking about this issue,” said Craig Christiansen, a principal leader within the opposition camp.¹⁹⁵⁷ “Even though we had high-powered East Coast ads (promoting Initiative 413), our campaign was truly a grassroots campaign,”

¹⁹⁵⁷ Henry J. Cordes and Leslie Reed, “Grass-Roots Push Foils Initiative 413,” *Omaha World-Herald*, 4 November 1998, 1.

Christiansen said.¹⁹⁵⁸ Some believe the almost exclusively Omaha-based petition movement hurt itself by not having a more broad geographic foundation of support. Some opponents of the measure were comfortable with the notion that voters valued the government services that would otherwise be harmed by passage of the constitutional amendment. The most obvious conclusion from the election results was that one side outspending the other does not necessarily translate to victory.¹⁹⁵⁹

Some of the petition organizers and supporters dissected the election results somewhat differently than the victorious opposition. They believed, in retrospect, that Initiative 413 represented the wrong solution to the correct problem, very much like Senator Kerrey said at the campaign rally in Omaha. Retired publisher Harold W. Andersen perhaps best captured the essence of this thought when he wrote:

I hope that in celebrating their victory, leaders of the opposition to Initiative 413 - the tax-limiting proposal rejected by Nebraska voters two days ago - will take time to reflect on a reality that, I believe, still confronts them and other Nebraskans.

The reality is the fact that some Nebraskans - a good many, in my opinion - voted against Initiative 413 because they thought it was the wrong way to address the problem of tax and spending increases, which in 20 years have seen state and local taxes paid by Nebraskans increased by 368 percent. These voters want something done about this tax and spending explosion, but they felt that writing 3,500 words of detailed restrictions into the state constitution is the wrong way to go about it.¹⁹⁶⁰

Andersen believed a ballot question merely asking voters whether they believed government spends too much would have been answered in the affirmative.

E. The 1999 Legislative Session

LB 149 - Guaranteed Funding

Anyone who questions the generally nonpartisan nature of the Nebraska Unicameral Legislature should take careful review of the passage of LB 149 in 1999. In

¹⁹⁵⁸ Id.

¹⁹⁵⁹ Id.

¹⁹⁶⁰ Harold W. Andersen, "Tax, Spending Curbs Still Needed in State," *Omaha World-Herald*, 5 November 1998, 27.

addition to the major impact the measure had on public education and school finance, it made a strong case for the unique Nebraska legislative system. The system was founded in 1934, in part, on the principal that legislators would serve the people best if they looked upon issues from a nonpartisan perspective rather than along party lines. In fact, a reasonable assumption could be made that LB 149, which became law over Governor Johanns' objection, would not have passed at all had legislators abided the opinion of their partisan-elected governor.

The genesis of LB 149 was the discovery in late 1998 that a discrepancy existed between the Legislature's Fiscal Office and the Department of Education with regard to the projected state aid amount for 1999-2000. In October 1998, the Legislative Fiscal Office determined the funding level for state aid in 1999-00 at \$598.7 million. However, in December 1998, NDE certified state aid for 1999-00 in the amount of \$574.7 million — a difference of \$24 million. The department's lower amount was due to adjustments in state aid from the prior year (1998-99) in which the majority of all local systems had received more state aid than they should have received. In fact, it was believed that 62% of all Nebraska school systems had received more state aid than actually due to them in 1998-99.¹⁹⁶¹ But how did this happen?

There were actually a number of factors that caused the over-funding of state aid for the 1998-99 school fiscal year. The department's certification amount was derived by taking the Fiscal Office's estimate of \$598.7 million (less \$2 million for reorganization incentives) less \$22 million for prior year adjustments due to the use of more recent data elements and a fixed Local Effort Rate (LER) of \$1.00 in the recalculation of 1998-99 aid. In essence, NDE had discovered that the 1998-99 state aid certification had been \$22 million more than what it should have been, resulting in local systems actually owing the state due to the receipt of excess state aid.

It must be remembered that in 1997 the Legislature passed LB 806 in order to conform the state aid formula to the pending implementation of the levy limits, which

¹⁹⁶¹ Leslie Reed, "Aid Bill Given Fast Track The Education Committee advances a \$22 million correction in state funding for schools," *Omaha World-Herald*, 20 January 1999, 13.

were established under LB 1114 (1996). Under LB 806, the Local Effort Rate (LER) would be determined each year by NDE. Beginning for the 1998-99 state aid year, the department would annually set the LER at the greater of:

- (a) The maximum levy less 10¢; or
- (b) the rate which, when multiplied by the total adjusted valuation of all taxable property in local systems receiving equalization aid under the school finance formula, will produce the amount needed to support the total formula need of such districts when added to state aid appropriated by the Legislature for the ensuing school year along with other actual receipts.¹⁹⁶²

The local effort rate yield (total property tax) would then be determined by multiplying each local system's total adjusted valuation by the established local effort rate.

Ultimately, the department used \$1.00 for the LER to compute state aid for the 1998-99 school fiscal year. Senator Ardyce Bohlke would later explain to her colleagues during floor debate that the LER should have been set at 96¢ rather than \$1.00. The four-cent gap helped to cause an over-certification of state aid in 1998-99 in the amount of \$22 million. Bohlke explained:

A floor for the local effort rate was amended in LB 806, which kept it at a dollar this past December when actually it should have been 96 cents. This created a gap of 22 million. The reason the local effort rate tried to go down was because the calculated needs of the districts went down. Because we do not have complete data by December 1, it is necessary to use estimates.¹⁹⁶³

But there were other factors involved in the \$22 million mistake. Not the least of these factors was the implementation of an entirely new tax system on motor vehicles.

LB 271 was passed in 1997 to replace the property tax system on motor vehicles with a tax and fee schedule based in part on the age of the vehicle. The new system became operative on January 1, 1998 and was meant to be relatively revenue-neutral, so that political subdivisions would not experience any major loss or gain in revenue from motor vehicle taxation. The problem faced by the Department of Education was the lack

¹⁹⁶² LB 806, Session Laws, 1997, § 38, p. 26 (1552). NEB. REV. STAT. § 79-1008.01 (Cum. Supp. 1997).

¹⁹⁶³ Legislative Records Historian, *Floor Transcripts, LB 149 (1999)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 96th Leg., 1st Sess., 1999, 3 February 1999, 608.

of available revenue data concerning the new motor vehicle tax system for the computation of state aid in the 1999-2000 school fiscal year. LB 149 would attempt to correct this by including at least eight months of motor vehicle tax data within the recertification of state aid.

As Senator Bohlke alluded during floor debate, another factor in the miscalculation of state aid related to the actual spending of local systems. Along with the passage of LB 1114 (1996), the Legislature passed a companion measure, LB 299 (1996), which imposed strict spending limitations on school systems. For 1996-97, school systems were placed under a 2% spending lid, and, for 1997-98, school systems faced a 0% spending lid. In 1998 the Legislature passed LB 989 to impose a permanent 2.5% base spending limit for school districts. At the time of the state aid certification on December 1, 1998, the department, according to the law, utilized a three-year averaging of local system data. The result of these various spending lids and the three-year averaging process could not help but to cause anomalies in spending patterns among local systems, and a corresponding effect on actual local system needs.

Introduction and Public Hearing

The chair of the Education Committee, Senator Ardyce Bohlke, served as chief sponsor of LB 149, while all other members of the committee cosponsored the bill. But for all practical purposes, the bill was referred to as a “committee bill” in order to demonstrate the unification of the committee on the issues contained within the measure. LB 149, without doubt, represented the overriding objective of the Education Committee relevant to the agenda for public education in 1999. The measure would have the distinction of being the first bill to receive a public hearing before the Education Committee during the 1999 Session. In a rapid succession of events, LB 149 was introduced on the second day of the session (January 7th) and its public hearing was held on the ninth day (January 19th). Even before the tenth and final day of bill introduction for the 90-day session, LB 149 was advanced from committee and ready for floor debate.

The public hearing for LB 149 was held on the day after the first recess day of the 1999 Session (the Legislature had been in recess due to the state holiday honoring Martin

Luther King). The hearing is memorable for both the large number of proponent testifiers and the relative brevity of the event. It was very apparent that a number of organizations and school districts had organized ahead of time in order to make their case for advancement of the bill. In fact, almost all the organizations representing public education had met prior to the hearing and discussed how best to support the measure. It was decided to place at the forefront of the list of testifiers one of Nebraska's more respected and recognized education leaders, Liz Karnes, who was, at the time, a member of Omaha Westside Community Schools' Board of Education. Karnes would be followed by then President of the State Board of Education, Bev Peterson, who was followed by Kim Ma, a student within the Lincoln Public School system. Bryce Neidig of the Nebraska Farm Bureau was specifically asked to testify in order to give the measure a broader range of support.¹⁹⁶⁴

The groups representing public education chose to communicate, for the most part, through a single spokesman. Duane Obermier, President of the Nebraska State Education Association, testified on behalf of his own organization along with such groups as the Nebraska Association of School Boards, the Greater Nebraska Schools Association, the Nebraska Rural Community Schools Association, Class Is United, Friends of Rural Education, and the Nebraska Council of School Administrators.¹⁹⁶⁵

At the conclusion of the public hearing schedule for January 19th, the Education Committee met in executive session. The committee advanced LB 149 with committee amendments attached by a unanimous 8-0 vote.¹⁹⁶⁶

Table 113. Provisions LB 149 (1999) as Advanced from Committee

- Amend the school finance formula by requiring the recertification of state aid to be paid in the 1999-2000 school year by April 1, 1999;
- Set the local effort rate at 10¢ below the maximum levy for the certification of state aid;

¹⁹⁶⁴ Committee on Education, *Committee Statement, LB 149 (1999)*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, 1.

¹⁹⁶⁵ *Id.*

¹⁹⁶⁶ Committee on Education, *Executive Session Report, LB 149 (1999)*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, 19 January 1999, 1.

Table 113—*Continued*

-
- Change the certification deadline for future years to February 1st;
 - Remove a state aid estimation procedure;
 - Declare the certification of state aid made on December 1, 1998; and
 - Clarify that the estimate the Department of Education provides to the Governor, Appropriations Committee, and the Education Committee is meant for the necessary funding level for the following school fiscal year.
-

Sources: Legislative Bill 149, *Provide for recalculation and recertification of state aid to schools*, sponsored by Education Committee, Nebraska Legislature, 96th Leg., 1st Sess., 1999, 7 January 1999; NEB. LEGIS. JOURNAL, *Com AM7 to LB 149 (1999)*, 20 January 1999, 272.

“Time is of the essence”

Floor debate on LB 149 began on the morning of February 3, 1999. “To my newly elected colleagues,” Senator Bohlke said in her opening remarks, “we are asking you to absorb a great deal in a short amount of time.”¹⁹⁶⁷ The chair of the Education Committee proceeded to give her colleagues, both new and veteran, an oral history of the school finance formula since 1990. Such an historical background is important, she felt, in order to explain the situation that arose in 1999 and the need for passage of LB 149. “The formula is meant to react, but the “respin” this December resulted in an overall loss of \$22 million to school districts,” Bohlke said.¹⁹⁶⁸ “Unless we react, schools will have to pay that back by debiting the aid they will receive next year,” she added.¹⁹⁶⁹ In the meantime, school districts will need to determine their staffing for the following year, and, by law, disperse reduction-in-force notices to teachers by April 15th. “Time is of the essence,” Bohlke said at the conclusion of her remarks.¹⁹⁷⁰

Of course, not everyone was in a hurry to pass LB 149. Governor Mike Johanns, for instance, did not see the need to expedite the legislative process. Shortly after the bill

¹⁹⁶⁷ *Floor Transcripts, LB 149 (1999)*, 3 February 1999, 606.

¹⁹⁶⁸ *Id.*, 608.

¹⁹⁶⁹ *Id.*

¹⁹⁷⁰ *Id.*, 610.

was advanced from committee, the newly elected Governor asked aloud, “Why rush?”¹⁹⁷¹ “Let’s be careful and deliberate ... LB 149 is really bigger than a simple one-time adjustment to the formula,” he said, “It raises questions that I believe deserve debate and consideration.”¹⁹⁷² At that point in time, Johanns had not yet unveiled his 1999 budget proposal to the Legislature. But it was known already that the proposal did not include an additional \$22 million for public education to make up for the error made during the calculation of state aid. Even before first-round debate began, it was clear that a battle lay ahead between the Legislature and the executive branch.

Nevertheless, on the first day of debate, Senator Bohlke was met with relative cooperation from her fellow legislators on the issues posed by LB 149. The committee amendments were adopted almost immediately by a solid 33-0 vote.¹⁹⁷³ Senator Bohlke attempted to steer the debate along the lines of enhancing predictability within the state aid formula, and creating a more stable system for school districts to count upon from one year to the next. And to a great extent, her strategy was successful. No one disagreed with the need for a more predictable state aid formula. But there were a few that disagreed with the overall impact of the legislation. Some felt the bill might tie the hands of future Legislatures on the issue of appropriations for state aid to schools. A thought that may have already crossed Governor Johanns’ mind by this time.

The debate on February 3rd had some very positive qualities, both on the merits of the legislation itself and on school finance policy generally. For instance, Senator Bohlke mentioned in her opening remarks that the Department of Education would soon have printouts available on the district-by-district impact of the legislation. This prompted Senator Pam Brown of Omaha to remark:

[L]ast year, I think it was, there was a statement made on the floor that we were going to ... we were no longer going to legislate by printout, and I was absolutely delighted with that statement because I thought, well, at least we’re going to talk

¹⁹⁷¹ Leslie Reed, “Johanns: No rush to Fix School-Aid Miscalculation,” *Omaha World-Herald*, 26 January 1999, 9.

¹⁹⁷² *Id.*

¹⁹⁷³ NEB. LEGIS. JOURNAL, 3 February 1999, 432.

about the policy that is directing what we're doing in terms of funding for education rather than constantly pouring over the numbers and seeing who wins and who loses and not having some sort of stable policy that guides us and that ... that helps us know that what we're doing has some meaning besides whether it's a win or lose situation.¹⁹⁷⁴

Senator Ron Raikes of Lincoln added his comments later in the debate. "Not having printouts is maybe not realistic, but certainly having printouts that are more simple and can be more quickly calculated is a possibility," Raikes said.¹⁹⁷⁵ The discussion certainly did not lead to any resolution on the issue of *printout politics*, but it was at least addressed. The Legislature recognized that it was likely to be dependent, to some degree, on how the numbers stacked up before it ratified a change in policy.

Another major theme of the February 3rd debate related to the history of school finance policy and tax policy in Nebraska. Speaker Doug Kristensen of Minden, for example, was very concerned that his colleagues understand how the Legislature arrived at the current school finance formula and also how property tax policy had evolved in recent years. "If we're going to talk about policy and philosophy this morning, I at least want to make sure that I put in what I believe that history was and try to get us on at least some agreement as to where our policies, in the past, have been," Kristensen said.¹⁹⁷⁶ The Speaker wanted his fellow lawmakers to know the difference between measures aimed at school finance reform and measures aimed at property tax relief:

Why [LB] 1059 came into being was we were afraid of being sued and so what that formula was designed to do was to bring people in and try to equalize and put more money in and give it to those school districts who needed the money and so we could try to form people into a more uniform opportunity. ... [LB] 1059 was not a property tax bill. [LB] 1059 was all about trying to keep us from being sued in this state and about equalization aid. ... [LB] 806 was about filling the gap that schools had. [LB] 806 was not about property tax relief. Property tax relief was [LB] 1114.¹⁹⁷⁷

¹⁹⁷⁴ *Floor Transcripts, LB 149 (1999)*, 3 February 1999, 614.

¹⁹⁷⁵ *Id.*, 620.

¹⁹⁷⁶ *Id.*

¹⁹⁷⁷ *Id.*, 620-21.

While some might differ about the true nature of these past legislative measures, Speaker Kristensen helped to frame the intent of LB 149. LB 149, the Speaker asserted, was about fixing a problem related to school finance, and not about property tax relief.

According to Senator Pam Redfield of Omaha, the policy questions related to LB 149 could not be divorced from the property tax relief initiatives already approved by the Legislature. “[T]his body has worked very, very hard to provide property tax relief to the people in the state of Nebraska and tried to equalize the spending in the schools across the state,” Redfield said.¹⁹⁷⁸ Passage of LB 149, she believed, would be contrary to those property tax relief efforts.

As occurred in so many previous policy discussions, Senator Bob Wickersham of Harrison seemed to have the appropriate answer at the appropriate time:

We made the policy decisions with [LB] 1114 and [LB] 806. What were those policy decisions? Those policy decisions were that we would have a calculation of an amount that would support schools. Needs, if you’ve seen the simplistic framework for the school aid formula, needs minus resources equals aid. In [LB] 806 we framed a means for calculating needs--average costs in two ... in three different groups: standard, sparse and very sparse. That’s the framework for calculating needs. In [LB] 1114 we set one of the important parameters for determining resources, and that was local property taxes.¹⁹⁷⁹

Wickersham went on to say that the levy limitations and all the policy ramifications attached to those levy limits were the obligation of the state to address. LB 149, in his opinion, was designed to balance the policy decisions relevant to tax matters with those related to school finance.

In no small way, Senator Chris Beutler of Lincoln also helped to frame the discussion, first by placing the issue at a level any politician would have to consider:

[M]y commitment to the bill goes back to the question of trust, it goes back to keeping your word, it goes back to some things that have been said on the floor before. But this is not just a simple matter of trust, it’s at a higher level than that, especially considering this institution, the 49 of us and our relationship with our

¹⁹⁷⁸ Id., 615.

¹⁹⁷⁹ Id., 617.

constituencies, and what we tell them, and what they expect from us, and what we expect from them.¹⁹⁸⁰

Beutler used an analogy that both lawyers and non-lawyers alike could understand by relating the issues surrounding LB 149 with the legal doctrine of detrimental reliance. In this case, school districts and patrons of those school districts relied upon the Legislature to establish a functional property tax system and school finance system such that they would not be harmed or otherwise incur damages. Naturally, Senator Beutler did not mean to imply the existence of any literal and binding contract. But the meaning of his analogy, an expectation that the Legislature would resolve problems created by its own policy directives, was well spoken.

After several hours of discussion, the Legislature voted to cease debate. In her closing remarks, Senator Bohlke expressed her appreciation for the debate and promised to work with anyone having questions between first and second-round debate. She reiterated the urgency of the situation and assured her colleagues that printouts would soon be available. Lastly, she reminded her colleagues, the essence of the legislation lay in the long-range effect it would have in predicting future certifications of state aid. “I believe that the predictability that all of us have been talking about and the improvement of stability are absolutely key,” she said.¹⁹⁸¹ And, likely based in part upon the trust factor mentioned by Senator Beutler and others, the Legislature voted to advance the bill by a 42-0 vote.¹⁹⁸² It would be the last time LB 149 would receive unanimous support.

“The long-awaited printout”

It took over a month after advancement from General File, but the Legislature finally had the chance to view what Senator Bohlke called the “long-awaited printout” on Monday, March 8th.¹⁹⁸³ This date would mark the first of two separate days of second-round consideration. Staff from the Department of Education had worked through the

¹⁹⁸⁰ Id., 642.

¹⁹⁸¹ Id., 645.

¹⁹⁸² NEB. LEGIS. JOURNAL, 3 February 1999, 433.

¹⁹⁸³ *Floor Transcripts, LB 149 (1999)*, 8 March 1999, 1870.

weekend to put together complete notebooks of information concerning the impact of LB 149. Legislators, staff, and media all received the information at basically the same time. And the information could hardly be classified as a mere printout as the case may have been in previous legislative sessions. It was evident that Senator Bohlke, her staff, and department staff truly wanted the data to paint a complete picture of each local system's fate under LB 149. Printout politics had gone high-tech.

As with all "printouts," there was both good news and bad. The figures demonstrated a need for increased appropriations for 1999-2000 state aid in the amount of \$19.4 million rather than the earlier projection of \$22 million.¹⁹⁸⁴ The majority of the state's local systems, numbering 286 at that time, would either break even or receive increases from the amount certified on December 1, 1999.¹⁹⁸⁵ Forty-seven local systems would stand to lose state aid under LB 149 as compared to the original certification amount.¹⁹⁸⁶ The loss or gain of state aid may have been due to any combination of factors, such as changes in other revenues, property tax valuations, or student enrollment.

Second-round debate began on March 8th with a motion by newly elected Senator Mark Quandahl to bracket the legislation until March 15th.¹⁹⁸⁷ The Omaha senator explained that he, along with his colleagues, had just received the notebook of data and he wanted time to digest the information. He would later withdraw the motion, but, until then, Senator Bohlke was allowed to explain some of the materials and data. And perhaps one of the more interesting questions about the data was how or why the total amount needed had been revised down to the \$19.4 million figure. Bohlke explained that the lower amount was due to the use of more accurate figures related to the new motor vehicle tax and fee system.

¹⁹⁸⁴ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 149 (1999)*, prepared by Sandy Sostad, Nebraska Legislature, 96th Leg., 1st Sess., 1999, 9 March 1999, 1-2.

¹⁹⁸⁵ Leslie Reed, "\$19.5 Million Is Projected Need for School Aid; Metro Area School Districts," *Omaha World-Herald*, 8 March 1999, 1.

¹⁹⁸⁶ *Id.*

¹⁹⁸⁷ NEB. LEGIS. JOURNAL, 8 March 1999, 858.

“Autopilot System”

One of the overriding themes of the debate on March 8th was not so much the data contained in the notebooks but rather when the notebooks were made available. In particular, Senator Pam Brown of Omaha expressed her dismay and concern about this situation. “[W]e get this data at what I would consider certainly the eleventh hour and are expected to digest it,” she said.¹⁹⁸⁸ Senator Bohlke responded that it was not her intention to take LB 149 to an immediate vote for advancement that day. “I want to reemphasize; in a short time, that we will obviously not be doing a vote today,” Bohlke said.¹⁹⁸⁹ Nevertheless, Senator Brown would repeat her concern that the body needed more time to digest the information.

In fact, Senator Brown was the first to use an expression that came to be the buzz word to describe LB 149, whether correctly labeled or not. And this was likely related to the true nature of Senator Brown’s concern about the legislation. During the debate, Senator Brown spoke of the process outlined in LB 149 to determine appropriate levels of state aid from year to year. Said Brown:

I am more concerned about the part of LB 149 that sets up the process for the future that automatically has a calculation that is going to set the amount for state aid, because the reason that got us here, even though there were ... there were certain circumstances that may have been unique, the reason that got us here is that we had unique problems in the way that we calculated the amount.¹⁹⁹⁰

Brown compared LB 149 to the act of surrendering “our appropriating responsibility to a process,” the process she would call an “autopilot system.”¹⁹⁹¹ From that moment forward, LB 149 became known as the state aid autopilot bill among legislative circles. Senator Brown’s concern would mirror that of the Governor, who would eventually veto the measure based upon that very reason.

¹⁹⁸⁸ *Floor Transcripts, LB 149 (1999)*, 8 March 1999, 1875.

¹⁹⁸⁹ *Id.*, 1879-80.

¹⁹⁹⁰ *Id.*, 1887.

¹⁹⁹¹ *Id.*, 1888.

So what did Senator Brown mean by autopilot? And why did she perceive this as a negative aspect of the legislation? To answer the first question, one must look no further than the Fiscal Note attached to the measure. On January 28, 1999, Sandy Sostad, an analyst for the Legislative Fiscal Office, wrote:

LB 149 changes the basis for determining the total amount to be appropriated for state aid. The amount of TEEOSA aid for the following school year is currently determined by the Legislative Fiscal Analyst based on language requiring the appropriation to 'result in a statewide tax levy for each year's state aid calculation that would be less than the maximum tax levy' specified for schools in statute.

The bill provides that NDE will determine the appropriation level by using a LER [local effort rate] of \$.10 less than the maximum tax levy in statute. Use of a fixed LER to calculate the appropriation level means the amount of state aid to be appropriated will not be determined until NDE is able to run the formula with the required data elements in late January, for the February 1 certification of state aid.¹⁹⁹²

Since the Legislature convenes in early January of each year, both the legislative and executive branches would need to wait until NDE certifies state aid in order to know the exact level of appropriation for state aid.

Once certified, school districts would begin budget plans based upon those funding expectations. Senator Brown equated this process to a sort of appropriation on autopilot because, in part, the Legislature does not typically begin its own budget debate until late in the session.¹⁹⁹³ It could conceivably be regarded, therefore, as tying the hands of the Legislature on the issue of state aid. Although the Legislature always retains the authority to pass legislation that effectively voids a given state aid certification and requires a new one based upon other parameters. Nevertheless, the overall advantage of the system proposed under LB 149 was most definitely in favor of school districts.

The other question posed by Senator Brown's opposition to the system proposed by LB 149 is *why* she would perceive it as a negative. It certainly had nothing to do with negative sentiments toward public education since she had sponsored and/or supported

¹⁹⁹² *Fiscal Impact Statement, LB 149 (1999)*, 28 January 1999, 1.

¹⁹⁹³ The Legislature establishes a biennium budget in each odd-numbered year. The Legislature addresses any necessary changes to the budget during even-numbered years.

other K-12 oriented legislation in the past. The answer was found in her comments during floor debate on March 8th. The very term “autopilot” implies that the Legislature would have no say, or little say in this arena of state appropriations. In fact, Governor Johanns wrote in his veto message perhaps what Senator Brown was thinking during debate on bill. “LB 149 has severely limited elected officials’ flexibility in the state budgeting process,” Johanns wrote.¹⁹⁹⁴ In short, it was a matter of state control over political subdivisions versus the other way around.

After a lengthy discussion, Senator Quandahl withdrew his motion to bracket.¹⁹⁹⁵ Perhaps in an effort to close debate for the day, Senator Bob Wickersham, a proponent of the legislation, moved to indefinitely postpone the bill.¹⁹⁹⁶ Under the Rules of the Legislature, this automatically gave the chief sponsor of the bill, Senator Bohlke, an opportunity to request that the bill be laid over. And this she did. LB 149 was laid over ostensibly for the purposes of allowing legislators and staff to review the data.

“One by land, two by sea”

The second and final day of Select File debate occurred on March 10, 1999. The delay gave legislators about a day and a half to look over the data and come to grips with their opinion about the legislation. And there would be one last attempt by those who feared the loss of legislative control over school funding issues.

Speaker Kristensen offered what really was the only serious amendment to the bill since its advancement from committee. The amendment proposed to keep the provisions of LB 149 relatively in tact. In future years, as per the bill, state aid would be certified by February 1st during the legislative session. The Kristensen amendment would add a new provision to provide that if the Legislature decided to appropriate a lesser amount than what the certification called for, then the February 1st certification is automatically null and void.¹⁹⁹⁷ A new certification would be completed based on the final appropriation.

¹⁹⁹⁴ NEB. LEGIS. JOURNAL, 18 March 1999, 1067-68.

¹⁹⁹⁵ Id., 8 March 1999, 858.

¹⁹⁹⁶ Id., 866.

¹⁹⁹⁷ NEB. LEGIS. JOURNAL, *Kristensen AM0715*, 9 March 1999, 878.

The Speaker's amendment was filed on March 9th, a day before the debate took place. The K-12 education community was alerted and communication was dispatched to urge senators' opposition to the measure. This lobbying effort certainly did not escape the attention of the Speaker. Said Kristensen:

I assume, by this morning, most of you have gotten a frantic panic call from your superintendent. Obviously, the K-12 educational lobby has probably visited with you. I suppose part of it is 'the British are coming, the British are coming, one by land, two by sea,' they're here to storm the state aid bill and we're not going to get our money, and we're going to create terrible calamity, we're going to create instability, and that you won't have state aid to schools.¹⁹⁹⁸

Kristensen asked his colleagues to carefully consider the ramifications of LB 149 in its present form. "The issue is, who really are the stewards and what really is your job here as a state legislator towards the state budget," he cautioned.¹⁹⁹⁹

The K-12 lobby may have had reason to worry considering the language contained in the Kristensen amendment. It certainly would have given back to the Legislature the ultimate control over its budget, but it also had the potential to create havoc on local school district budgets and staffing. The amendment essentially required schools to look forward to, but not count upon, the certification of state aid issued on February 1st. Since the Legislature typically does not finalize its own budget until late in the session, schools would be waiting with fingers crossed that the certification was worth the paper on which it was written. In the meantime, the April 15th deadline to issue reduction-in-force notices could lapse with still no word on the Legislature's final decision on state aid appropriations. But the Speaker's concern appeared to be first and foremost with the budget situations faced by the Legislature. And he certainly was not alone, since the administration's concern appeared to mirror that of the Speaker's.

However, while the education community may not have liked his proposal, some of his colleagues in the Legislature did like it. Speaker Kristensen raised some very good points about the state budget-making process and where the *buck* stops. He pointed out

¹⁹⁹⁸ *Floor Transcripts, LB 149 (1999)*, 10 March 1999, 1981.

¹⁹⁹⁹ *Id.*, 1982.

that funding for Medicaid and public assistance were already two major areas where the Legislature had little control. If LB 149 passed in its present form, another major portion of the budget, state aid to education, would also be more or less taken off the table for debate. “That means that if we have an economic downturn, if we have short monies, half of the budget you’re not going to be able to touch,” Kristensen said.²⁰⁰⁰ The Speaker also asked his colleagues to remember their constitutional responsibilities. “Who does watch the state budget?” he asked, “What is your ultimate role?”²⁰⁰¹

In order to counter the Speaker’s move, Senator Bob Wickersham filed an amendment to the amendment. The Wickersham proposal would allow a school district to exceed the maximum property tax levy in the amount of the difference of the February 1st certified state aid and the recertified amount in the event the Legislature fails to appropriate sufficient funds to meet the initial certification.²⁰⁰² It would essentially hold the Legislature’s feet to the fire since few if any state lawmakers would want to cause an increase in property taxes.

Senator Wickersham most assuredly did not want to cause increases in property taxes, nor did he particularly relish offering the amendment that he did. “I’m going to ask you to vote for the amendment to the amendment even though I don’t like it, but I think it’s the only fair way that we can frame our discussion this morning,” he said.²⁰⁰³ And his point in requesting such a vote was as compelling as anything the Speaker had to say in defense of his own initial amendment. Said Wickersham:

What does that mean? It means that if the schools had to go back to the property tax base because we wouldn’t keep our commitments to K-12 education, that they would go back to property taxes. They have no place else to go. Within the framework that we have imposed on them, they have no place else to go. And if we won’t keep our commitments, at least we ought to be honest about it and say that we know what the impact of failure to keep our commitment is, and that is

²⁰⁰⁰ Id.

²⁰⁰¹ Id.

²⁰⁰² NEB. LEGIS. JOURNAL, *Wickersham AM0728 to Kristensen AM0715*, 10 March 1999, 883-886.

²⁰⁰³ *Floor Transcripts, LB 149 (1999)*, 10 March 1999, 1985.

higher property taxes. We ought to recognize that that is what Senator Kristensen's amendment is about and not play games with our constituents.²⁰⁰⁴

It may or may not have been Senator Wickersham's intent to use his own amendment to make his colleagues think twice about the Kristensen proposal. Whether a surprise or not, some legislators seemed to buy into both ideas, which would have flown in the face of the property tax relief concept promoted in the previous three sessions.

The chair of the Appropriations Committee, Senator Roger Wehrbein, seemed to like both amendments as an effort to maintain some flexibility for state lawmakers. Senator Pam Brown, whose concerns were prominently voiced during first-round debate, also seemed to go along with the proposals. Senator Chris Beutler, an ardent supporter of LB 149, also rose to cast his support for the Kristensen plan. But not all were enamored.

Senator Stan Schellpeper of Stanton wanted to color the Kristensen proposal in a different light. Said Schellpeper:

The real thrust behind the Kristensen amendment is Governor Johanns' property tax plan. You know, you can talk about anything you want but that's the real thrust behind the Kristensen amendment. This body has to decide if we want to support education with sales and income taxes or go back to using more ... more property taxes. ... We started it, let's not jump off the ship today.²⁰⁰⁵

Senator Schellpeper was referring to the Governor's budget proposal to apply additional funds to the property tax relief effort. It was widely known by then that the Governor had not intended to devote additional resources for state aid as required under LB 149.

For her part, Senator Bohlke knew full well what Senator Wickersham intended with his amendment to the amendment — to make the body completely aware of the impact the Kristensen amendment might have on schools. It also concerned the age-old discussion about shifting education funding toward state support through sales and income taxes and away from local property taxes. She asked her colleagues to consider the impact of the combined proposals on schools:

²⁰⁰⁴ Id.

²⁰⁰⁵ Id., 2001-03.

And what would happen if we passed the Wickersham amendment and then passed the Kristensen amendment and then we would come in at the beginning of a session and we would certify aid February 1, and then schools would not know until we ended that session, after they have set their budgets, hired the teachers, as to really what they ... what amount of aid they would be receiving?²⁰⁰⁶

Bohlke urged her colleagues to stay the course on property tax relief by advancing LB 149 in its existing form and to uphold the proper funding of public education.

In his closing comments, Senator Wickersham reiterated that he neither liked his own amendment nor the Kristensen amendment. But he felt if the body was destined to adopt the Kristensen amendment, then it should accordingly vote in favor of his amendment first. The Legislature heeded his advice, but just barely. The Wickersham amendment was adopted by a 25-20 vote.²⁰⁰⁷ This set the stage for the final item of discussion, the adoption of the Kristensen amendment as amended by the Wickersham amendment.

The body continued debate on the overall proposal. Senator Bohlke became more animated in her opposition to the Kristensen plan. She drew upon her recollection of prior school finance policy issues, including the inception of the TEEOSA in 1990. “I stand firm on that, that I think we definitely need to vote ‘no’ on the Kristensen amendment, because I think actually, if we would adopt the Kristensen amendment, it takes us back actually prior to LB 1059, on where we were on determining state aid for education,” she said.²⁰⁰⁸

Senator Ron Raikes of Lincoln, a member of both the Education and Revenue Committees, joined Senator Bohlke in opposition to the Kristensen amendment. Already a recognized authority on school finance issues, Senator Raikes drew the body’s attention to an important, yet undisclosed aspect of the Wickersham-Kristensen proposal. Raikes admitted that he voted in favor of the Wickersham amendment with reservation, which he then shared with members of the Legislature. The levy exclusion contained in the

²⁰⁰⁶ Id., 1989-90.

²⁰⁰⁷ NEB. LEGIS. JOURNAL, 10 March 1999, 886.

²⁰⁰⁸ *Floor Transcripts, LB 149 (1999)*, 10 March 1999, 2009.

Wickersham amendment, Senator Raikes noted, would treat schools disparately. He explained:

The state aid formula contributes aid to schools, to local school districts on an equalized basis, a capacity to pay. Nonequalized schools, you understand, with the Wickersham amendment, are, in effect, held harmless. If we cut state aid, nonequalized schools will not be affected. Nonequalized schools, and there are several in the state, have more resources than needs now, that's why they're nonequalized. Equalization is an effort to bring equalized districts up to the nonequalized ones.²⁰⁰⁹

Naturally, Senator Wickersham, himself an authority on school finance, was aware of the implications of his own amendment. But Raikes' comments were particularly helpful to those listening carefully to understand just how the packaged amendment might affect schools within their own legislative districts.

Drawing to some degree on Raikes' remarks, Speaker Kristensen closed on his amendment by urging his colleagues to remember their roles in state government. "My job is not to be the state super school board," he said, "My job is to be a state senator."²⁰¹⁰ He added, "My job is not to blindly close my eyes and say, whatever it takes, you're not going to be held harmless."²⁰¹¹ He insisted that public schools would need to participate, like everyone else, in the state budget-setting process and to ride the peaks and valleys of the economic situations faced by the state.

In a rather dramatic moment in the legislative life of LB 149, all 49 members of the Legislature were present for the vote to adopt the Kristensen amendment, as amended by the Wickersham amendment. And all participated in the vote, which left the Speaker and perhaps the Governor on the short end. The amendment was defeated by an 18-31 record vote.²⁰¹²

²⁰⁰⁹ Id., 2010.

²⁰¹⁰ Id., 2017.

²⁰¹¹ Id.

²⁰¹² NEB. LEGIS. JOURNAL, 10 March 1999, 886.

Table 114. Record Vote: Kristensen AM0715, as Amended
by Wickersham AM0728 to LB 149 (1999)

Voting in the affirmative, 18:

Baker	Byars	Jensen	Peterson	Smith
Beutler	Chambers	Kristensen	Quandahl	Tyson
Brown	Crosby	Matzke	Redfield	Wehrbein
Bruning	Engel	Pederson		

Voting in the negative, 31:

Bohlke	Dierks	Kiel	Price	Schrock
Bourne	Hartnett	Kremer	Raikes	Stuhr
Brashear	Hilgert	Landis	Robak	Suttle
Bromm	Hudkins	Lynch	Schellpeper	Thompson
Connealy	Janssen	Pedersen	Schimek	Vrtiska
Coordsen	Jones	Preister	Schmitt	Wickersham
Cudaback				

Source: NEB. LEGIS. JOURNAL, 10 March 1999, 886.

Senator Bohlke and fellow members of the Education Committee had scored a major victory in the defeat of the Kristensen amendment. It meant that LB 149 would be considered for advancement in tact, as originally proposed. Another roll call vote was taken on the issue of advancement. LB 149 advanced to the final-round of consideration by a 46-3 vote.²⁰¹³ Speaker Kristensen was among those voting to advance the bill.

Table 115. Record Vote: Advancement
of LB 149 (1999) to E&R Final

Voting in the affirmative, 46:

Baker	Coordsen	Jones	Peterson	Schrock
Beutler	Cudaback	Kiel	Preister	Smith
Bohlke	Dierks	Kremer	Price	Stuhr
Bourne	Engel	Kristensen	Quandahl	Suttle
Brashear	Hartnett	Landis	Raikes	Thompson
Bromm	Hilgert	Lynch	Robak	Tyson
Brown	Hudkins	Matzke	Schellpeper	Vrtiska
Bruning	Janssen	Pedersen	Schimek	Wehrbein
Byars	Jensen	Pederson	Schmitt	Wickersham
Connealy				

²⁰¹³ NEB. LEGIS. JOURNAL, 10 March 1999, 893-94.

Table 115—*Continued*

Voting in the negative, 3:
Chambers Crosby Redfield

Source: NEB. LEGIS. JOURNAL, 10 March 1999, 893-94.

The failure of the Kristensen amendment dealt Governor Johanns a serious blow toward his property tax relief initiative. It also solidified his opposition to LB 149 as he made public the day after the bill moved to the final stage. “I don’t care if it’s 49-0,” Johanns said referring to a pending final-round vote, “I will still veto the legislation, because it’s bad public policy.”²⁰¹⁴ By this time, estimates had been released indicating that LB 149, coupled with a \$1 levy limit, would cost the state an additional \$84 million in state aid for the 2001-02 school year. Members of the Legislature were heading into final-round consideration with their eyes wide open and aware of the consequences.

“A two-handed vote”

On March 17, 1999, Senator Bohlke was ready to make a stand on passage of LB 149. She filed a motion to suspend the Rules of the Legislature and permit consideration of the bill on Final Reading.²⁰¹⁵ Speaker Kristensen had not placed the bill on the agenda, but Bohlke was anxious to move the bill forward. The motion passed by a 40-2 vote.²⁰¹⁶ The Legislature proceeded to vote in favor of passage of LB 149 by a solid 43-3 vote.²⁰¹⁷

Table 116. Record Vote: Passage of LB 149 (1999)

Voting in the affirmative, 43:

Baker	Coordsen	Kiel	Preister	Schrock
Beutler	Cudaback	Kremer	Price	Smith
Bohlke	Dierks	Kristensen	Quandahl	Stuhr
Bourne	Engel	Landis	Raikes	Suttle
Brashear	Hartnett	Lynch	Robak	Thompson
Bromm	Hilgert	Matzke	Schellpeper	Tyson

²⁰¹⁴ Leslie Reed and Todd Von Kampen, “Johanns Vows Veto Of School-Aid Plan,” *Omaha World-Herald*, 11 March 1999, 1.

²⁰¹⁵ NEB. LEGIS. JOURNAL, 17 March 1999, 1031.

²⁰¹⁶ *Id.*

²⁰¹⁷ *Id.*, 1031-32.

Table 116—*Continued*

Bruning	Hudkins	Pedersen	Schimek	Wehrbein
Byars	Janssen	Pederson	Schmitt	Wickersham
Connealy	Jensen	Peterson		
<i>Voting in the negative, 3:</i>				
Chambers	Crosby	Redfield		
<i>Present and not voting, 1:</i>				
Brown				
<i>Excused and not voting, 2:</i>				
Jones	Vrtiska			

Source: NEB. LEGIS. JOURNAL, 17 March 1999, 1031-32.

Governor Johanns wasted no time in taking action on the legislation. He returned the measure to the Legislature with his veto the next day, on March 18th, along with the following communication:

My veto of LB 149 has nothing to do with the additional \$19.4 million that this legislation will authorize to be distributed to Nebraska public schools under the state aid finance formula. To the contrary, had LB 149 centered solely on the issue of restoring additional funds to the school aid formula, then I would have signed the legislation into law. My objection to LB 149 arises from provisions of the bill which clearly obligate the State while removing the flexibility of elected officials to make spending decisions based upon the entire state budget.

LB 149 changes the state aid calculation process to require that state aid amounts be certified each year on February 1. The legislation also amends the statutory finance formula by fixing one calculation factor, the local effort rate, at ten cents below the maximum property tax levy. The practical effect of this change is that the statutory formula will dictate to the Legislature a “needed” appropriation level. Combined, these LB 149 provisions prohibit the Legislature from either increasing or decreasing the certified state aid amount during budget deliberations which occur later in each calendar year. Thus, as adopted by the Legislature, LB 149 has severely limited elected officials’ flexibility in the state budgeting process. This is poor public policy.²⁰¹⁸

Interestingly, LB 149 represented the first veto of Johanns’ administration. It would also represent his first overturned veto.

²⁰¹⁸ Id., 18 March 1999, 1067-68.

Senator Bohlke was quick to file a motion to override, doing so on the same day the Governor vetoed the bill.²⁰¹⁹ She asked the Speaker to place the issue on the Legislature's agenda just as soon as possible, which turned out to be the afternoon of Monday, March 22, 1999.

For the proponents of the measure, the veto override was a relative sure thing, although such an event is never taken for granted. The education community was unified in its support of the measure, and all representative organizations worked together to influence a successful outcome. For the K-12 lobby, the final passage of LB 149 symbolized the conclusion of the legislative session, for all practical purposes. This was *the* bill of the 1999 Session for public education interest groups.

There are not too many votes on veto overrides without accompanying political posturing on the floor of the Legislature. LB 149 was no exception. Even though most, if not all, legislators knew how they planned to vote, there was the inevitable discussion that precedes it. Of particular amusement was Senator Gene Tyson's comment about the nature of the veto override in his opinion. The Norfolk legislator said:

I was going to vote for LB 149, and then after our Governor vetoed it I was going to vote for the override, and I'm going to. But I thought maybe some of you might have a little problem in voting for it so I'll tell you about how to make a two-handed vote. With a two-handed vote, you take one hand and press the 'aye' button and use the other hand to hold your nose, because this requires a two-handed vote.²⁰²⁰

The "two-handed vote" comment related to the winner-loser situation faced within Tyson's own legislative district. His largest school system, Norfolk Public Schools, actually lost state aid under LB 149, while the other school systems within in his district gained funding. It was a good news, bad news situation for Senator Tyson, who did not particularly care for the existing school finance system. But he still felt the right thing to do was pass the bill over the Governor's objection.

²⁰¹⁹ Id., 1068.

²⁰²⁰ *Floor Transcripts, LB 149 (1999)*, 22 March 1999, 2530.

Senator Brown, one of the key opponents of LB 149, vowed to fight the measure to the last. “I dearly regret that we have ceded to the executive branch our responsibility to protect our legislative process and our legislative integrity,” she said.²⁰²¹ But the Omaha lawmaker also knew the likely outcome of the override vote. “The chickens will come home to roost from this legislation both fiscally but, more importantly I believe, in the public’s perception of whether we are doing our job and defending our institutional responsibility,” Brown warned.²⁰²²

Senator Ernie Chambers of Omaha had become an outspoken critic of LB 149 on the basis that it surrendered one of the major duties of the Legislature. Said Chambers:

When we think of the Legislature institutionally, we should never give over our duties, our responsibilities and our powers to anybody. We should not willingly and voluntarily give over to an automatic system, whether it’s a computer, a formula, or a board or agency, the duty and responsibility that we have to study serious matters and make independent decisions that are appropriate to that situation.²⁰²³

Senator Chambers would do his best to sway the body. He was joined by Senator Pam Redfield, also of Omaha, who reminded her colleagues about one of the more under emphasized facts concerning LB 149. This same issue, she said, was addressed in 1998 under LB 1175, which was vetoed by Governor Ben Nelson.

In 1998, the issue of guaranteed funding for public education took an entirely different course. The Legislature, as if snapped to its senses by the Governor, reversed its decision by sustaining the veto and then passing a bill during special session without the controversial provisions. Redfield thought the Legislature should remember its decision from just a year earlier, and remember why it had reversed itself. Said Redfield:

And so I would urge you to think carefully as we vote this issue, recognizing the fact that there are important things in this bill that we can, as a body, carefully, carefully look at and deal with this session and correct, but we need to be very careful that we are not creating a monster that we will regret.²⁰²⁴

²⁰²¹ Id., 2525.

²⁰²² Id., 2525-26.

²⁰²³ Id., 2522.

²⁰²⁴ Id., 2532.

She reminded her colleagues that public education was but one of the very important “paramount” responsibilities of the state.²⁰²⁵

Since Senator Redfield raised the issue of recent legislation, at least one senator was not about to let it pass without adding his own thoughts. Senator Ron Raikes reminded Redfield that “fixing the local effort rate,” as he put it, was a double-edged sword.²⁰²⁶ “It seems to be the presumption that that automatically means that we are going to be putting more money into state aid,” Raikes explained, “I would argue that that is not the case.”²⁰²⁷ By examining the basic formula (needs minus resources equals aid), he said, it can be discerned that “if resources increase faster than needs, aid will in fact go down.”²⁰²⁸ In other words, schools may or may not benefit from the autopilot policy proposed under LB 149.

For the most part, the discussion on March 22nd involved a one-sided debate among the opponents. Parting shots fired across the bow. The proponents were committed to seeing LB 149 through the legislative process. As to the potential precedent set by this legislation, Senator Bohlke said she would welcome any precedent that involved a positive for education. “I hope it continues to set the precedent that we in the Legislature have always done, and that’s our support of K-12 education,” she said in her closing remarks.²⁰²⁹ The veto override was successful by a 39-7 vote.²⁰³⁰

Table 117. Record Vote: Vote to Override Veto, LB 149 (1999)

Voting in the affirmative, 39:

Beutler	Dierks	Kristensen	Price	Smith
Bohlke	Hartnett	Landis	Quandahl	Stuhr
Bourne	Hilgert	Lynch	Raikes	Suttle
Bromm	Hudkins	Matzke	Robak	Thompson
Byars	Janssen	Pedersen	Schellpeper	Tyson

²⁰²⁵ Id.

²⁰²⁶ Id., 2535.

²⁰²⁷ Id.

²⁰²⁸ Id.

²⁰²⁹ Id., 2536.

²⁰³⁰ NEB. LEGIS. JOURNAL, 22 March 1999, 1125.

Table 117—*Continued*

Connealy	Jones	Pederson	Schimek	Wehrbein
Coordsen	Kiel	Peterson	Schmitt	Wickersham
Cudaback	Kremer	Preister	Schrock	
<i>Voting in the negative, 7:</i>				
Baker	Bruning	Crosby	Jensen	Redfield
Brown	Chambers			
<i>Present and not voting, 2:</i>				
Brashear	Engel			
<i>Excused and not voting, 1:</i>				
Vrtiska				

Source: NEB. LEGIS. JOURNAL, 22 March 1999, 1125.

LB 149 was, in fact, Governor Johanns' first vetoed bill and represented his first overturned veto. This, no doubt, was something the Governor kept in the back of his mind for the remainder of his tenure as the state's chief executive officer. And for years afterward, members of the education community would be cognizant of their own part in helping to shape the outcome.

Governor Johanns apparently looked upon LB 149 as the final word on the issue of education funding. As early as April 1999, while the Legislature was still in session, the Governor was mingling among educators and promising to work toward "consensus" on the issue.²⁰³¹ Appearing before the Delegate Assembly of the Nebraska State Education Association (NSEA), the Governor vowed to find a solution to education funding while at the same time easing the burden of property taxpayers. "I will find a way to make that happen," Johanns promised.²⁰³² At the same NSEA event, Senator Bohlke was honored with one of the coveted NSEA Friend of Education Awards for her dedication to education and, one can surmise, her work toward passage of LB 149.

²⁰³¹ Niz Proskocil, "Johanns: School Consensus Possible Governor tells teachers he still hopes to ease the property-tax burden in funding education," *Omaha World-Herald*, 25 April 1999, 1b.

²⁰³² *Id.*

Table 118. Summary of Modifications to TEEOSA
as per LB 149 (1999)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
1	79-1001	Act, how cited	Adds one new section to the TEEOSA.
2	79-1022.01 <i>new section</i>	December 1, 1998, certification null and void; recertification	A new section declares the certification of state aid made on December 1, 1998 to be null and void and a recertification is required on or before April 1, 1999. The certification and the recertification contain both the calculation of aid for the 1999-2000 school year and prior year corrections based on the final calculation, or respin, of aid for the 1998-99 school year. For the respin for 1998-99 only, no district will receive less than was calculated for the respin on December 1, 1998.
3	79-1003	Terms, defined	Removes estimation language from the definitions of "general fund operating expenditures," "special education allowance," and "transportation allowance." The definitions of "general fund operating expenditures" and "transportation allowance" were further amended by clarifying that the data to be used is for the school year 2 years prior to the year in which aid is to be paid.
4	79-1005.01	School fiscal year 1998-99 and thereafter; income tax receipts; disbursement; calculation	Removes language stating that the allocated income tax funds, or rebate are taken from the funds dedicated to public education and to clarify that reductions in allocated income tax funds due to minimum levy adjustments will not increase the amount available as allocated income tax funds. Previously, those amounts were redistributed as equalization aid.
5	79-1007.02	School fiscal year 1998-99 and thereafter; cost groupings; average formula cost per student; local system's formula need; calculation	Clarifies that the data from the annual financial reports will be from the school year 2 years prior to the year in which aid is to be paid. The average formula cost per student is also calculated prior to the certification of state aid, which means the calculation will not change in the respin. A reference to the certification of state aid being on December 1 is deleted.
6	79-1008.01	Equalization aid; amount	Deletes a reference to the certification of state aid being on December 1.
7	79-1010	Incentives to reorganized districts and unified systems; qualifications; requirements; calculation; payment	Removes the provisions that the \$2 million set aside for base fiscal year incentive payments be subtracted from the TEEOSA appropriation and that unexpended balances of the set aside be reappropriated to TEEOSA. The provision that non-base year incentive payments be subtracted from the appropriation prior to any calculations is also removed.
8	79-1015.01	Local system formula resources; local effort rate; determination	Sets the local effort rate ten cents below the maximum levy for the certification of state aid. The previous procedure for determining the local effort rate would be used for the respin.

Table 118—*Continued*

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
9	79-1018.01	Local system formula resources; other actual receipts included	Clarifies that the formula resources are for the school year 2 ears prior to the year state aid will be paid. Estimation language similar to that in 79-1003 is also deleted in this section.
10	79-1022	Distribution of income tax receipts and state aid; effect on budget	Changes the date for the certification of state aid from December 1 to April 1 for 1999 and February 1 for each year thereafter. The section is also amended to remove the requirement for the Legislative Fiscal Analyst to provide an estimated funding level. A new provision requires the Department of Education to report the necessary funding level to the Governor, the Appropriations Committee, and the Committee on or before the certification date.
11	79-1026	Applicable allowable growth percentage; determination; target budget level	Changes the date for the certification of allowable growth percentages from December 1 to April 1 for 1999 and February 1 for each year thereafter.
12	79-1027	Budget; restrictions	Changes the date for the certification of allowable reserve percentages from December 1 to April 1 for 1999 and February 1 for each year thereafter.
13	79-1028	Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated	Changes the date for the certification of revisions of allowable growth rates due to student growth from December 1 to April 1 for 1999 and February 1 for each year thereafter.
14	79-1031	Department; annual estimate required	Requires NDE, with assistance from the Property Tax Administrator, the Legislative Fiscal Analyst, and the budget division of the Department of Administrative Services, to provide in estimate to the Governor, the Appropriations Committee, and the Education Committee on or before November 15 of each year. The language is eliminated regarding legislation the Governor is required to submit as part of his budget request.
15	79-1031.01	Appropriations Committee; duties	Eliminates language stating that it is the Legislature's intent to ensure sufficient funding to result in a statewide tax levy less than the maximum levy and a requirement that the Legislative Fiscal Analyst calculate an amount to carry out that intent. The Appropriations Committee requirement to include that amount in its budget recommendations is modified to require the committee to include the amount necessary to fund the state aid certified.

Source: Legislative Bill 149, *Slip Law*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, §§ 1-15, pp. 1-14.

LB 813 - Technical Cleanup

LB 813 was principally designed by the Department of Education to remove obsolete language, clarify various provisions, and address issues brought forward since the previous legislative session. For instance, the measure proposed to make some corrections and modifications to various criteria for quality education incentives established under LB 1228 (1998).²⁰³³ The bill renamed the Nebraska School for the Visually Handicapped to the Nebraska Center for the Education of Children who are Blind or Visually Impaired, and modified the mission of the institution.²⁰³⁴ The bill provided that reimbursements for wards of the court and short-term borrowings would be considered “special grant funds,” which would allow schools to receive the funds outside expenditure lids.²⁰³⁵ But the bill would also contain some major substantive provisions, most of which were added later in the legislative process.

Leading up to the final stage of floor debate, one of the more significant aspects of LB 813 related to changes in the way Class I (elementary only) schools and their primary high school districts would coordinate the annual budget setting process.²⁰³⁶ This had been an ongoing issue within some local systems, and LB 813 would represent the latest attempt to resolve the matter. However, the most controversial provision of LB 813 related to the cost groupings within the state aid formula, a provision that would not be added until the legislation had already reached the final stage of debate.

As Senator Bohlke would recall during floor discussion, she had been approached by several of her colleagues, Senators Baker and Schrock, concerning various school systems within their respective legislative districts. These school systems, numbering eight or nine, were classified under the standard cost grouping under the school finance formula, but officials from these systems believed they would be better served by the formula if they were classified under the sparse cost grouping. This would effectively

²⁰³³ Legislative Bill 813, *Slip Law*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, § 17, pp. 10-12.

²⁰³⁴ *Id.*, § 29, p. 21.

²⁰³⁵ *Id.*, § 19, p. 14.

²⁰³⁶ *Id.*, § 32, pp. 23-24.

afford them additional state aid. At the time, the standard cost grouping produced approximately \$4,300 per student, about \$5,070 per student under the sparse cost grouping, and \$5,572 per student under the very sparse cost grouping.²⁰³⁷

The eight or nine school systems at issue did not meet the criteria, established under LB 806 (1997), to be classified as sparse. The criteria, at the time, defined the sparse cost grouping as those local systems that do not qualify for the very sparse cost grouping but which meet the following criteria:

The local system has less than two students per square mile in the county in which the high school is located, based on the school district census, less than one formula student per square mile in the local system, and more than ten miles between the high school attendance center and the next closest high school attendance center on paved roads;

The local system has less than one and one-half formula students per square mile in the local system and more than 15 miles between the high school attendance center and the next closest high school attendance center on paved roads; or

The local system includes 95% or more of a county.²⁰³⁸

These requirements, according to Senator Bohlke, precluded the qualification of the school systems brought to her attention by Senators Baker and Schrock. “Their school district just ... the high school happens to be in the wrong place, which does not let them qualify under the miles [criteria] to another school,” she explained on the floor.²⁰³⁹ The “wrong place,” she would later clarify, refers to the exact location of the high school in relation to another high school.

In order to comply with the requests made by Senators Baker and Schrock, Bohlke agreed to file a motion for specific amendment to LB 813 in order to pull the bill back from Final Reading.²⁰⁴⁰ The amendment would expand the sparse cost grouping criteria as follows:

²⁰³⁷ Legislative Records Historian, *Floor Transcripts, LB 813 (1999)*, prepared by the Legislative Transcribers’ Office, Nebraska Legislature, 96th Leg., 1st Sess., 1999, 9 April 1999, 3685.

²⁰³⁸ NEB. REV. STAT. § 79-1007.02 (Cum. Supp. 1997).

²⁰³⁹ *Floor Transcripts, LB 813 (1999)*, 9 April 1999, 3678.

²⁰⁴⁰ NEB. LEGIS. JOURNAL, *Bohlke AM1143*, 7 April 1999, 1345-46.

Less than two students per square mile in the county in which each high school is located, based on the school district census, less than one formula student per square mile in the local system, and more than ten miles between each high school attendance center and the next closest high school attendance center on paved roads;

Less than one and one-half formula students per square mile in the local system and more than 15 miles between each high school attendance center and the next closest high school attendance center on paved roads;

Less than one and one-half formula students per square mile in the local system and more than 275 square miles in the local system; or

Less than two formula students per square mile in the local system and the local system includes an area equal to 95% or more of the square miles in the largest county in which a high school attendance center is located in the local system.²⁰⁴¹

The changes would become operative in time for the 2000-01 school fiscal year. But would it help those local systems identified by Senators Baker and Schrock? Just as importantly, does this change represent sound public policymaking?

In truth, LB 813 represented the second occurrence for Senator Bohlke to recommend changes to criteria of the sparse cost grouping. Perhaps out of political pressure, she had successfully recommended an amendment to LB 710 in 1997. The amendment effectively altered LB 806, which had passed earlier in the same legislative session. The amendment to LB 710 eliminated two of the original criteria proposed for the sparse cost grouping.²⁰⁴²

The amendment to LB 813, on the other hand, added a new criterion and modified another in order to qualify more local systems into the sparse cost grouping. Not everyone was thrilled with the idea, including Senators Ron Raikes and Chris Peterson, who questioned the rationale offered by Senator Bohlke. Senator Raikes, in particular, asked what impact the amendment would have on local systems within the standard cost grouping. Said Raikes:

²⁰⁴¹ Id.

²⁰⁴² NEB. LEGIS. JOURNAL, *Bohlke AM2635*, printed separate, 3 June 1997, 2557.

[T]he issue is that if the eight systems that you happen to pull out of the standard cost grouping and put into the sparse cost grouping were among the higher cost ones in the standard cost grouping, then the standard cost grouping cost per student would go down for the ... maybe not very much, but it would go down.²⁰⁴³

Senator Peterson was somewhat more direct in her comments, “Whenever we’re dealing with the different classifications and there is change within those structures, it ultimately impacts the amount of the aid in the formula.”²⁰⁴⁴ But were they correct in their criticism?

From an overall policy perspective, it may be argued that the criteria selected to be used in the formula passed under LB 806 may not have been as carefully determined as it could have been. A more careful analysis may have saved some back peddling in subsequent sessions. On the other hand, one might argue that no matter the amount of research into the proper criteria, nothing would prevent the inevitable political rambling and tweaking that ensued. Senator Bohlke was doing her best to accommodate as many requests to change the formula as possible within the limits of her own political agenda. Obviously, her amendment to LB 813 was not a violation of her own beliefs and objectives.

From an objective viewpoint, the Legislative Fiscal Office reported that the amendment would have “an impact on determining the cost groupings of schools in the certification of state aid beginning in 2000-01.”²⁰⁴⁵ An analysis prepared by NDE demonstrated that if the provision had been in effect in 1999-00 the total amount of state aid would have decreased by \$579,231.²⁰⁴⁶ The analysis indicated that nine school systems would move from the standard cost grouping to the sparse cost grouping. School systems in the sparse cost grouping would experience a \$1,562,363 increase in state aid and school systems in the standard cost group would experience a \$2,141,594 decrease in

²⁰⁴³ *Floor Transcripts, LB 813 (1999)*, 9 April 1999, 3683.

²⁰⁴⁴ *Id.*, 3686.

²⁰⁴⁵ Nebraska Legislative Fiscal Office, *Fiscal Impact Statement, LB 813 (1999)*, prepared by Sandy Sostad, Nebraska Legislature, 96th Leg., 1st Sess., 1999, 21 April 1999, 1.

²⁰⁴⁶ *Id.*

state aid, thereby creating a net \$579,231 decrease.²⁰⁴⁷ But it was not known exactly what impact the amendment would have for 2000-01 and subsequent years. Senator Bohlke would later justify the change as “very minimal percentage impacts.”²⁰⁴⁸ She added, “The standard cost group decreases by less than two-tenths of 1 percent; the sparse cost group increases by five one-hundredths of 1 percent.”²⁰⁴⁹

Senators Raikes and Peterson may have had some good points to make, but they did not press the issue too terribly hard. The Legislature accepted Senator Bohlke’s rationale, approved her motion to return the bill to Select File, and eventually adopted her proposed amendment by a 29-1 vote.²⁰⁵⁰ The Legislature would ultimately pass LB 813 on a unanimous 44-0 vote.²⁰⁵¹

Table 119. Summary of Modifications to TEEOSA as per LB 813 (1999)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
19	79-1003	Terms, defined	Generally removes obsolete language from existing terms and definitions. The “special education allowance” is changed to the “special receipts allowance,” by deleting obsolete language, and modifying definitions. The “general fund operating expenditure” and “transportation allowance” definitions are modified to clarify that the data is for local systems, not districts. The “special grant fund” definition is expanded to include reimbursements for wards of the court and short-term borrowings including, but not limited to, registered warrants and tax anticipation notes.
20	79-1007.02	School fiscal year 1998-99 and thereafter; cost groupings; average formula cost per student; local system’s formula need; calculation	Adds a new criteria for the sparse cost grouping and changes another. The new criteria specifies that a local system would be qualified as a sparse system if it had less than one and one-half formula students per square mile in the local system and more than 275 square miles in the local system. The revised criteria was amended to provide that a local system would qualify if it had less than two formula students per square mile in the local system and the local system includes an area equal to 95% or more of the square miles in the largest county in which a high school attendance center is located in the local system.

²⁰⁴⁷ Id.

²⁰⁴⁸ *Floor Transcripts, LB 813 (1999)*, 6 May 1999, 6095.

²⁰⁴⁹ Id.

²⁰⁵⁰ NEB. LEGIS. JOURNAL, 9 April 1999, 1359.

²⁰⁵¹ Id., 6 May 1999, 1900.

Table 119—Continued

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
21	79-1009	Option school districts; net option funding; calculation	Streamlines existing language without changing the meaning or purpose.
22	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	Requires the Property Tax Administrator to certify school district adjusted valuations in addition to local system adjusted valuations.
23	79-1022	Distribution of income tax receipts and state aid; effect on budget	Requires school districts receiving less than \$10,000 per year in state aid to receive a lump-sum payment on the last business day of December, rather than the standard 10 equal payments.
24	79-1024	Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect	Editorial change, no substantive modification.
25	79-1026	Applicable allowable growth percentage; determination; target budget level	Harmonizes existing language with change in Section 19 to rename the “special education allowance” to the “special receipts allowance.”
26	79-1027	Budget; restrictions	Expands and clarifies the funds included in the allowable reserve limitations. Clarifies that the total requirements are included for contingency funds and depreciation funds. Necessary employee benefit fund cash reserves are added.
27	79-1027.01	Property tax requests exceeding maximum levy; reductions; procedure	Clarifies that reductions in property tax requests required to meet the levy limitations are modified for Class I districts by the percentage of affiliation with the high school district. A requirement is also added to clarify that Class I districts with multiple affiliations must make reductions necessary to effect the total required within each local system requiring the reduction.
28	79-1029	Basic allowable growth rate; Class II, III, IV, V, or VI district may exceed; procedure	Reduces the required notice from 7 to 5 days for school boards to vote on exceeding the basic allowable growth rate.

Source: Legislative Bill 813, *Slip Law*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, §§ 19-28, pp. 12-21.

LB 272 - County Superintendents

The office of county superintendent had been a fixture on the public education landscape since territorial days and into statehood. On March 16, 1855, the Nebraska Territorial Legislature passed the Common Schools Act, which created the office of Superintendent of Public Instruction, the precursor to the office of Commissioner of Education.²⁰⁵² The measure also created the elected position of county superintendent. The early role of the county superintendent included the apportionment of the county school tax to schools within the county, an activity we now associate with county treasurers. The office of county superintendent evolved over the decades. The office was generally in charge of various recordkeeping on behalf of the districts within the county and also became an integral part of the school reorganization process.

In 1997 the Legislature took action to eliminate the elected office of county superintendent by passing LB 806. The measure was principally related to revising the school finance formula in connection with the levy limitations passed the previous year. But one of the major features of the legislation was to seek efficiencies in education, in part, through elimination of the elected office. In any other session, in any other year, perhaps, this would have posed political obstacles. However, the passage of LB 1114 in 1996 and the pending implementation of statutory levy lids created an atmosphere conducive for restructuring local government.

The idea of eliminating the office of county superintendent certainly did not originate in 1997. Senator Brad Ashford of Omaha introduced LB 184 in 1993 to do away with the office, but the measure was indefinitely postponed by the Education Committee just one day after its public hearing.²⁰⁵³ As a compromise to the notion of eliminating the office, Senator Ardyce Bohlke offered a bill in 1997 to create regional superintendents of public instruction as opposed to one office per county. Her bill, LB 789, also was killed in committee.²⁰⁵⁴ In the same session, Senator Elaine Stuhr of

²⁰⁵² 1855 NEB. LAWS, *Joint Resolutions and Memorials*, 212-221.

²⁰⁵³ NEB. LEGIS. JOURNAL, 9 March 1993, 935.

²⁰⁵⁴ *Id.*, 24 March 1997, 1188.

Bradshaw introduced LB 808 to phase out the office.²⁰⁵⁵ In fact, it was Senator Stuhr who successfully engineered a plan to eliminate the elected office within the confines of a bill she would ultimately vote against final passage, LB 806.

As advanced from committee on March 25, 1997, LB 806 did not carry any provisions related to the elimination of the elected office of county superintendent. Then, during second-round floor debate of the measure, Senator Stuhr and Senator Paul Hartnett of Bellevue successfully amended LB 806 to provide intent to eliminate the office by June 30, 2000.²⁰⁵⁶ (This was essentially the intent and purpose of LB 808, which had not been advanced from committee.) The Stuhr-Hartnett proposal required the Department of Education to make recommendations on the disposition of duties assigned to county superintendents and to report back to the Legislature by December 1, 1997.

The amendment was adopted by a unanimous 36-0 vote although Senator Bob Wickersham did voice concern about the impact it might have on rural-oriented counties.²⁰⁵⁷ Senator Stuhr defended her amendment, in part, by noting the support of those most affected. “[W]e have been working very hard with the County Superintendents Association and also with the Nebraska Association of County Officials, and they have all agreed to this amendment,” Stuhr said.²⁰⁵⁸

As amended, LB 806 required the Education Committee to prepare legislation in time for the 1998 Legislative Session to carryout the intent to eliminate the elected county positions.²⁰⁵⁹ This, in fact, was done in the form of LB 1217 (1998), introduced by Senator Stuhr.²⁰⁶⁰ While the bill was advanced from committee, it was done so late in

²⁰⁵⁵ Legislative Bill 808, *State intent relating to county superintendents*, sponsored by Sen. Elaine Stuhr, Nebraska Legislature, 95th Leg., 1st Sess., 1997, title first read 22 January 1997.

²⁰⁵⁶ NEB. LEGIS. JOURNAL, *Stuhr-Hartnett AM2198*, 15 May 1997, 2018-20. NEB. REV. STAT. § 23-3312 (Cum. Supp. 1997).

²⁰⁵⁷ NEB. LEGIS. JOURNAL, 15 May 1997, 2017.

²⁰⁵⁸ *Floor Transcripts, LB 806 (1997)*, 15 May 1997, 7107.

²⁰⁵⁹ LB 806, Session Laws, 1997, § 64, p. 37 (1563). NEB. REV. STAT. § 23-3313 (Cum. Supp. 1997).

²⁰⁶⁰ Legislative Bill 1217, *Eliminate the office of county superintendent of schools*, sponsored by Sen. Elaine Stuhr, Nebraska Legislature, 95th Leg., 2nd Sess., 1998, title first read 20 January 1998.

the 60-day session, leaving it stranded on General File. Now dedicated to the mission, Senator Stuhr tried again in 1999 with the introduction of LB 272, the bill that finally carried out the intent of LB 806.

The introduced version of LB 272 did exactly what was expected under LB 806. The bill struck all references to the elected office of county superintendent effective June 30, 2000 and transferred the duties to county clerks and treasurers, and school officials. Based upon the recommendations of the study group organized by the Commissioner of Education, LB 272 also proposed to eliminate county reorganization committees. This was something of an unexpected turn since LB 806 did not specify the elimination of these committees.

LB 272 proposed to transfer the duties of the county reorganization committees to the State Committee for the Reorganization of School Districts. The move to eliminate these local committees was defended by Brian Halstead who represented the Department of Education and the Commissioner of Education. Testifying before the Education Committee on January 25, 1999, Halstead said:

When the Legislature gave us the duty to study the duties of the county superintendent, we weren't authorized to change the reorganization laws and we knew that very clearly. But in the meetings and in the discussion, there was a consensus that if it could be streamlined, that it would make it easier and more efficient and be more consistent across the state if there was one body overseeing it instead of multiple bodies.²⁰⁶¹

Halstead indicated that the move to eliminate the county committees resulted in the request by the department for appropriations to hire additional staff. If the state-level committee on reorganization assumed the new duties, the department would need to hire another employee beginning in the 2000-01 fiscal year.

The dissolution of the county committees did not sit well with one member of the Education Committee. Senator Bob Wickersham questioned whether it was really necessary to eliminate the committees. He cast doubt about the rationale provided by Senator Stuhr. "I'd need to hear a more compelling reason and some protections at the

²⁰⁶¹ Committee on Education, *Hearing Transcripts, LB 272 (1999)*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, 25 January 1999, 84.

state level assuring us that the state committee will be properly sensitive to what local conditions are,” Wickersham said during the public hearing.²⁰⁶² Wickersham reminded those present that the Legislature had committed a considerable amount of time in the previous two sessions to fine-tune the reorganization process. And now LB 272 proposed to eliminate one of the underpinnings from the reorganization procedures.

Senator Stuhr had stated in her opening remarks that the elimination of the local committees was a matter of efficiency in the reorganization process. “The current process of a County Reorganization Committee has actually lengthened the reorganization process ... one body responsible for overseeing reorganizations would provide a greater efficiency and consistency,” she stated.²⁰⁶³ Later in the hearing she added that some reorganizations require multiple county committees and sometimes delayed the process due to logistics in bringing all concerned together at one time.

Senator Wickersham was not alone in his opposition to the bill, at least at the early stages of the legislative process. Christine Nielsen, who represented the Nebraska Association of County Superintendents, also cast her organization’s opposition to the bill.²⁰⁶⁴ This was the same organization that supported the move to eliminate their elected offices, according to Senator Stuhr, during floor debate on LB 806 (1997). Nielsen’s testimony pointed out a number of perceived flaws in the legislation and many questions she believed were left unanswered in the bill.

The county superintendents’ organization may have officially opposed the bill, but some of their own members actually participated in developing the recommendations that became LB 272. In fact, the Commissioner’s study group was comprised of county superintendents, school superintendents, and school board members. LB 272 was the result of a broad-based consensus on how to carryout the intent of the Legislature to dissolve the elected office of county superintendent.

²⁰⁶² Id., 80.

²⁰⁶³ Id., 77.

²⁰⁶⁴ Committee on Education, *Committee Statement, LB 272 (1999)*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, 1.

Interestingly, the bill did not preclude the appointment of county administrators to take on many of the same types of duties performed by the elected officials. This would remain a local decision by each county government. “If a county board wishes to continue the functions of a county school administrator, it may contract with a qualified individual to do so,” Stuhr wrote in her statement of intent.²⁰⁶⁵ Absent an appointed officer, the former duties of the county superintendent would be divided among other county officials and individual school district personnel as directed by the legislation.

Table 120. Provisions of LB 272 (1999) to Eliminate
the Office of County Superintendent

1. Eliminate the office of county superintendent of public instruction effective June 30, 2000 and provide for an optional office of county school administrator.
2. Records in the office of county superintendent transferred to the county clerks.
3. County reorganization committees were to be eliminated.
4. The State Committee for the Reorganization of School Districts was to be assigned the duties and responsibilities of the former county reorganization committee in the reorganization and unification processes.
5. The State Board of Education would be authorized to adopt rules and regulations for the State Reorganization Committee.
6. Additional responsibilities for school district superintendents:
 - Certificates allowing an individual under age 16 to work would be filed with school superintendents;
 - Superintendent would receive lists of students enrolled in public, private, denominational, or parochial schools;
 - Superintendent would compare lists to census information for compulsory attendance requirements;
 - Teachers and administrators would register certificates with superintendents of school district;
 - Superintendent would have the authority to endorse certificates; and
 - Superintendent of a primary high school district would be responsible for receiving applications for work permits for individual aged 14 to 16.

Source: Legislative Bill 272, *Slip Law*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, §§ 1-114, pp. 1-42.

²⁰⁶⁵ Senator Elaine Stuhr, *Introducer’s Statement of Intent, LB 272 (1999)*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, 25 January 1999, 1.

LB 272 impacted the statutes relevant to the school finance formula but only in a minor way. Prior to LB 272, the Commissioner of Education was authorized to notify the appropriate county superintendent of any school district that had not submitted budget documents, financial reports, and statistical reports in a timely fashion. The county superintendent would then direct the applicable county treasurer to withhold funding to the school district until such documents and reports were received by the Department of Education. LB 272 eliminated the “middle man” and authorized the Commissioner to work directly with the appropriate county treasurer on such matters.²⁰⁶⁶

LB 272 was poised for the fast track in the legislative process. The Legislature had already committed itself to the action proposed in the measure. LB 272 was advanced from the Education Committee on a 7-1 vote on February 8, 1999.²⁰⁶⁷ Senator Wickersham was the lone dissenting vote, but it would be the only time he would cast a negative vote on the measure. LB 272 received unanimous votes for advancement throughout all stages of floor debate and received final approval on March 20, 1999 by a 46-0 vote.²⁰⁶⁸

Table 121. Summary of Modifications to TEEOSA as per LB 272 (1999)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
93	79-1024	Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect	Eliminated references to county superintendents. Requires the Commissioner of Education to work directly with the county treasurers to withhold funding if individual school budget documents are not received in a timely fashion.
94	79-1033	State aid; payments; reports; use; requirements; failure to submit reports; effect; early payments	Eliminated references to county superintendents. Requires the Commissioner of Education to work directly with the county treasurers to withhold funding if individual school financial and statistical reports are not received in a timely fashion.

Source: Legislative Bill 272, *Slip Law*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, §§ 93-94, pp. 36-37.

²⁰⁶⁶ Legislative Bill 272, *Slip Law*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, §§ 93-94, pp. 36-37.

²⁰⁶⁷ Committee on Education, *Executive Session Report, LB 272 (1999)*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, 8 February 1999, 1.

²⁰⁶⁸ NEB. LEGIS. JOURNAL, 20 March 1999, 2313.

LB 194 - Property Tax and Assessment

For those who monitor school finance policy, it is essential to pay close attention to the revenue “side” of the equation. School officials and lobbyists for education organizations typically devote as much attention to revenue-related legislation as education-related legislation. Whether by design or happenstance, the Revenue and Education Committees meet in public hearing rooms directly across the hallway from each other on the first floor of the Capitol, although the committees do not conduct hearings on the same days of the week. In recent years, at least one member and as many as four members of the Education Committee also served as members of the Revenue Committee. The connection between the committees has had positive effects on both education and revenue policy decisions over the years since discussions on one subject are often interrelated with the other.

LB 194 (1999) is an example of this cross connection between revenue and education fields. The bill was introduced on behalf of the Property Tax Administrator, Cathy Lang, and the Property Tax Division of the Department of Revenue.²⁰⁶⁹ Her office annually proposes technical and substantive cleanup provisions very similar to the way in which the Department of Education suggests cleanup bills to the Education Committee.

As introduced and advanced from committee, LB 194 did not change any sections of law directly related to the school finance formula nor education-related statutes generally. Instead, the bill contained both technical and substantive changes to laws related to property tax assessment and other revenue matters. For instance, the bill proposed that after July 25th of each year the county assessor, with approval of the county board of equalization, would correct the assessment roll and the tax list, if necessary, in the case of a clerical error that results in a change in the value of the real property.²⁰⁷⁰ LB

²⁰⁶⁹ In 1999, LB 36 was passed to separate the Property Tax Division from the Department of Revenue and to create a separate state agency for this purpose, the Department of Property Assessment and Taxation. Legislative Bill 36, in *Laws of Nebraska, Ninety-Sixth Legislature, First Session, 1999*, Session Laws, comp. Patrick J. O’Donnell, Clerk of the Legislature (Lincoln, Nebr.: by authority of Scott Moore, Secretary of State).

²⁰⁷⁰ Legislative Bill 194, *Slip Law*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, § 30, p. 11.

194 changed the date by which the county assessor must complete the assessment of real property from April 1st to March 20th of each year.²⁰⁷¹

The legislation took some rather dramatic steps toward centralization of standards used by county assessors. Previous to 1999, the Property Tax Administrator was required to produce various manuals and guidelines to assist county assessors carryout their duties. LB 194 changed the existing law to require all county assessors and deputy assessors to be educated and certified by the Property Tax Administrator.²⁰⁷² The bill required the Property Tax Administrator to establish, implement, and maintain a curriculum of educational courses for the certification and recertification for all county assessors.²⁰⁷³ The Administrator must also establish, through rule and regulation, the required educational standards and criteria for certification and recertification.

The measure permitted the Property Tax Administrator to invalidate the certificate of any assessor or deputy assessor who willfully fails or refuses to diligently perform his/her duties concerning the assessment of property and the duties of each assessor and deputy assessor. If the certificate of a person serving as assessor or deputy assessor is revoked, the person is removed from office, the office declared vacant, and the person is not be eligible to hold that office for a period of five years after the date of removal.²⁰⁷⁴

LB 194 advanced from the Revenue Committee on February 3, 1999.²⁰⁷⁵ The measure progressed through the legislative process and was amended several times before it reached the third and final stage of consideration. On March 25th Senator Bob Wickersham, chair of the Revenue Committee and member of the Education Committee, moved to return the bill to Select File for specific amendment. It was at this point in time that LB 194 would take on a direct relation to the school finance formula.

²⁰⁷¹ Id., § 15, p. 5.

²⁰⁷² Id., § 22, pp. 7-9.

²⁰⁷³ Id., § 14, p. 5.

²⁰⁷⁴ Id., § 22, pp. 7-9.

²⁰⁷⁵ Committee on Revenue, *Executive Session Report, LB 194 (1999)*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, 3 February 1999, 2.

The amendment filed by Senator Wickersham would not have been offered on that day if LB 149, the controversial school finance bill, had not been passed over the Governor's objection just three days earlier.²⁰⁷⁶ One of the major provisions of LB 149 was to change the state aid certification date from December 1st each year to February 1st each year.²⁰⁷⁷ The idea was, in part, to utilize the most current data available, and, by moving the date to February 1st, it allowed the Department of Education to use more current data. Senator Wickersham drew upon this objective in another change to the school finance formula. "This change is only possible because in LB 149 we moved the certification date from December 1st to February 1st, so this is a reaction, if you will, in part, to the changes that we made in LB 149," Wickersham said.²⁰⁷⁸

Prior to 1999, the Property Tax Administrator would compute and certify to the Department of Education the adjusted valuation for the current calendar year of each local system for each class of property in each such local system. This function had to be completed by July 1st of each year. The adjusted valuation of property for each local system would be used to calculate the state aid value in order to calculate state aid. The Property Tax Administrator would then notify each local system of its adjusted valuation for the current calendar year by class of property, again by July 1st of each year. The problem, as Wickersham explained, is that the "old July 1st date didn't allow the Property Tax Administrator's Office to use current information for that component of the valuation of a school district."²⁰⁷⁹ The Property Tax Administrator had to use the prior year's data.

The Wickersham amendment to LB 194 proposed to change the July 1st deadline to October 10th beginning in 2000. To help the Property Tax Administrator carryout this objective, the amendment required county assessors to certify the total taxable value by

²⁰⁷⁶ The Legislature voted to override Governor Johanns' veto of LB 149 (1999) on March 22, 1999. NEB. LEGIS. JOURNAL, 22 March 1999, 1125.

²⁰⁷⁷ LB 149 (1999), *Slip Law*, § 10, p. 11.

²⁰⁷⁸ Legislative Records Historian, *Floor Transcripts, LB 194 (1999)*, prepared by the Legislative Transcribers' Office, Nebraska Legislature, 96th Leg., 1st Sess., 1999, 25 March 1999, 2883.

²⁰⁷⁹ *Id.*

school district to the Property Tax Administrator by August 25th of each year.²⁰⁸⁰ “[T]he effect is that we will have more current information in the adjusted valuation numbers that are given by the Property Tax Administrator’s Office to the Department of Education to be used in the state aid formula,” Wickersham asserted to his colleagues.²⁰⁸¹

In addition to the foregoing date change, the Wickersham amendment also proposed to change the deadline by which a local system may file with the Property Tax Administrator written objections to the adjusted valuations prepared by the Property Tax Administrator. The date had been July 31st and the Wickersham amendment changed the date to November 10th of each year. The date by which the Property Tax Administrator had to respond to the request was changed from November 1st to January 1st. Finally, the amendment changed the deadline for requests by local systems to file nonappealable corrections of adjusted valuation due to clerical error or, for agricultural land, assessed value changes by reason of land qualified or disqualified for special use valuation (greenbelt). The date had been October 1st and the amendment changed the date to November 10th of each year and the Property Tax Administrator had to respond by January 1st of the following year.²⁰⁸²

Senator Wickersham’s amendment apparently made sense to his colleagues. There was no debate or discussion on the matter. The rationale for the amendment was in harmony with that proposed under LB 149, which the Legislature had already passed into law. “We have consistently worked to provide the most current information possible for use in the school aid formula, and I would suggest to you that this change is consistent with that,” Wickersham said.²⁰⁸³ And his colleagues agreed by granting a unanimous 39-0 vote for adoption of his amendment.²⁰⁸⁴ The Legislature passed LB 194 on April 23, 1999 by a 42-0 vote.²⁰⁸⁵

²⁰⁸⁰ NEB. LEGIS. JOURNAL, *Wickersham AM1007*, 25 March 1999, 1217-20.

²⁰⁸¹ *Floor Transcripts, LB 194 (1999)*, 25 March 1999, 2883.

²⁰⁸² NEB. LEGIS. JOURNAL, *Wickersham AM1007*, 25 March 1999, 1217-20.

²⁰⁸³ *Floor Transcripts, LB 194 (1999)*, 25 March 1999, 2883.

²⁰⁸⁴ NEB. LEGIS. JOURNAL, 25 March 1999, 1220.

²⁰⁸⁵ *Id.*, 23 April 1999, 1645-46.

Table 122. Summary of Modifications to TEEOSA
as per LB 194 (1999)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
34	79-1016	Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited	<p>Changed from July 1st to October 10th the deadline by which the Property Tax Administrator (PTA) must compute and certify to the Department of Education the adjusted valuation of each local system for each class of property in each local system. Required county assessors to certify the total taxable value by school district to the PTA by August 25th each year.</p> <p>Changed the deadline by which a local system may file with the PTA written objections to the adjusted valuations prepared by the PTA from July 31st to November 10th of each year. The date by which the PTA had to respond to the request was changed from November 1st to January 1st.</p> <p>Changed the deadline for requests by local systems to file nonappealable corrections of adjusted valuation due to clerical error or, for agricultural land, assessed value changes by reason of land qualified or disqualified for special use valuation (greenbelt). The date had been October 1st and LB 194 changed the date to November 10th. The PTA must respond by January 1st of the following year.</p>
35	79-1022	Distribution of income tax receipts and state aid; effect on budget	Editorial change; harmonize with changes made in section 34.

Source: Legislative Bill 194, *Slip Law*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, §§ 34-35, pp. 12-14.

LB 87 - Joint Public Agencies

In an era when the trend was fewer not more local governments, LB 87 (1999) seemed somewhat out of place at first glance. Legislative Bill 87 was sponsored by Senator Bob Wickersham, chair of the Revenue Committee, and was actually a second attempt from a bill introduced a year earlier. LB 1089 (1998) was advanced by the Revenue Committee and placed on General File on March 2, 1998.²⁰⁸⁶ LB 1089 was designated a Speaker priority, but the session ended before the measure could be debate.

²⁰⁸⁶ NEB. LEGIS. JOURNAL, 2 March 1998, 848.

The subject of both LB 1089 and its successor LB 87 was the creation of a new type of political subdivision called a joint public agency.²⁰⁸⁷ The idea was to give existing political subdivisions and state agencies another possible avenue for cooperation on joint projects, somewhat similar to interlocal agreements. Under the Joint Public Agency Act, as created by LB 87, a school district, for instance, could form a joint public agency with a municipality (inside or outside Nebraska), a state agency, or even a federal agency. Whatever the combination of joining parties, the legislation would not create any new property tax authority. The levy limits would still apply and there would be no levy exclusion for such entities. If a city and school district formed a joint public agency, for example, their combined property tax authority would have to cover the new entity.

The joint public agency would be allowed to own property, make contracts, employ workers, and otherwise enjoy the benefits of a governmental entity. The agency would have its own board, would have the option to hire an executive director, would be subject to the open meeting laws, and would be subject to the Political Subdivision Tort Claims Act. The agency may also issue bonds if doing so was consistent with the agreement between the parties that formed the new political subdivision.²⁰⁸⁸

LB 87 amended the school finance laws only in one area and that was related to the spending lid exclusions available to school districts. Prior to LB 87, a K-12 or high school only (Class VI) district was granted the authority to exceed the local system's allowable growth rate for expenditures in support of a service that is the subject of an interlocal cooperation agreement or a modification of an existing agreement. LB 87 expanded this section of law to include joint public agencies.²⁰⁸⁹

²⁰⁸⁷ Legislative Bill 87, *Slip Law*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, §§ 1-100, pp. 1-46.

²⁰⁸⁸ *Id.*

²⁰⁸⁹ *Id.*, § 88, pp. 37-38.

Table 123. Summary of Modifications to TEEOSA
as per LB 87 (1999)

<i>Bill Sec.</i>	<i>Statute Sec.</i>	<i>Revised Catch Line</i>	<i>Description of Change</i>
88	79-1028	Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated	Prior to LB 87, a K-12 or high school only (Class VI) district was granted the authority to exceed the local system's allowable growth rate for expenditures in support of a service that is the subject of an interlocal cooperation agreement or a modification of an existing agreement. LB 87 expanded this section to include joint public agencies.

Source: Legislative Bill 87, *Slip Law*, Nebraska Legislature, 96th Leg., 1st Sess., 1999, § 88, pp. 37-38.

F. Review

At the beginning of the 1998 Session, Governor Ben Nelson was on a personal mission to ensure the property tax relief promised under the levy limitations of LB 1114 (1996). The Governor asked Senator Coordsen to serve as chief sponsor of what became LB 989, the spending limit bill of the 1998 Session. Demonstrating the seriousness of the proposal, the Governor asked the remaining seven members of the Revenue Committee to cosponsor the bill, giving it an all but guaranteed pass from committee to floor debate. As introduced, LB 989 proposed to limit budget growth for all political subdivisions, including school districts and educational service units. The bill provided for an annual revenue lid of 2.5% for all political subdivisions other than school districts since schools are the only class of local government that operate under an expenditure lid. For school districts, the bill set a 2.5% base growth rate on general fund expenditures other than expenditures on special education and permitted a lid range of 2% (2.5% to 4.5%).

As passed by the Legislature, LB 989 implemented a growth rate of 2.5% to 4.5% for general fund expenditures (other than special education) effective July 1, 1998. The bill reinstated the student growth allowance and unused budget authority provided under law prior to the implementation of LB 299 (1996). It allowed a school board to exceed the basic allowable growth rate by up to an additional 1% with the affirmative vote of at least three-fourths of the board. Finally, the bill reinstated most of the spending lid exceptions in existence prior to 1996, including lid exceptions for (i) interlocal

agreements, (ii) repairs to infrastructure damaged by a natural disaster, (iii) judgments (except CIR orders) to the extent not paid by liability insurance, (iv) early retirement programs, and (v) certain lease purchase agreements.

Another important lid bill from the 1998 Session involved the levy limitations that would soon become operative for the 1998-99 school year. As originally introduced in 1997, LB 306 proposed to create an efficiency commission to approve or deny capital construction projects of local governments. By the start of the 1998 Session, a new and more pressing issue arose concerning the levy limitations. The issue involved the ability of local governments, including school districts, to place a levy override question on an election ballot in time for the first year of implementation of the maximum levies. LB 1114 (1996) stated that the maximum levy provisions would become operative for fiscal years beginning “after July 1, 1998.” Given this operative date, some attorneys representing school districts questioned whether a levy override election could be held prior to the July 1st date. And a few school districts, particularly hard hit by the levy limits, had a need to pursue a levy override immediately in order to sustain operations.

As passed by the Legislature, LB 306 made a number of modifications to revenue-related statutes. For school districts, however, the central focus of the bill was the levy override provisions. The provided a more specific election procedure and ballot language for elections to exceed the levy limits. It provided a process for a local governing body to rescind or modify a previously approved levy override ballot issue, something not considered at the time LB 1114 (1996) was passed. The bill specified that a local governing body could only pursue one levy override attempt per calendar year, but the patrons of the district may bring forward any number of petition efforts to override the levy limit as they wish during a calendar year. The idea was to avoid placing limits on the will of the people. Finally, the bill changed the operative date of the existing law concerning the ability to override the levy limitations from July 1, 1998 to the date of December 1, 1997. The retroactive date would permit school districts and other political subdivisions to exceed the levy limits in time for the first year of implementation (1998-99).

The idea of “fully funding” the state aid formula has long been an objective of public schools. The issue dates back to Senator Warner’s attempts in 1967 to fully fund the Foundation and Equalization Act, the predecessor to TEEOSA. The proponents of LB 1059 (1990) and LB 806 (1997) also fought to ensure sufficient funding to permit the state aid formula to function as intended. In 1998, the issue reappeared in, of all things, an amendment to a technical cleanup bill (LB 1175). An amendment to LB 1175, offered by Senator Bob Wickersham, sought to establish the local effort rate in the state aid formula at 90.97% times the maximum levy allowed schools under the property tax lid. The Legislature would then be required to provide sufficient annual appropriations to fully fund the amount of state aid certified by NDE based on the local effort rate established under the bill. In essence, there would be a guarantee, of sorts, by the Legislature to ensure complete funding from year to year. The formula would function with minimal political influences.

The Wickersham amendment would be adopted without initial fanfare, but that would not last for long. Once the Governor’s office understood the gravity of the amendment, the fate of LB 1175 was sealed. Governor Nelson would veto the bill, and subsequently call a special session of the Legislature to pass all provisions of the bill except the provisions contained within the Wickersham amendment.

In 1999 the issue would once again appear on the legislative agenda. This time the issue would involve the full attention of the Legislature and also the new executive administration under Governor Mike Johanns. The measure was LB 149, which was introduced due to an unexpected shortfall in state aid of approximately \$19.4 million.

Before 1999, the calculation of state aid to schools used both estimates and actual data. The state aid calculation was first based on an estimate using a three-year average growth trend. When actual data became available, the new data replaced the estimate, and any increases or decreases in state aid resulting from the use of actual data were subsequently reflected in the amount of state aid paid out to school systems the following year. In 1999, the disparity between the estimate and the actual data resulted in the \$19.4 million shortfall and the introduction of LB 149.

LB 149 proposed to declare the state aid amount certified by NDE for the 1998-99 school year null and void and required a recertification in order to correct the shortfall. The bill also changed the annual state aid certification date from December 1st of each year to February 1st. The change allowed state aid to be based on actual data rather than estimates.

The need to recertify state aid brought about a larger discussion concerning the state aid calculation process itself. Reasonable questions were asked about whether this would be an annual occurrence and whether anything could be done to bring about more stability in the funding process. The response by the Education Committee was the incorporation of provisions in the bill to provide that total aid would be the amount necessary to meet school needs after subtracting the revenue raised from local property taxes. The bill set the local effort rate (LER) at 10¢ below the maximum property tax levy (e.g., \$1.00 under a \$1.10 levy). Use of a fixed LER to calculate the level of appropriation meant the amount of state aid to be appropriated would not be determined until the required data elements were available. But the goal to achieve more accurate state aid appropriations would be met.

The Legislature passed LB 149 by a resounding vote, which was promptly followed by a veto. Undaunted, the Legislature took action to override Governor Johanns' veto by a 39-7 vote. The final passage of LB 149 was considered a major victory for public education, but the funding issue would return in subsequent sessions.